JRS AUSTRALIA
JESUIT REFUGEE SERVICE

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Submission to the Inquiry into Migration Amendment Bill 2024 (Cth)

Jesuit Refugee Service (JRS) Australia

November 2024

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About Jesuit Refugee Service (JRS)

An international organisation: Jesuit Refugee Service (JRS) is an international Catholic organisation, founded in 1980 as a work of the Society of Jesus ("the Jesuits"). Our status as an international organisation links us to international advocacy campaigns, expertise and initiatives.

Seeking social justice for refugees worldwide: JRS undertakes services, accompaniment and advocacy at national, regional and international levels to ensure that refugees have full rights while in exile, and to strengthen the protection afforded to refugees, internally displaced people, people seeking asylum and other forcibly displaced people.

Programs offering global support: JRS programs are found in 51 countries, assisting refugees, people seeking asylum and other displaced people in camps, detention centres, war zones and urban settings. JRS offers support mainly through access to education, emergency assistance, healthcare, livelihood activities and social services.

JRS in Australia: JRS Australia supports approximately 3,000 people annually, through frontline services including specialist casework, emergency relief and referrals to address acute needs relating to physical and mental health, domestic and family violence (DFV), and housing, food and financial insecurity. We also support people to access safe and dignified employment, training, education, childcare, legal advice, and other critical services. And we run a refugee leadership program and other activities to strengthen social and community connections, development and advocacy.

Strong local alliances: We have a strong alliance with parishes, communities and schools across Australia, religious orders, local and state governments, refugee organisations, campaigns and coalitions, and other organisations in the community in the not for profit and education sectors.

A stronger voice for refugees: Advocacy is a central pillar of JRS' work. To guide our advocacy and service, we utilise an expanded definition of 'refugee' to encompass 'de facto refugees' including victims of armed conflicts, erroneous economic policy or natural disasters and internally displaced persons (IDPs). JRS' advocacy is characterised by the following principles:

- It stems directly from our close engagement with refugees;
- It flows from accompaniment and service and is linked to JRS projects;
- It is based on Jesuit values, inspired by Ignatian spirituality; and
- It is built on lived and learned expertise.

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1 Summary

Thank you for the opportunity to provide a submission in relation to the Migration Amendment Bill 2024 ("the Bill"). **We recommend that this Bill not be passed.** We want to state from the outset that the group that is targeted by this Bill are people who have already served sentences and ongoing punishment of this group is unnecessarily cruel and punitive. Over and above that, the Bill holds the capability to impact a much broader community, and we aim to explore that further below. In this brief submission we will outline three key concerns we have about the potential this Bill holds to exacerbate suffering of people who have sought safety in Australia. These concerns are:

- The risk of refoulement and/or harm in third countries;
- The risk of family separation; and
- The unfairness in expanded power to revisit protection findings.

2 Risk of refoulement and/or harm in third countries

1. Schedule 1, Part I of this Bill allows the Australian Government to pay foreign countries to establish informal, non-legally binding "third-country reception arrangements".[1]

2. Under these arrangements, holders of Subclass 070 Bridging (Removal Pending) visas (BVRs) can be granted permission to enter and stay in the foreign country. Once notified, their BVR in Australia ceases, requiring them to leave Australia.[2]

3. Given the apparent informality of these third-country reception agreements, we are highly concerned about the potential lack of accountability and enforceability of human rights obligations owed to the transferred persons once they arrive in the third country.

4. This concern is heightened by the proposed s198AHB, which states that although the Australian Government cannot restrain the transferred person's liberty, the third country may do so, 'whether the implementation or the taking of action occurs in that country or another country'.[3]

5. Many of our clients live with the physical and mental impacts from the poor living conditions and trauma they experienced during their time in offshore detention. They endured egregious abuse in Nauru and Papua New Guinea (PNG), despite

[1] Migration Act 1958 (Cth) (**Migration Act**) proposed s198AHB
[2] Migration Act proposed s76AAA
[3] Migration Act proposed s 198AHB

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Memoranda of Understanding (MOUs) that sought to uphold their dignity and various international treaties signed by third country governments.[4]

6. In 2014, in response to an incident at the Manus Island Detention Centre, the Legal and Constitutional Affairs References Committee found that Australia has 'specific obligations with respect to the transfer of persons to another country where there is a real risk of them suffering particular human rights violations'.[5] This involves not sending a person to a third country where there is a real risk of refoulement, persecution, torture or punishment.

7. This Bill fails to explicitly, or even implicitly, address the Australian Government's responsibility in ensuring that the third-country reception arrangements uphold the principles of non-refoulement and human rights. Theoretically, under these arrangements, people on BVRs could be returned to their countries of origin ('chain refoulement') or tortured to the point of 'voluntarily' going back to their country of origin.[6]

8. Compelling BVR visa holders, many of whom would have endured the hostility of both offshore and hotel detention for years prior to their release, to facilitate their own removal to a third country with no guarantee of their wellbeing and protection, is unnecessarily cruel, unjust, and inconsistent with this country's international obligations.

3 Risk of family separation

1. Though the impacts of proposed s 76AAA do not apply to non-citizens who are under the age of 18, this does not address the potential for the Bill to eventuate in forced family separation.

2. In a report published in 2021, the Refugee Advice and Casework Service (RACS) identified several families experiencing 'two legal realities', whereby the parents and children who arrived by boat were barred from permanent protection, whilst children born in Australia were entitled to obtain citizenship.[7]

[4] Senate Legal and Constitutional Affairs Committee, Parliament of Australia, *Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre* (Report, April 2017).
[5] Senate Legal and Constitutional Affairs Committee, Parliament of Australia, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014* (December, 2014) [7.23].
[6] Kaldor Centre for International Refugee Law, *Cruel, Costly and Ineffective: The Failure of Offshore Processing in Australia* (Policy Brief, No 11, August 2021), 11.
[7] Refugee Advice and Casework Service (RACS), *A Place to Call Home: Shining a Light on Unmet Legal Need for Stateless Refugee Children in Australia* (Report, March 2021) 17.

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3. One example provided in the report was Muhammad and Sumaiya, who arrived in Australia by boat to seek asylum in 2013. They were stateless Rohingya with one daughter (Noor) born in their country of origin, a second daughter (Farrah) born in transit to Australia, and a third child (Husan) who was born in Australia. Muhammad, Sumaiya and their two eldest children are not entitled to permanent protection due to their mode of entry to Australia, but Husan is able to obtain citizenship.

4. We are concerned that if this Bill were to pass, families like this would be at risk of separation. Though the children would be allowed to stay in Australia, Muhammad and Sumaiya can be forced to facilitate their own departure to an unknown third country if they were on a BVR.

5. Through our Foodbank program, casework service and Finding Safety program, we provide for families' essential needs as they navigate their settlement journeys. These are families who have endured significant hardship to seek the basic right of safety, and who deserve to not have the threat of separation contribute to the complexities they already face.

4 Unfairness in expanded power to revisit protection decisions

1. As it stands, s197D of the Migration Act 1954 ("the Act") purports that even if a protection finding is made for an 'unlawful non-citizen' (i.e. a person without a visa), this finding can be revisited and overturned at any time. As stated by the Asylum Seeker Resource centre, 'the protection from refoulement [granted by s197C(3) of the Act] is qualified by a constant and ongoing reassessment of any "protection finding" which may apply to them'.[8]

2. Until the proposal of this Bill, people on BVRs and Subclass 050 (Bridging (General)) visas (BVEs) were defined as 'lawful non-citizens'[9], meaning those who have positive protection findings cannot have those findings revisited and overturned to justify their removal from Australia, as would be the case for 'unlawful non-citizens'[10].

[8] Asylum Seeker Resource Centre (ASRC), Submission No 32 to Senate Legal and Constitutional Affairs Legislation Committee, *Inquiry into the Migration Amendment (Strengthening the Character Test) Bill 2021* (16 December 2021) 12 [41].
[9] Migration Act s 5.
[10] Migration Act ss 197D(2), 198.

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3. Schedule 1, Part II of this Bill brings these visa holders into the purview of ss197D and 198 on the premise that even though they are on valid visas, those on removal pathways 'should be required to cooperate with efforts to facilitate their removal'[11].

4. Though the text of the Bill provides that 'only certain non-citizens holding Subclass 050 (Bridging (General)) visas will be removal pathway non-citizens', in recognition of the fact that there are many people on BVEs for purposes other than impending removal, the wording of what constitutes 'certain' BVE holders is vague.

5. Specifically, it includes people on BVEs who 'at the time the visa was granted, satisfied a criterion for the grant relating to the making of, or being subject to, acceptable arrangements to depart Australia.'[12]

6. This could include the almost 8,500 people,[13] who have been failed by the Fast-Track system, but who are still unwilling or unable to return to danger. As we know now, the Fast-Track system has been condemned as deeply flawed due to severe procedural restrictions, including arbitrary deadlines and applicants not being given the right to a hearing[14]. This group has strong links to the community as they have called Australia their home for over ten years.

7. Another group of people on BVEs are those who are part of the Medevac cohort. These people were brought to Australia from offshore detention to receive urgent medical assistance, and were subsequently kept in hotels as Alternative Places of Detention (APODs) for years, where they endured horrific conditions and consequent health issues.[15] As evident in the case study below, many who have been released are on BVEs despite protection findings being made during their time in offshore detention.

8. According to the Refugee Council of Australia, as at 30 June 2024, 7,152 people out of the 9,581 people on BVEs were from countries with serious human rights issues, such as Sri Lanka, Iran, Pakistan, Bangladesh, Afghanistan, Myanmar, Somalia, Sudan and Syria.[16] A further 886 people on BVEs are stateless.

9. A significant proportion of our clients hold BVEs. Whether they are waiting for an initial or final decision on their protection claims, or waiting to be resettled to a third

[11] Explanatory Memorandum, Migration Amendment Bill 2024 (Cth) 8.
[12] Migration Act proposed s5(1).
[13] ASRC, *People Failed by Fast Track* (Briefing Paper, 12 September 2024), 2.
[14] Ibid.
[15] Australian Human Rights Commission, *The Use of Hotels as Alternative Places of Detention (APODs)* (Inspection Report, June 2023).
[16] Refugee Council of Australia, *New UN Report on Sri Lanka and the Need to Review Asylum Claims Rejected under the Fast Track Process* (Letter to Hon Tony Burke MP, 30 August 2024) 2.

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country after having been recognised as being owed protection obligations, the overarching feeling is "uncertainty".

10. Despite this uncertainty and adversity, our clients show great resilience. They pay taxes, start businesses, provide for their families, engage in community activities, and encourage their children to study hard so that they can contribute to Australian society.

11. By creating an expanded definition of 'removal pathway non-citizens', people who have experienced some positive progression in their case could have their visa overturned at any time. To have such a threat hovering over them after years of uncertainty is an unnecessary cruelty.

12. Furthermore, the ambiguity of wording in this amendment permits future governments to take liberties in their interpretation of which people are on a 'removal pathway'. Though the Government of this day has their own conceptions of what 'certain non-citizens' means to them, a lack of clear definition threatens a broader community.

Case study: Thanush

Thanush is a construction worker and human rights activist who came to Australia by boat in 2013, seeking asylum after fleeing persecution as a Tamil in Sri Lanka. Upon arrival, he was taken to detention on Christmas Island, and later that year, he was transferred to offshore detention in Manus Island in Papua New Guinea. In 2016, during his time on Manus Island, he was found to be a refugee through the regional Refugee Status Determination (RSD) process, but remained in detention for a further two years.

Thanush was taken to Australia in 2018 under the Medevac process and was kept in hotel detention until January 28th 2021. Upon his release, he was given a 6-month BVE, which included work rights, but no study rights or rights to re-enter Australia if he were to go to a third country to see his family. He got a job in a supermarket, but lost his job soon after due to the COVID-19 lockdown.

When he lost his job, Thanush reached out to JRS and received rental assistance, Foodbank support and work readiness training. We helped him to get his forklift license and engaged him in our Leadership Program, where he became a speaker in our Schools Engagement Program. Through the Schools Engagement Program and other advocacy work, Thanush speaks to diverse communities about his experience as a refugee and has inspired tens of thousands of people through his resilience and commitment to contributing to Australian society, despite the adversity he has faced.

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Because of his date and mode of arrival, Thanush is part of a cohort of people who are banned from permanent resettlement in Australia, even though he has been recognised as a refugee. He holds a BVE (not a Temporary Protection Visa (TPV) or Safe Haven Enterprise Visa (SHEV) and he is not eligible for the Subclass 851 Resolution of Status (RoS) visa. Over the years, Thanush has applied for third country resettlement in Canada and New Zealand. He is currently waiting to hear back about New Zealand, although he has been told that it could be between 9 – 12 months before he gets an answer.

If this Bill were to pass, Thanush's protection finding could be revisited and overturned. This outcome would be devastating, given that Thanush has built an incredible community of friends and supporters here in Australia and he has refugee status. We urge Parliament to consider the implications that the expanded power to overturn protection findings will have on people like Thanush, who, despite many challenges over the last 10 years, calls Australia home.

5 Conclusion

It seems that the Government has a fervent reluctance to accept any intervention, whether it be from the High Court of Australia or the court of public opinion, against their ongoing attempts to punish a small cohort of vulnerable people. This Bill undermines the spirit of the law. Further evidence of this is the speed with which this Bill has been developed and the limited time for stakeholder input. We ask the Senate Committee to uphold our shared values of justice, fairness and the rule of law.

We ask the Senate Committee to recommend that this Bill not be passed.