Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

BY EMAIL: legcon.sen@aph.gov.au

9 April 2024

Dear Committee Secretary,

The Andrew & Renata Kaldor Centre for International Refugee Law at UNSW Sydney (Kaldor Centre) is pleased to provide a submission to the inquiry into the Migration Amendment (Removals and Other Measures) Bill 2024.

The Kaldor Centre is the world's leading research centre dedicated to the study of international refugee law. Founded in October 2013, the Kaldor Centre undertakes rigorous research on the most pressing displacement issues in Australia, the Asia-Pacific region and around the world, and contributes to public policy by promoting legal, sustainable and humane solutions to forced migration.

At the outset, we wish to express our concerns about the speed of, and lack of consultation in, the policy development process for this bill. We share the view of the Senate Standing Committee for the Scrutiny of Bills that 'legislation, particularly legislation that may trespass on personal rights and liberties, should be subject to a high level of parliamentary scrutiny'.[1] Truncated parliamentary processes which limit parliamentary scrutiny and debate are not appropriate for bills such as this one which seriously impact on personal rights and liberties.[2] While this inquiry provides some opportunity to consider the wide-ranging and open-ended ramifications of the bill, it is insufficient to alleviate our concerns about the expedited nature of the process and inadequate scrutiny of the bill's provisions. The process has undermined the government's apparent commitment to transparent and orderly governance, particularly since the government has not provided sufficient justification for the speed with which it has sought to rush through these changes.

Moreover, given the Immigration Minister's recent affirmations that 'the importance of lived experience in shaping national and international dialogue and policy cannot be overemphasised', and that it is time for the government to 'walk the walk on meaningful participation for refugees',[3] it is disappointing that this bill was drafted and rushed into parliament without any prior consultation with refugee communities.

[1] Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 5 of 2024* (27 March 2024), para 1.32.
[2] Ibid, para 1.29.
[3] Andrew Giles MP, 'Refugee Communities Association of Australia Conference' (Transcript, 21 September 2023) <https://minister.homeaffairs.gov.au/AndrewGiles/Pages/refugee-communities-assoc-aust-conf-21092023.aspx>.

In terms of the substance of the bill, it is our view that it risks violating a number of Australia's obligations under international law. Accordingly, **it is our recommendation that the bill be rejected in its entirety**.

The reasons for this recommendation are set out in this submission, which focuses on:

- the bill's overly broad scope;
- the risk of *refoulement*;
- the impact on children and families;
- the further criminalisation of Australia's migration system;
- the impact and risk of unintended consequences resulting from travel bans; and
- alternative approaches to facilitating removals.

Please do not hesitate to contact us if we can be of further assistance.

Yours sincerely,

Professor Jane McAdam AO
Director

Associate Professor Daniel Ghezelbash
Deputy Director

Madeline Gleeson
Senior Research Fellow

Dr Tristan Harley
Senior Research Associate

General comments

1. The Kaldor Centre has serious concerns about the scope and ramifications of the Migration Amendment (Removal and Other Measures) Bill 2024. It gives the Minister extraordinarily broad and ill-defined powers which would make a person's failure to cooperate with the government's efforts to remove them a criminal offence; expand the Minister's powers to reverse protection findings; and potentially see entire countries subject to travel bans, prohibiting their citizens from coming to Australia for holidays, work or education (in an attempt to pressure those countries to accept involuntary returns).

The scope of provisions compelling cooperation in removal are overly broad

2. The impetus for the bill appears to be the need to deal with people affected by last year's High Court ruling in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs*,[4] which ended indefinite detention, as well as pending litigation in the High Court concerning people who are not cooperating with efforts to remove them.[5] However, the bill goes much further than these limited cohorts. Proposed section 199B(1) targets anyone on a removal pathway, including people who may have been living in the Australian community for many years. Specifically, it includes as 'removal pathway non-citizens':

    a. unlawful non-citizens;
    b. Bridging (Removal Pending) visa (BVR) holders;
    c. Bridging (General) visa (BVE) holder who hold the visa; and
    d. any other non-citizens prescribed in the Migration Regulations (which would allow the Minister to designate other cohorts to be added).

3. Proposed section 199B(1)(d), which would allow additional classes of non-citizens to be added through regulations, is particularly problematic and has not been sufficiently justified. As the Senate Standing Committee for the Scrutiny of Bills observed, this section 'is applicable to lawful non-citizens who have been granted a visa permitting residence in Australia, who may have lived in Australia lawfully for an extended period and have no certainty or clarity as to when a visa may be subject to a removal pathway direction'.[6] We share the view of the Committee that, given the severe penalties for failing to comply with such a direction, 'the ability to expand the scope of people that may be subject to removal pathway directions is a significant matter that would more appropriately be dealt with by way of primary rather than delegated legislation'.[7]

4. Proposed sections 199C(1) and (2) grant the Minister broad powers to give 'removal pathway directions' – that is, to 'give a direction to a removal pathway non-citizen to do specified things necessary to facilitate their removal, or to do other things the Minister is satisfied are reasonably necessary to determine whether there is a real prospect of their removal becoming practicable in the reasonably foreseeable future'.[8] This may include signing and submitting certain documents required for travel, such as a passport; attending an interview with an official; or providing documents to an official. As noted below, these powers are not subject to the safeguards necessary to ensure compliance with Australia's obligations under international law. They are also

[4] *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37.
[5] *ASF17 v Commonwealth of Australia*, Case No P7/2024.
[6] Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 5 of 2024* (27 March 2024), para 1.4.
[7] Ibid.
[8] Explanatory Memorandum, 2.

overly broad and could extend, for example, to issuing a direction with which it is not possible to comply or directing a person to produce a document they do not have.[9]

5. Furthermore, proposed section 199C(4) would provide the Minister with a broad power to specify time periods for compliance with directions. The bill contains no safeguards to ensure that these time periods are reasonable and sufficient to allow affected individuals to 'take steps to comply and seek legal advice'.[10]

The bill does not adequately protect against risks of *refoulement*

6. Proposed section 199D would prevent the Minister from issuing a removal pathway direction to compel the removal of non-citizens to a country with respect to which a protection finding has been made,[11] as well as to those with pending protection visa applications[12] or ongoing court or tribunal proceedings.[13] However, we are concerned that the bill could still result in people who *do* have protection needs being forced to return to countries where they would be at risk of persecution or other forms of serious harm.

7. This risk is particularly acute for asylum seekers who had their claim assessed through the fast-track process. The Labor party has itself acknowledged that fast-track processes have not provided a 'fair, thorough and robust assessment process for persons seeking asylum',[14] meaning that some refugees were wrongly denied protection.

8. For other people, their personal circumstances or the situation in their home country may have changed since their protection claim was determined. As the Refugee Council of Australia has observed: 'While the legislation provides that these powers won't apply to those who have been found to be refugees by Australia, we are concerned that those who do have strong claims, but have not had a fair hearing or review, will be sent back to real harm.'[15]

9. Proposed section 199E(4)(b) makes it clear that the fact that someone 'is, or claims to be, a person in respect of whom Australia has *non-refoulement* obligations' is not a 'reasonable excuse' for failing to follow a direction. The government's justification for this provision is that it is necessary in order to facilitate the removal of individuals with respect to whom Australia may have protection obligations to safe third countries.[16] However, the wording of the provision does not restrict its application to such situations. As it stands, the fact a person is or may be owed protection obligations with respect to the country to which they are to be removed will not be reasonable excuse for non-compliance with a direction.

10. The proposed amendments to sections 197C and 197D of the *Migration Act 1958* (Cth) expand the Minister's powers to revisit and reverse protection findings made with

[9] Senate Standing Committee for the Scrutiny of Bills (n 6) para 1.11.
[10] Ibid, para 1.5.
[11] Proposed s 199D(1).
[12] Proposed s 199D(2).
[13] Proposed s 199D(6).
[14] Australian Labor Party, *ALP National Platform: As Adopted at the 2021 Special Platform Conference* (March 2021) <https://alp.org.au/media/2594/2021-alp-national-platform-final-endorsed-platform.pdf> 124.
[15] Refugee Council of Australia, 'New Legislation Puts Refugees Failed by Fast Track Process at Risk' (Media release, 27 March 2024) <https://www.refugeecouncil.org.au/new-legislation-puts-refugees-failed-by-fast-track-process-at-risk/>.
[16] Stephanie Foster, Evidence to Senate Legal and Constitutional Affairs Legislation Committee, Migration Amendment (Removal and Other Measures) Bill 2024 (26 March 2024) 21.

respect to non-citizens. Under the current framework, the Minister only has the power to revisit protection findings made with respect to certain unlawful non-citizens. The amendments would expand this power to cover all removal pathway non-citizens, including lawful non-citizens on valid visas. According to the Explanatory Memorandum, this would include those on Bridging (Removal Pending) visas (BVR) and Bridging (General) visas (BVE) granted on 'final departure' grounds.[17] We echo the concerns raised by the Senate Standing Committee for the Scrutiny of Bills about the lack of explanation or justification for why this amendment is needed, particular in light of the significant impact it will have on the rights of those affected.[18] The lack of procedural fairness protections for individuals who may have their protection findings overturned is also concerning. While section 197D(4) sets out a requirement that a person be notified in writing of the decision and reasons for it, there are no safeguards in place to allow an individual to respond or comment on the information and evidence being relied upon prior to the decision being made by the Minister.

The bill risks having a serious and unlawful impact on children and families

Impact on children

11. Proposed section 199D(4) would prevent the Minister from directly issuing a removal pathway direction to a child. However, proposed section 199D(5) authorises the Minister to issue a direction to any parent or guardian who is a removal pathway non-citizen in relation to their child or children.

12. Two of the most fundamental principles underpinning the protection of children's rights under international law are that: i) the best interests of the child must be taken into account as a primary consideration in all actions concerning children (the 'best interests' principle), and ii) States must assure to children who are capable of forming their own views the right to express those views freely in all matters affecting them, and to have those views be given due weight in accordance with their age and maturity (the 'right to be heard' principle).[19] The Committee on the Rights of the Child has emphasised the importance of ensuring that domestic law reflects these principles.[20] However, in its current form, the bill contravenes both.

Best interests of the child

13. The best interests principle 'expresses one of the fundamental values of the Convention [on the Rights of the Child]'.[21] It 'should be a primary consideration in decisions concerning the deportation of a child and … such decisions should ensure, within a procedure with proper safeguards, that the child concerned will be safe, be provided with proper care and be able to enjoy his or her rights'.[22] It is not sufficient that consideration of a child's best interests be a matter of ministerial discretion or implied into other administrative processes. Rather, 'the best interests of the child should be ensured *explicitly* through individual procedures as an integral part of any administrative or judicial decision concerning the entry, residence or return of a child,

[17] Explanatory Memorandum, 18.
[18] Senate Standing Committee for the Scrutiny of Bills (n 6) para 1.17.
[19] Convention on the Rights of the Child, articles 3(1), 12. The Committee on the Rights of the Child has recognised these as two of the four general principles for interpreting and implementing all the rights of the child under the Convention: Committee on the Rights of the Child, *General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child* (CRC/GC/2003/5, 27 November 2003), para 12.
[20] Ibid, para 22.
[21] Committee on the Rights of the Child, *General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art. 3, para. 1)* (CRC/C/GC/14, 29 May 2013), para 1.
[22] *HK v Denmark* (Committee on the Rights of the Child, CRC/C/90/D/99/2019, 1 June 2022), para 7.3.

placement or care of a child, or the detention or expulsion of a parent associated with his or her own migration status'.[23]

14. Proposed section 199D(5) could be used to compel parents to sign documents and take other actions on the child's behalf, even if those actions are not in the child's best interests. The bill contains no other safeguards requiring that the best interests of affected children be considered in any way. As such, the bill fails to give effect to Australia's binding obligations under international law to ensure that the best interests of the child are a primary consideration in any decision concerning the deportation of that child *and/or* an immediate family member of that child.

15. Before deciding to remove a child or their family member, Australia is required to undertake an individualised 'best interests determination' or 'best interests assessment' (BIA) involving two phases: first, the government must identify the course of action which is in the best interests of the specific child; second, the government must weigh those interests against other factors (such as public safety or national security), ensuring that the child's interests are given due weight as a 'primary consideration' in this balancing exercise.[24] There are certain formal requirements for a BIA, including that the grounds for any decision which differs from the best interests of the child be articulated and justified in order to show that the best interests were given appropriate weight in the specific context of the child's case.[25]

16. The identification of an individual child's best interests and balancing of those interests against other factors are tasks for which Australian courts are well-suited, and which they are frequently called on to do both within and outside of the migration context. It is concerning that the bill does not envision a role for the courts in overseeing the protection of children's rights in this context, and indeed that it does not even require that the Minister undertake this assessment before issuing a parent or guardian a removal pathway direction (either directly, or in relation to their child or children).

The child's right to be heard

17. The right to be heard principle is enshrined in article 12 of the Convention on the Rights of the Child and 'imposes a clear legal obligation on States parties to recognize this right and ensure its implementation by listening to the views of the child and according them due weight'.[26] This is a 'strict obligation to undertake appropriate measures to fully implement this right for all children',[27] and recognises that while children have not yet attained the legal and social status and autonomy of adults, they are independent rights holders.

18. The bill empowers the Minster to take action in relation to children but does not make any provision for such children to express their views or have those views given due weight at any stage of the process. The Minister may decide to issue a removal pathway direction to a parent or guardian, and that parent or guardian may either

[23] Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and Committee on the Rights of the Child, *Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the General Principles regarding the Human Rights of Children in the context of International Migration* (CMW/C/GC/3-CRC/C/GC/22, 16 November 2017), para 30 (emphasis added).
[24] *Wan v Minister for Immigration and Multicultural Affairs* [2001] FCA 568, para 32. In the United Kingdom, see *ZH v Secretary of State for the Home Department* [2011] UKSC 4, para 26.
[25] Committee on the Rights of the Child, *General Comment No. 14* (n 21) para 97.
[26] Committee on the Rights of the Child, *General comment No. 12 (2009): The Right of the Child to be Heard* (CRC/C/GC/12, 20 July 2009), para 15.
[27] Ibid, para 19.

comply or not, but there is no requirement that the child even be informed of the process, let alone provided with provided with an opportunity to seek legal or other advice or advocate for themself.

Impact on families

19. Proposed section 199G, which would render applications for visas by citizens of 'removal concern countries' invalid, contains exemptions for certain family members of Australian citizens and other people in Australia. These exemptions reflect the recognition of the family under international law as 'the natural and fundamental group unit of society' which is 'entitled to protection by society and the State'.[28] However, the same protection is not afforded to families which might be subject to removal pathway directions. The bill would authorise the Minister to issue such directions to spouses, de facto partners and other immediate family members of Australian citizens and permanent residents if they meet the criteria to be a 'removal pathway non-citizen' (which, as discussed above, are overly broad). The Minister would also be empowered to issue removal pathway directions in relation to the dependent children of Australian citizens and permanent residents, if both those children and their other parent or guardian are removal pathway non-citizens. There is no requirement that the Minister respect, or even consider, the importance of family unity in such contexts.

The bill further criminalises the migration system

20. Proposed section 199E would establish a new criminal offence of refusing or failing to comply with a removal pathway direction. If a person refuses or fails to comply, and does not have a 'reasonable excuse', they will face a mandatory gaol term of between one and five years, a $93,900 fine, or both.

21. There is no precedent in Australian law for a failure to comply with a direction resulting in mandatory imprisonment – not even in the context of terrorism offences. The only comparable provisions involve a failure to comply with police directions to move on under various state laws, which establish a couple of offences (concerning failure to disclose identity) that may be punished by *up to* 12 months' imprisonment. In some states, reportable offenders (such as child sex offenders) who fail to produce electronic devices when directed by police may face *up to* five years' imprisonment. However, across all these existing provisions, the gaol terms are *maximum* sentences, not *mandatory minimum* sentences.

22. It is particularly extraordinary that failure to comply with an order to sign and submit a document, without any intention of wrongdoing, could result in a mandatory prison sentence. Indeed, the Explanatory Memorandum to the bill itself concedes that the imposition of a mandatory minimum sentence could violate Australia's obligations under international law.[29] As the Senate Standing Committee for the Scrutiny of Bills noted, 'the use of mandatory minimum sentences impedes judicial discretion'.[30] It deprives the courts of their ability to impose shorter or alternative sentences depending on the circumstances of the case, and has serious implications for the rule of law.

23. The imposition of a mandatory minimum sentence is particularly concerning given that the government has failed to provide sufficient justification for its need. The Explanatory Memorandum to the bill states that the objective of a mandatory minimum sentence for the offence of refusing or failing to comply with a direction 'is to provide a

[28] International Covenant on Civil and Political Rights, art 23; Universal Declaration of Human Rights, art 16.
[29] Explanatory Memorandum, 26.
[30] Senate Standing Committee for the Scrutiny of Bills (n 6) para 1.8.

strong deterrent to non-cooperation by removal pathway non-citizens'.[31] However, in other contexts, the Law Council of Australia has advised that there is no evidence that mandatory sentencing reduces crime, and in some cases it might even make things worse.[32] In the current context, there are many reasons why an individual might fail or refuse to cooperate with a removal pathway direction, not all of which would be addressed by the threat of a prison sentence.[33] Accordingly, the purported need for a mandatory minimum sentence to 'deter' non-cooperation should be interrogated.

Designation of removal concern country

24. We are also concerned that proposed sections 199F and 199G will give the Minister the power to 'blacklist' entire countries and prevent their citizens from applying for Australian visas.[34] This is a discretionary ministerial power that requires little consultation and is unlikely to be subject to administrative or judicial review. The only limitations on this power are that the Minister first consults with the Prime Minister and Minister for Foreign Affairs. The Minister must also detail why they think it is in the national interest to make such a decision.

25. The Senate Standing Committee for the Scrutiny of Bills has expressed concern that 'such a significant matter is being left to the broad and unfettered discretion of the minister and is to be set out in delegated legislation'.[35] In its view, any such decision 'is more appropriate for primary legislation and the full parliamentary consideration afforded to Acts of parliament'.[36] While we have additional concerns about the inclusion of sections 199F and 199G at all, we agree that *at a minimum* this level of scrutiny and oversight is required for any decision to impose large-scale bans on citizens of other countries from applying for Australian visas.

26. The blacklisting of entire countries may have significant economic, diplomatic and security implications for Australia which warrant careful consideration and consultation with all areas of government. Additionally, from a human-centred perspective, punishing people who may wish to work, study in or visit Australia for the actions of their government is punitive – particularly when the relevant countries are non-democratic autocracies.

27. The Australian government's frustration at not being able to remove certain non-citizens is not unique. In 2020, only around 18 per cent of people in the US who had received removal orders were actually deported.[37] Similarly, in the EU, only around 19 per cent were removed during 2015–19.[38] These low rates were largely attributed to

[31] Explanatory Memorandum, 26.
[32] Law Council of Australia, *Mandatory Sentencing: Factsheet* <https://lawcouncil.au/docs/3b338bbd-ae36-e711-93fb-005056be13b5/1405-Factsheet-Mandatory-Sentencing-Factsheet.pdf> 2.
[33] For a list of examples of possible reasons why a person whose asylum claim has been unsuccessful may subsequently not cooperate with removal procedures, see: European Council on Refugees and Exiles, *The Way Forward: Europe's Role in the Global Refugee Protection System: The Return of Asylum Seekers Whose Applications Have Been Rejected in Europe* (1 June 2005) <https://www.refworld.org/reference/research/ecre/2005/en/42951> 20–22.
[34] There are certain exceptions, for instance for spouses, de facto partners or dependent children of Australian citizens; permanent visa holders; or persons who usually reside in Australia without time limits: proposed s 199G(2).
[35] Senate Standing Committee for the Scrutiny of Bills (n 6) para 1.23.
[36] Ibid.
[37] Erlend Paasche, '"Recalcitrant" and "Uncooperative": Why Some Countries Refuse to Accept Return of Their Deportees' (*Migration Policy Institute*, 20 December 2022) <https://www.migrationpolicy.org/article/recalcitrant-uncooperative-countries-refuse-deportation>.
[38] Ibid.

so-called 'uncooperative' or 'recalcitrant' countries of origin refusing to accept the return of their citizens.[39]

28. While the US can refuse to issue visas to nationals of designated 'recalcitrant' countries, it first considers whether a country is being deliberately uncooperative or is just *unable* to cooperate due to mitigating factors, such as disasters or limited capacity (for example, as a result of law enforcement issues, inadequate records, and/or an inefficient bureaucracy).[40] By contrast, the Australian bill contains no indication that such considerations will be taken into account.

29. It is also important to note that distinguishing between deliberate efforts by countries of origin to obstruct return, on the one hand, and capacity limitations or bureaucratic challenges, on the other, is not always a straightforward task. Countries of origin may have valid concerns about accepting non-citizens by mistake, particularly where they are being pressured to do so by returning countries, or they may invoke the challenges of identifying individuals as 'convenient measures to avoid cooperation'.[41] As one scholar has noted, '[t]he resultant opacity leaves deporting states in a conundrum. Politically motivated noncollaboration requires a different response than a simple dysfunctional bureaucracy.'[42] This need for a differentiated responses brings into question the Australian government's assertion in the Explanatory Memorandum that blacklisting 'is an appropriate and proportionate measure to safeguard the integrity of Australia's migration system'.[43]

30. Furthermore, while the evidence suggests that pressure can work in some cases, in others, countries 'may retaliate in ways detrimental to bilateral trade, tourism, law enforcement, or other forms of cooperation'.[44] In our view, there are considerable risks to managing international relations through punitive unilateral measures. The issue of international cooperation concerning the return of nationals to their home country is a diplomatic one that should be negotiated in good faith between political leaders.

An alternative approach to facilitate removals in accordance with international law

31. The removal of people found not to have protection needs plays an important role in maintaining the integrity of the refugee and migration system. As States noted in UNHCR's Executive Committee Conclusion No. 96, 'the efficient and expeditious return of persons found not to be in need of international protection is key to the international protection system as a whole, as well as to the control of irregular migration and prevention of smuggling and trafficking of such persons'.[45] Indeed, 'the credibility of individual asylum systems is seriously affected by the lack of prompt return of those who are found not to be in need of international protection'.[46]

32. However, the legitimacy of returns depends on the existence of fair, efficient and timely refugee status determination procedures, to ensure that people with protection concerns are not returned prematurely and contrary to international law.[47]

---

[39] Ibid.
[40] Congressional Research Service, 'Immigration: "Recalcitrant" Countries and the Use of Visa Sanctions to Encourage Cooperation with Alien Removals' (23 January 2020) <https://sgp.fas.org/crs/homesec/IF11025.pdf> 1.
[41] Paasche (n 37).
[42] Ibid.
[43] Explanatory Memorandum, 3.
[44] Congressional Research Service (n 40) 2.
[45] UNHCR Executive Committee, *Conclusion No. 96 (LIV) on the Return of Persons Found Not to Be in Need of International Protection* (2003), Preamble.
[46] Ibid, para (b).
[47] European Council on Refugees and Exiles (n 33) 12.

33. As the European Council on Refugees and Exiles has observed: 'If states are concerned with being able to undertake successful and sustainable returns they must address the fairness of their asylum procedures first. Wrong decisions may lead to people being persecuted and having to flee from their countries of origin again'.[48] Moreover: 'Under no circumstances should a person be returned until it has been clearly and definitely established that there are no protection needs relating to the individual case in question and that return will therefore not put their life at risk. Essential measures to ensure this cannot happen include the granting of a suspensive right of appeal and allowing a procedure to be re-opened if new elements arise in a particular case.'[49]

34. Even where removal is appropriate, States have affirmed that the 'return of persons found not to be in need of international protection should be undertaken in a humane manner, in full respect for human rights and dignity and, that force, should it be necessary, be proportional and undertaken in a manner consistent with human rights law'.[50] Additionally, 'in all actions concerning children, the best interests of the child shall be a primary consideration'.[51]

35. Finally, UNHCR has emphasised that, in order to be effective, measures to remove non-citizens who do not have protection needs must be paired with broader approaches which respond to the realities of displacement and migration. Indeed, '[a] comprehensive approach to return is premised on the recognition that migration control and deterrence alone can have little lasting impact on curbing irregular movements, when the need or the desire to migrate prevails. Return-oriented measures must, therefore, be part of a broad range of migration management policies that go beyond short-term reactions to a perceived or real misuse of asylum systems.'[52]

36. In line with the above, the most effective approach to facilitating removals consistently with international law is to ensure that refugee status determination procedures are both fast and fair. The longer a person has been in Australia, the greater the legal and practical barriers to removal. At the same time, where an applicant feels they have not had an opportunity to have their protection claims fairly assessed, the more reluctant they may be to accept voluntary removal from the country. To the extent that certain non-citizens who do not have protection needs continue to refuse to cooperate with their removal, such situations are better resolved on an individual basis, according to the specific reasons for refusal, rather than blanket criminal provisions.

Recommendation

37. We recommend that the bill be rejected in its entirety.

[48] Ibid, 13.
[49] Ibid.
[50] UNHCR Executive Committee, *Conclusion No. 96* (n 45) para (c).
[51] Ibid.
[52] UNHCR, 'The Return of Persons Not in Need of International Protection' in *UNHCR Protection Training Manual for European Border and Entry Officials* <https://www.unhcr.org/sites/default/files/legacy-pdf/4d9487259.pdf> 5.