



Senate Legal and Constitutional
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Dear Committee Secretary,

The Andrew & Kaldor Centre (the Kaldor Centre) is pleased to provide a submission to the inquiry into the Migration Amendment (Removals and Other Measures) Bill 2024.

The Kaldor Centre is the world's leading research centre dedicated to the study of international refugee law. Founded in October 2013, the Kaldor Centre undertakes rigorous research on the most pressing displacement issues in Australia, the Asia Pacific region, and the world, and contributes to public policy through its research and advocacy work on forced migration.

At the outset, we wish to express our concerns about the rushed passage of the bill in the Senate. The Senate Standing Committee for the Scrutiny of Bills (the Committee) has expressed concern about the impact of the bill on personal rights and liberties, and the potential for a high level of frustration among the public. Truncated parliamentary processes are not always the most appropriate for bills such as this. While this inquiry provides some opportunity to consider the wide-ranging and open-ended implications of the bill, it is insufficient to allow for a thorough and meaningful examination of the process and inadequate scrutiny of the bill's provisions. The process has undermined the government's apparent commitment to transparent and orderly governance, particularly since the government has not provided sufficient justification for the speed with which it has sought to rush through these changes.

Moreover, given the Minister's recent affirmations that 'the importance of lived experience' is 'overemphasised', and that it is time for the government to 'prioritise the participation for refugees',³ it is disappointing that this bill was drafted and passed in parliament without any prior consultation with refugee communities.

¹ Senate Standing Committee for the Scrutiny of Bills, *Scrutiny of Bills: 5 Years On* (27 March 2023) 132.

² *Ibid.* 132.

³ Andrew Giles MP, 'Refugee Communities Association of Australia' (Speech, 11 Sept. 2023) <https://minister.homeaffairs.gov.au/AndrewGiles/Pages/refugee-communities.aspx>.

In terms of the substance of the bill, it is our view that it risks violating a number of obligations under international law. Accordingly,

General comments

1. The Kaldor Centre has serious concerns about the scope and ramifications of the Migration Amendment (Removal and Other Measures) Bill 2024. It gives the Minister extraordinarily broad and ill-

potentially see entire countries subject to travel bans, prohibiting their citizens from coming to Australia for holidays, work or education (in an attempt to pressure those countries to accept involuntary returns).

The scope of provisions compelling cooperation in removal are overly broad

overly broad and could extend, for example, to issuing a direction with which it is not possible to comply or directing a person to produce a document they do not have.⁹

5. Furthermore, proposed section 199C(4) would provide the Minister with a broad power to specify time periods for compliance with directions. The bill contains no safeguards to ensure that these time periods are reasonable and sufficient to allow affected individuals to

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The bill does not adequately protect against risks of *refoulement*

6. Proposed section 199D would prevent the Minister from issuing a removal pathway direction to compel the removal of non-

respect to non-citizens. Under the current framework, the Minister only has the power to revisit protection findings made with respect to certain unlawful non-citizens. The amendments would expand this power to cover all removal pathway non-citizens, including lawful non-citizens on valid visas. According to the Explanatory Memorandum, this would include those on Bridging (Removal Pending) visas (BVR) and Bridging (General) visas (BVE) grounds.¹⁷ We echo the concerns raised by the Senate Standing Committee for the Scrutiny of Bills about the lack of explanation or justification for why this amendment is needed, particular in light of the significant impact it will have on the rights of those affected.¹⁸ The lack of procedural fairness protections for individuals who may have their protection findings overturned is also concerning. While section 197D(4) sets out a requirement that a person be notified in writing of the decision and reasons for it, there are no safeguards in place to allow an individual to respond or comment on the information and evidence being relied upon prior to the decision being made by the Minister.

The bill risks having a serious and unlawful impact on children and families

Impact on children

11. Proposed section 199D(4) would prevent the Minister from directly issuing a removal pathway direction to a child. However, proposed section 199D(5) authorises the Minister to issue a direction to any parent or guardian who is a removal pathway non-citizen in relation to their child or children.
12. Two of the most fundamental principles under international law are that: i) the best interests of the child must be taken into account as a primary consideration in all actions concerning children, and ii) States must assure to children who are capable of forming their own views the right to express those views freely in all matters affecting them, and to have those views be given due weight in accordance with their age and maturity.¹⁹ The Committee on the Rights of the Child has emphasised the importance of ensuring that domestic law reflects these principles.²⁰ However, in its current form, the bill contravenes both.

Best interests of the child

13. The best interests principle expresses one of the fundamental values of the Convention [on the Rights of the Child]

placement or care of a child, or the detention or expulsion of a parent associated with his or her own migration status ²³

14. Proposed section 199D(5) could be used to compel parents to sign documents and interests. The bill contains no other safeguards requiring that the best interests of affected children be considered in any way. As such, the bill fails to give effect to the best interests of the child are

comply or not, but there is no requirement that the child even be informed of the process, let alone provided with an opportunity to seek legal or other advice or advocate for themselves.

Impact on families

19. Proposed section 199G, which would render applications for visas by citizens of certain family members of Australian citizens and other people in Australia. These exemptions reflect the the natural and fundamental group unit of society²⁸ However, the same protection is not afforded to families which might be subject to removal pathway directions. The bill would authorise the Minister to issue such directions to spouses, de facto partners and other immediate family members of Australian citizens and permanent residents removal pathway non-citizen (which, as discussed above, are overly broad). The Minister would also be empowered to issue removal pathway directions in relation to the dependent children of Australian citizens and permanent residents, if both those children and their other parent or guardian are removal pathway non-citizens. There is no requirement that the Minister respect, or even consider, the importance of family unity in such contexts.

The bill further criminalises the migration system

20. Proposed section 199E would establish a new criminal offence of refusing or failing to comply with a removal pathway direction. If a person refuses or fails to comply, and one and five years, a \$93,900 fine, or both.
21. There is no precedent in Australian law for a failure to comply with a direction resulting in mandatory imprisonment not even in the context of terrorism offences. The only comparable provisions involve a failure to comply with police directions to move on under various state laws, which establish a couple of offences (concerning failure to disclose identity) that may be punished by *up to*

