

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Via email: legcon.sen@aph.gov.au

22 November 2024

Dear Committee Secretary,

National Legal Aid (NLA) welcomes this opportunity to make a submission to the inquiry into the *Migration Amendment Bill 2024*. NLA represents the eight Chief Executive Officers of the state and territory Legal Aid Commissions (LACs). Five of the LACs provide legal assistance to migrants, refugees and asylum seekers at the Administrative Review Tribunal and Federal Court and a number receive additional funding to increase legal assistance and representation for the protection visa application process and review. This submission draws on the experience and expertise of these LACs.

NLA has significant concerns about a number of provisions in the Bill, including but not limited to the issues raised in this letter, and as result recommends that the Bill not be passed in its current form.

An overarching concern held by NLA is that the Bill creates an unnecessary additional process to deal with people who are not Australian citizens who are deemed to be at risk to the community, despite the fact that there are already systems in place for such people including the Community Services Orders as well as the mainstream justice systems across State and Territory jurisdictions.

While the stated intention of the Bill is to target a small number of people, NLA is of the view that the manner in which it has been drafted creates risks of unintended consequences that could mean many more people are affected. Such people include, for example, Transitory Persons who have been brought to Australia for medical treatment from Offshore processing centres. Given that the provisions in the Bill may target a broad category of Bridging Visa holders and facilitate their removal, the implementation of the Bill may create a scheme that is incompatible with Australia's international obligations. Further, there appears to be no obligations on countries that agree to accept returnees under the regime established by the Bill. For example, the Bill does not have the equivalent of the proposal that was included under the 2011 Malaysia Solution to require third countries to be parties to the Refugees Convention and/or the International Covenant on Civil and Political Rights.

NLA is also concerned that the Bill would enable the government to share vulnerable non-citizens' information with foreign governments without clear parameters. This could constitute a breach of privacy rights or put individual's safety at risk on removal to a third country. NLA is also concerned that, as with the post-NZYQ legislation, this Bill enables the government to reverse protection findings made for refugees.

Finally, NLA would note that legislation affecting rights and liberties must always be subject to proper parliamentary scrutiny, which is not possible within the short timeframe of this inquiry.

Given the timeframe of the inquiry into the Bill, NLA has not been able to develop a more in-depth submission dealing with these and other concerns in a more detailed fashion, nor has there been time to properly consult with stakeholders regarding its impact, including clients. However, NLA would endorse the Law Council of Australia's submission to the inquiry which provides a more thorough analysis of concerns with the approach taken in the Bill.

Thank you for the opportunity to comment on the *Migration Amendment Bill 2024*. Please feel free to contact Katherine McKernan, Executive Director of NLA, on _____ or at _____ if you require any further information.

Yours sincerely

Helen De Brito
Director, Legal Aid WA
Chair, NLA Civil Law Network