

Submission to the Senate Inquiry into the *Migration Amendment (Removal and Other Measures) Bill 2024*

April 2024

For enquires: mwc@migrantworkers.org.au

1 Introduction

- 1.1 The Migrant Workers Centre Inc. (MWC) welcomes the opportunity to make a submission to the Committee's inquiry into the *Migration Amendment (Removal and Other Measures) Bill 2024* (hereafter 'the Bill').
- 1.2 The Migrant Workers Centre Inc. (MWC) is a not-for-profit organisation that connects migrant workers with one another and empowers them to understand and enforce their workplace rights. The MWC collaborates with unions and community partners to organise grassroots campaigns, deliver education sessions on workplace safety and rights, and advocate for long-term solutions to the exploitation of migrant workers in Australia. The MWC advocates for all workers who were born overseas and work in Australia, irrespective of their migration status.
- 1.3 The MWC shares the concerns raised by advocates and civil society organisations regarding the wide-reaching impacts of the Bill on non-citizens, especially those affected by the High Court's 2023 ruling ('NZYQ decision') that indefinite detention is unlawful.¹ If passed, the Bill will introduce powers that allow the Minister to compel non-citizens to cooperate with their removal or face up to five years' imprisonment. It also provides for a blanket ban on entry from entire countries. These measures are highly punitive and discriminatory and, understandably, have spread fear and confusion in the community.
- 1.4 We ask the Committee to recall that the people most immediately affected by the Bill are members of the Australian community, in every sense except their visa status. They are colleagues, neighbours, friends, and family members. Many have been in Australia for over a decade while seeking asylum and have been failed by the Coalition government's abhorrent 'fast track' system. Some of these people are workers who have sought advice through the Migrant Workers Centre.
- 1.5 By passing this Bill, the Parliament will allow hundreds of members of our community, with deep links to Australia including by family, to be locked up in jail should they fail to depart the country. This is a brutal and inhumane response to people failed by the 'fast track' system, and one that is ultimately bound to fail.
- 1.6 We fully endorse the Human Rights Law Centre's submission and **strongly urge the Committee to recommend that the Bill should not be passed.** In this submission, we draw from our own work and research to illustrate the practical impacts of the proposed travel

¹ NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs [2023] HCA 37 ('NZYQ').

ban and the power to coerce people to leave Australia. We pay particular attention to the consequences for holders of Bridging 'E' Visas (BVE).

2 Effects of the Bill on Bridging 'E' Visa holders

- 2.1 The scope of the deportation power is broad, extending to BVE holders who currently do not have a visa application or other process (such as a protection claim) on foot. It exposes people with genuine protection claims to the risk of deportation, especially those who have been through the defective 'fast-track' process. This process, known for its limited form of merits review, has been widely criticised for not providing a fair hearing or review of protection claims.²
- 2.2 The proposed Bill provides that genuine fears of persecution upon return to one's home country will not constitute a valid excuse for refusing to comply with a removal direction. Individuals medically unfit to cooperate with their removal could also face criminal charges. These provisions risk breaching Australia obligations under the 1951 Convention Relating to the Status of Refugees and other international instruments.
- 2.3 Many BVE holders who may be subject to the Bill have resided within our community for more than a decade. They have built their lives here, and some might have children born in Australia who are now citizens. Irrespective of their visa status, these people are fundamentally part of the community. The prospect of them receiving a removal order and facing incarceration for not self-deporting is profoundly inhumane.
- 2.4 Mehdi's story, illustrated in **Case Study 1**, highlights the implications of the Bill for people subject to the 'fast-track' process. His personal circumstances have significantly changed since he came to Australia, as he now has a partner and child born in Australia who depend on him. Like many others living in prolonged visa uncertainty, Mehdi is forced to endure substandard working conditions to make ends meet.³ The difficulties faced by Mehdi and his family are likely to compound should the Bill become law.

Case study 1. Mehdi's* journey

Mehdi, an Iranian who arrived in Australia by boat in 2013, was denied asylum through the 'fast track' process and now holds a Bridging 'E' Visa with limited work rights. He is seeking Ministerial intervention after exhausting most legal options to remain in Australia. Despite his background as an architect, discrimination in the labour market limits his employment opportunities. He has maintained work throughout his time in Australia over the past decade and is settled in the Melbourne community with his family.

In 2023, Mehdi sought help from the Migrant Workers Centre to reclaim \$40,000 in unpaid wages after being exploited and bullied by an employer who made him work under an ABN to avoid providing employee benefits. Mehdi faces the daunting prospect of deportation to Iran under the proposed Bill, where he fears persecution, or the risk of five years' imprisonment should he fail to cooperate. The threat of jail or forced self-removal will place severe additional burdens on Mehdi and his family, for whom he is the main provider.

**All cases have been deidentified*

² Emily McDonald and Maria O'Sullivan, "Protecting Vulnerable Refugees: Procedural Fairness in the Australian Fast Track Regime" (2018) 41(3) *University of New South Wales Law Journal* 1003.

³ Migrant Workers Centre, [Insecure by Design: Australia's migration system and migrant workers' job market experience](#) (Report, March 2023).

- 2.5 The NZYQ decision presents the Albanese Government with an opportunity to reform a system that has trapped individuals in prolonged uncertainty and limbo, costing them years of their lives. It is crucial to offer these individuals the chance to rebuild their lives with dignity by having their protection claims fairly heard.

3 Discriminatory travel ban

- 3.1 The Bill also grants the Minister unprecedented powers to prohibit entry to Australia from countries that do not accept involuntary returns of their citizens. It is not clear which countries could be impacted by the travel ban.⁴ Notable examples may include Iran, Iraq, Russia, and South Sudan. Such a measure would undermine the right to family reunification, indiscriminately penalising individuals who may seek to work, study, or simply visit Australia, based solely on the actions of their respective governments.
- 3.2 There are narrow and selective exemptions to any future travel ban. Dual nationals, spouses, de facto partners, dependent children, parents of minors, and offshore humanitarian visa applicants could still apply for visas. The Minister has the discretion to allow visa applications on a case-by-case basis, but the vast majority of people from designated countries will be locked out of entry to Australia. The exemptions also fail to recognise diverse cultural understandings of 'family' that may stem from the shared refugee/asylum seeker experience. For example, asylum seekers from different households may form close-knit networks for support and survival, creating meaningful family configurations that the Bill's exemptions do not account for.
- 3.3 **Case Study 2** expands on Mehdi's story (outlined above), highlighting the Bill's practical implications for family reunification. Research has established that family reunification has important protective effects for wellbeing, particularly for asylum seekers.⁵ Depriving migrants of the right to family reunion disregards the key role that it plays in facilitating successful integration and settlement in their new home.

Case study 2. Mehdi and Laila*

Mehdi, having made Australia his home, hopes that one day his sister Laila will visit to meet his family. He has not seen her for over a decade, and fears for her safety in Iran because of her connection to him. These worries have adversely impacted his mental health. Should the Bill become law, Iran is likely to be listed as a 'removal concern country', restricting Laila's ability to visit Mehdi.

Like many in similar situations, Laila does not qualify for any of the Bill's narrow exemptions. Even if Mehdi should one day become an Australian citizen, the ban would still apply, preventing both from realising their right to family reunion. The only sliver of hope would lie in the Minister's discretionary power to permit visa applications on a case-by-case basis. However, this is a highly uncertain and potentially lengthy process that is likely to keep Mehdi and Laila apart for many more years.

**All cases have been deidentified*

⁴ Ben Doherty, 'Labor's deportation bill could be used to blacklist entire countries' citizens from obtaining visas to Australia' (The Guardian, 28 March 2024).

⁵ Rebecca Wickes, John van Kooy, Rebecca Powell and Claire Moran, *The social impact of family separation on refugee settlement and inclusion in Australia* (Report, August 2019); Brooke Wilmsen, "Family Separation and the Impacts on Refugee Settlement in Australia" (2013) 48(2) *The Australian Journal of Social Issues* 241.

Recommendations

1. The Committee should recommend that the Bill should not be passed.