



127 Myers St,  
Geelong, Vic 3220

Submission to Senate Legal and Constitutional Affairs Committee on the

## **Migration Amendment (Removals and Other Measures) 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 region, 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.

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.

CRAG opposes the Migration Amendment (Removals and Other Measures) Bill 2024 in its entirety. We also wish to register our dismay at the attempt that was made to rush this reactive Bill through Parliament without adequate opportunity for careful consideration by Parliamentarians.

Peak bodies on refugee law and policies, The Kaldor Centre, Human Rights Law Centre, Refugee Council of Australia, Asylum Seeker Resource Centre and Refugee Legal have all identified grave concerns with this Bill. As a grassroots organisation, working closely with people seeking asylum who live in the Geelong community, CRAG has particular insight into the impact of this Bill on the lives of people who are our friends and neighbours. We have no doubt that, if passed into legislation, this Bill will:

- Risk returning people to serious harm and persecution
- Unfairly punish refugees and people seeking asylum
- Separate families forever
- Expand the unchecked powers of the Immigration Minister

### **Risking returning people to serious harm and persecution**

Around 10,000 people seeking asylum were refused protection in the “Fast Track” refugee determination process. The Fast Track process has been subject to extensive international criticism, as has been rightly acknowledged by the Labor government as flawed, unfair and neither thorough nor robust.

In many cases, up to date country information from international human rights agencies and credible media outlets was not taken into proper consideration in Fast Track assessments. In regard to Sri Lankan Tamil asylum seekers, for example, undue emphasis was placed on Australian Department of Foreign Affairs (DFAT) reports, and people with genuine fear of persecution, even those who had been the victims of torture in Sri Lanka, were denied

protection. In a landmark immigration case in the United Kingdom in May 2021, three Upper Tribunal judges were scathing in their rejection of the Australian DFAT country reports used as a basis to determine asylum applications for Sri Lankan Tamils.<sup>1</sup>

The Bill penalises those who were failed by the Fast Track system, whose claims for protection have never been properly or fairly addressed.

In addition to this, the situations in many people's homelands have deteriorated significantly since the initial assessment of their claims for asylum. Due to the Fast Track system's very limited appeals process, new information cannot be presented. Persecution and violence toward minority groups has escalated in places such as Afghanistan since the Taliban regained power, for example, and in the border areas of Pakistan (e.g. Waziristan and the Parachinar area<sup>2</sup>), where extremist groups have been emboldened by the situation in Afghanistan. In Iran, the United Nations Human Rights Council found that "crimes against humanity – specifically those of murder, imprisonment, torture, rape and other forms of sexual violence, persecution, enforced disappearance and other inhumane acts" were committed by the government in its crackdown against peaceful protests.<sup>3</sup> However, this information cannot be considered in judicial reviews of cases which were assessed prior to these events occurring.

There are several people living in the Geelong community who have Return Pending Visas (or no visas) due to their cases being unfairly rejected in the flawed Fast Track system. They are valued members of our community, and they genuinely fear they will be harmed if returned to their homelands. There are no protections in this Bill for people who were subjected to the Fast Track process and its failings.

The Bill also includes new powers for the Minister to overturn a person's protection finding in certain circumstances. This creates a high risk that people who have previously been found to be in need of protection could be deported to harm, in breach of Australia's obligations under the Refugee Convention and international law.

## **Unfairly punishing refugees and people seeking asylum**

This Bill will punish people seeking asylum by forcing them to cooperate with their deportation process or face criminal charges and imprisonment. If a person does not comply with the Minister's direction to engage in the deportation process, they could be sentenced to one to five years' imprisonment and hefty fines. Having a fear of persecution in their home country is specifically listed in the Bill as **not** being an acceptable reason for non-compliance.

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<sup>1</sup> New South Wales Council for Civil Liberties <https://www.nswccl.org.au/dfat>

<sup>2</sup> Australian Institute of International Affairs <https://www.internationalaffairs.org.au/australianoutlook/elusive-peace-what-explains-the-ongoing-conflicts-in-parachinar-pakistan/>

<sup>3</sup> <https://www.aljazeera.com/news/2024/3/8/iran-committed-crimes-against-humanity-during-protest-crackdown-un-says>

This Bill will force people, who have genuine fears for their safety and freedoms, to choose between agreeing to be returned to face their persecutors and torturers (in countries where there is credible international evidence that persecution and torture still continues) or being imprisoned here for up to five years and being fined thousands of dollars.

This will result in refugees, people seeking asylum and people who are stateless being incarcerated indefinitely, either in immigration detention or prison.

### **Separating families forever**

The Bill gives the Minister for Immigration unprecedented powers to prevent people from certain countries from entering Australia. While spouses, de facto partners or dependent children of Australian citizens, permanent visa holders or persons who are usually resident in Australia would be exempt from this ban, any children from these countries who are no longer considered dependants, due to their age, will be banned from coming to Australia even to visit their parents.

After 10 to 11 years of waiting for permanent visas and to be allowed to apply for family visas, refugees who were caught up in the Fast Track system will now be separated permanently from their own children, siblings and parents if this Bill is passed into legislation.

This Bill will exacerbate the suffering and distress the Geelong asylum seeking community has lived with for the past 10 or 11 years, making it unbearable for people to live with. People who fled their homelands to find a safe place for their families to live in peace will never be able to bring those families with them to safety. CRAG has very serious concerns for the mental health of our friends and neighbours if the Bill is passed. It will also create significant pain and suffering for other migrants who have made Australia home.

### **Expanding unchecked powers**

The Bill expands the Minister's powers to unprecedented levels, without adequate safeguards.

The Bill permits the Minister to unilaterally, subject only to consultation with the Prime Minister and the Minister for Foreign Affairs, designate a country to be a "removal concern country", with the effect that almost all nationals from that country are prohibited from applying for any visa to come to Australia. Only the Minister can decide in individual cases to lift that prohibition, however the Minister is under no duty to even consider a request.

As mentioned above, the Bill also permits the Minister to reverse a protection finding made during the assessment of a person's protection visa application. Refugee determinations should be made according to fair, thorough assessments which follow due process. Only the Administrative Review Tribunal should have the power to review refugee determinations. Politicians, who may make politically motivated decisions which put the lives of others at risk, should not be provided with this level of power.

## Conclusion

The Migration Amendment (Removals and Other Measures) Bill 2024 is contrary to the policy and value statements<sup>4</sup> the Albanese Government took to the most recent Federal Election, which include:

- Australia must not harm people seeking refuge.
- Family reunion for migrants and refugees is important to successful settlement.
- The assessment and review of protection claims will be underpinned by robust, efficient and transparent process that ensure fair and consistent outcomes, including access to review and independent advice.
- The assessment and review of protection claims must be independent and free from any political or diplomatic interference.
- Detention that is indefinite or otherwise arbitrary is not acceptable.
- Migration policies will be non-discriminatory.
- 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.

The Bill is also contrary to the Refugee Convention and its core principle of non-refoulement, which is so fundamental that no reservations or derogations may be made to it. It provides that no one shall expel or return ("refouler") a refugee against their will, in any manner whatsoever, to a territory where they fear threats to life or freedom.<sup>5</sup>

Combined Refugee Action Group strongly opposes this proposed legislation.

Margaret Manning and Peter Coghlan,  
Co-Convenors

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<sup>4</sup> <https://alp.org.au/media/2594/2021-alp-national-platform-final-endorsed-platform.pdf>

<sup>5</sup> <https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees>