Fitzroy Legal Service

Community driven justice.

FITZROY LEGAL SERVICE SUBMISSION TO INQUIRY INTO *Migration Amendment (Removal and Other Measures) Bill 2024*

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About Fitzroy Legal Service
Established in 1972, Fitzroy Legal Service ('FLS') is Victoria's longest standing community legal centre championing justice for the most marginalised members of our community. With deep commitment to community-driven change, we provide individuals and communities with access to justice when they need it most, and boldly agitate for high-impact policy and legislative reforms.

Background
FLS has supported migrant community members through the provision of legal services and advocacy for decades. Through our migrant employment law clinic, as well as our broader criminal law and family law and family violence practices, we have worked extensively with people seeking to build a home in Australia who face significant barriers, discrimination and exploitation due to their visa status. We have recently also launched a migration law program where we intend to support clients to access justice in their dealing with the migration system.

Responding to the *Migration Amendment (Removal and Other Measures) Bill 2024*
We note that this inquiry did not include specified terms of reference and accordingly make comment on the *Migration Amendment (Removal and Other Measures) Bill 2024* ('the Bill') as a whole.

We have serious misgivings about the Bill and believe it would entrench disadvantage for those seeking safety, risk non-compliance with Australia's international *non-refoulement* obligations under the *Convention Relating to the Status of* Refugees and endow the Minister with immense powers without sufficient safeguards. We have categorised these into three key concerns.

1. **The criminalisation of non-cooperation with removal creates a roundabout regime of indefinite detention**

The Bill introduces an unprecedented new power whereby a person can be required to do anything the Minister deems reasonably necessary to facilitate their removal from Australia, under threat of a five-year jail term should they fail to comply.[1] While reasonable excuse exceptions are provided, notably these do not include where an individual fears harm and/or persecution in their country of origin.[2] This means that the Minister will essentially be able to compel a person to engage with the representatives of an authoritarian regime that they fear will harm them. Should this Bill become law it would place people fleeing persecution and torture in an impossible position: having to choose between returning to a place where they fear they may be harmed or killed or go to prison for refusing to comply with the Minister's orders. We regard this outcome as not only cruel and punitive, but also ineffective in seeking to achieve the stated purpose of the Bill. For as cruel as these criminal sanctions are, they will never be enough to encourage people to return to face death or torture in the countries from which they have fled.

The last two decades of migration policy has shown us that people who hold a genuine fear of harm in their country of origin cannot be coerced into cooperating with their own removal simply by prolonging their detention. Yet this Bill does not include a mechanism to review ongoing detention or to release people from detention into the community. Instead, what it creates is a seemingly eternal roundabout of detention, allowing for people who genuinely fear harm to be imprisoned for up to five years before then being returned to immigration detention. This is indefinite detention in everything but name.

[1] *The Bill*, section 199C.
[2] Ibid, s 199E.

2. **The Minister will be given the power to reverse previous protection findings at any time without any adequate safeguards or procedural fairness**

While a limit on the Minister's new power does exist in so far as a person cannot be required to facilitate their removal to a country from which they have a protection finding,[3] this safeguard is severely undermined by the Bill's introduction of the Minister's unprecedented ability to reverse previous protection findings.[4] Most concerningly, the Bill does not contemplate any process the Minister would have to follow in making such a reversal and fails to guarantee that any procedural fairness protections would apply for the affected visa holder.

This means that any protection visa holder, someone who has been found by Australia to be a genuine refugee and to whom we owe protection and *non-refoulement* obligations, could find themselves at risk of having their protection visa revoked by the Minister basically at will. This is inconsistent with the Refugee Convention and Optional Protocol and against all principles of permanent refugee settlement. That a person could have lived and built a life in Australia for decades and then suddenly face deportation back to the country from which they fled is unusually cruel and well beyond the scope of the intended purposes of this Bill.

3. **The Minister can impose discriminatory travel bans on entire countries with little accountability**

Should this Bill become law it would allow the Minister to unilaterally, subject only to consultation with the Prime Minister and Minister for Foreign Affairs, declare a country to be a "removal concern country" and ban all nationals from that country from applying for any visa to come to Australia.[5] Exceptions exist under the proposed section 199G of the Bill in limited circumstances, such as if they are a partner or dependent child of an Australian citizen or permanent resident. However, anyone else from such a designated country will have no recourse, as it is only the Minister who can decide in individual cases to lift the visa ban and is under no duty to even consider any requests.

Any such ban would be a clear violation of Australia's international obligations to avoid discriminatory immigration policies under the ICCPR and the Refugee Convention. The effect of this legislation would be to punish individuals who are wanting to work, study and build a life in Australia, for the actions of their governments - most of whom will likely be non-democratic autocracies. The proposal will also significantly punish Australian citizens and/or Permanent Residents in Australia who may wish to sponsor their family members to visit them in Australia and who fall outside of the narrow exclusions provided by section 199G(2) of the Bill. We consider this an extremely punitive and worrying public policy development, with echoes of President Trump's infamous 'Muslim Ban'.

That such a significant matter of consequence would be left to the unfettered discretion of the Minister is particularly concerning. It is our opinion that given the far-reaching implications of banning citizens from an entire nation from applying for an Australian visa, it is a matter that should be dealt with by primary legislation and the full procedures of parliamentary scrutiny in every instance a country is deemed a 'removal concern country'. Instead, the Bill introduces this power as a discretionary power of the Minister, which in most circumstances is not subject to administrative or judicial review. This would give rise to a

[3] *The Bill*, s 199D(1).
[4] See Schedule 2 of the Bill.
[5] *The Bill*, s 199G(1).

‘black hole’ of accountability leaving all those it affects, including those fleeing persecution and torture, with no options - other than to pursue nonofficial pathways to seeking safety.

Recommendation: That the Bill be withdrawn and the Government engage in a consultative process with community organisations and lived experience groups to develop pathways to community integration for those unable to return to their country of origin.