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Submission to Senate Legal and Constitutional Affairs Committee on the

Migration Amendment Bill 2024

Introduction

Combined Refugee Action Group (CRAG) is based in Geelong, Victoria. CRAG is a network for over 700 individuals and community groups across the Geelong, Bellarine Peninsula and Surf Coast regions, all advocating for people seeking asylum to be treated with fairness and decency and to be given the opportunity to rebuild their lives in safety from persecution.

CRAG members are in regular contact with people who have come to Australia for refuge and who are now part of the rich social fabric of our local region. We appreciate the opportunity to make this submission.

CRAG opposes the Migration Amendment Bill 2024, and recommends that it **not** be passed. We also wish to register our dissatisfaction that a Bill of such gravity is being rushed through Parliament without adequate opportunity for careful consideration by Parliamentarians, and without adequate time for submissions to be made to, and carefully considered by, the Senate Legal and Constitutional Affairs Committee.

As a grassroots organisation, working closely with people seeking asylum who live in the wider Geelong community, CRAG has particular insight into the impact of this Bill will have on the lives of people if passed into legislation. This Bill seeks to drastically expand the Government's powers to allow:

- People to be warehoused indefinitely in third countries, placing them at risk of harm
- Protection findings to be reversed so that people can be sent back to situations where their safety is at risk and their lives are in danger
- Families to be separated forever
- Punitive visa conditions to be imposed on migrants, refugees and people seeking asylum

Warehousing people in third countries, placing them at risk of harm

If this legislation is passed, the government will be allowed to pay third countries to warehouse people who were released from indefinite detention in Australia. People who have only just begun to rebuild their lives after years in detention, could be sent to places like Nauru, where they may be detained all over again. The Bill specifically contemplates that the third country may decide to detain a person sent there.

The serious damage done to people's physical and mental health by indefinite offshore detention has been well documented. At least 14 people have died as a result of indefinite

detention on Manus Island and Nauru. The fact that the Bill gives the Australian Government and immigration officials immunity against civil claims arising from the removal of people, is an admission of the likelihood of people suffering harm.

The Bill does not require that a person has a permanent right to reside in the third country they are to be sent to, nor that there is any guarantee of their safety there. The Bill allows a person to be sent to a third country even if the government of that country might then return them to persecution, and the risk of serious harm, in their homeland.

This Bill appears to be a state-sanctioned means for the Australian Government to enlist other nations to do the “dirty work” that the Australian Constitution, the rule of law and Australia’s obligations under International Human Rights Conventions prevent it from doing directly.

Reversing protection findings

The proposed new powers ignore Australia’s International Law obligations and expose refugees to the risk of being returned to places they may face harm. The Refugee Convention, with Australia is party to, contains various safeguards against the expulsion of refugees, and states that the principle of non-refoulement is so fundamental that no reservations or derogations may be made to it.

This Bill allows the Government to revisit protection findings made in relation to refugees. Refugee status is determined after a lengthy process of applications, evidence submission and consideration, interviews and tribunal reviews. It is not the role of politicians to determine whether someone should keep that refugee status. Refugee protection must be durable and lasting, so that people are not returned to situations of danger. Making it open to reversal for the convenience of the government, or to serve a political purpose, is an appalling abuse of power.

Separating families forever

If passed, this Bill will see families permanently torn apart and people uprooted from their communities here in Australia. Even if people have their entire families here and/or have grown up in Australia and know no other home, they may be deported. Australian citizens who have committed even serious crimes, and served associated prison sentences, are allowed to reunite with their families and move on with their lives. This Bill is based on discrimination. Its underlying principle is that if you are born elsewhere, you will be treated differently.

Imposing punitive visa conditions

The Migration Amendment Bill introduces a new test to impose curfew and ankle monitoring conditions for some visa holders, in an attempt to continue the punitive treatment the High Court ruled must cease. Only courts may determine if punitive measures are necessary to manage the behaviour of an individual. In the case of YBFZ, the High Court of Australia upheld the fundamental constitutional protections against placing decisions about punishment in the hands of politicians and government officials.

The High Court sent a clear message that the Government does not have the power to impose punishment, and that non-citizens are entitled to the same protections against interferences with their liberty and dignity as everyone else. This Bill is the government's attempt to circumvent the High Court ruling.

Conclusion

The Migration Amendment Bill 2024 is contrary to the policy and value statements¹ the Albanese Government took to the most recent Federal Election, which include:

- Migration policies will be non-discriminatory.
- Australia must not harm people seeking refuge.
- Family reunion for migrants and refugees is important to successful settlement.
- Labor will deal with the complex issue of those seeking Australia's protection by giving expression to the values of compassion, justice, human rights, fairness and generosity.
- We will treat people seeking our protection with dignity and compassion in accordance with our international obligations, the rule of law and the principles of fairness.
- Labor will always respect the independence of the judiciary, which is fundamental to the rule of law and our democratic society.
- Access to justice is essential to the rule of law and integral to the enjoyment of basic human rights to which all Australians, and all people in Australia's care, are entitled.

The Refugee Convention, which Australia is party to, states that no one shall expel or return ("refoul") a refugee against their will, in any manner whatsoever, to a territory where they fear threats to life or freedom.² This Bill makes it apparent that the Australian Government is either willing to refoul refugees directly by reversing their protection findings, or by paying other nations to refoul them on Australia's behalf.

If it is passed, this legislation may be applied to a wide range of people, not just those with serious criminal records. It could have broad ranging impacts for refugees and people seeking asylum who are on Bridging Visas, including those who have been failed by an unfair legal system, exposing them to detention, deportation, and having their personal information shared with foreign governments.

The Migration Amendment Bill seeks to circumvent recent High Court rulings and dismiss Australia's obligations under the International Law treaties. It ignores the rule of law and compromises our democracy.

Combined Refugee Action Group strongly opposes this proposed legislation.

¹ <https://alp.org.au/media/2594/2021-alp-national-platform-final-endorsed-platform.pdf>

² <https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees> (p3)