



12 April 2024

# **INQUIRY INTO THE MIGRATION AMENDMENT (REMOVAL AND OTHER MEASURES) BILL 2024**

**Senate Standing Committees on Legal and Constitutional Affairs**

**SUBMISSIONS FROM THE AUSTRALIAN MUSLIM ADVOCACY NETWORK LTD**

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MEASURES) BILL 2024**

**Submissions of the Australian Muslim Advocacy Network Ltd**

## **1. INTRODUCTION**

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The Australian Muslim Advocacy Network Ltd (AMAN) works to prevent the harms of systemic racism, online hatred and Islamophobia through policy engagement and law reform.

## **2. RECOMMENDATIONS**

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- (a) Abandon the Migration Amendment (Removal and Other Measures) Bill 2024 and instead focus on building durable, lasting mechanisms to review immigration detention and release people safely into the community, where they can begin to rebuild their lives.
- (b) Grant recognised refugees the opportunity to settle in Australia, irrespective of their mode of arrival, while also guaranteeing timely, equitable, and efficient assessment of asylum claims.
- (c) Terminate offshore processing and detention policies and permanently shut down the 'Regional Processing Centre' in Nauru.
- (d) Guarantee that bridging visas allow refugees and asylum seekers to reside in the community with complete rights and entitlements.

## **3. DISCUSSION**

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- a) The Migration Amendment (Removal and Other Measures) Bill 2024, if enacted, would grant the Minister for Immigration unprecedented authority to compel individuals to take any action necessary for their removal from Australia under threat of severe penalties, including up to five years of imprisonment for non-compliance.
- b) Additionally, the bill empowers the Minister to institute travel bans reminiscent of those seen in the Trump administration, effectively blocking visa applications from citizens of designated 'removal concern countries.'
- c) The ramifications of such legislation are dire. It forces individuals fleeing persecution, torture, and imminent danger to make an impossible choice: either risk returning to a place where their safety and lives are in jeopardy or face detention in Australian prisons for refusing to comply with removal orders. Furthermore, it grants the Minister and future governments discriminatory powers to bar visa applications from entire nations known for producing refugees, such as Afghanistan or Iran.
- d) This bill represents yet another hastily crafted, draconian response by the Albanese government following the High Court ruling in NZYQ. In November 2023, the High Court rightfully deemed it unlawful for the Australian Government to detain individuals when there is no realistic prospect of their timely removal from Australia,

particularly in cases where individuals are stateless or have valid protection claims, rendering their return impractical.

- e) The upcoming case of ASF17 v Commonwealth before the High Court will further examine whether similar limitations should apply to individuals unable to return to their home countries due to various factors, including fear of harm or medical impediments.
- f) AMAN identifies several troubling aspects of the Removal Bill, including its potential to circumvent an impending High Court ruling, the broad powers granted to the Minister for directing individuals' removal pathways, and the imposition of mandatory minimum sentences for non-compliance.
- g) Of particular concern is the disproportionate punishment of up to five years imprisonment for what may amount to minor infractions without adequate consideration for genuine fears of persecution or harm upon removal.

#### **4. HUMAN RIGHTS FRAMEWORKS**

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- a) The Refugee Convention of 1951 serves as the primary legal framework for the rights of refugees and asylum seekers discussed in this submission. Australia's voluntary accession obligates it to uphold refugee protection standards, including the principle of non-refoulement, which prohibits returning refugees to places where they face persecution. 'Constructive refoulement,' including actions like arbitrary detention forcing asylum seekers to abandon claims, is also forbidden. The Refugee Convention also encompasses rights beyond non-refoulement, notably Article 31(1), which prohibits penalising refugees for illegal entry or stay. The preamble emphasises the broad exercise of fundamental rights for refugees and asylum seekers, including civil, economic, social, and cultural rights.
- b) Australia's obligations under the International Covenant on Civil and Political Rights (ICCPR) require refraining from arbitrary detention and ensuring it is a last resort, justified, necessary, and regularly reviewed. The UNHCR Detention Guidelines consider factors like detention purpose, individual circumstances, and proportionality, as well as alternatives to detention.
- c) The Vienna Convention on the Law of Treaties mandates good faith compliance with treaties, including refugee safeguards. Parties cannot cite domestic law to justify treaty non-compliance. As a former UN High Commissioner for Human Rights emphasised, the law should deliver justice and adapt to changing needs, ensuring the preservation of rights for all.