JRS AUSTRALIA
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Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

15 April 2024

Re: Senate Legal and Constitutional Affairs Committee Inquiry into the *Migration Amendment (Removal and Other Measures) Bill 2024*

Dear Committee Secretary,

Jesuit Refugee Service (JRS) Australia welcomes the opportunity to contribute to the deliberations of the Senate Legal and Constitutional Affairs Committee regarding the *Migration Amendment (Removal and Other Measures) Bill 2024* ('the Bill').

We share widely aired concerns regarding the expedited process pertaining to the Bill's development and introduction and commend efforts to ensure appropriate parliamentary scrutiny of its provisions.

We are gravely concerned by the sweeping scope of the Bill and its potential ramifications for people we serve, including a heightened risk of *refoulement*, deprivation of liberty, separation of families and imposition of criminal sanctions and other serious harms, jeopardising Australia's compliance with international refugee and human rights law obligations. As such, **we recommend that the Bill be rejected in its entirety.**

About JRS Australia

JRS is an international organisation with a mission to accompany, serve and advocate for and with refugees, other displaced people and migrants in situations of vulnerability. JRS works in situations of greatest need, where others may not be present, and where there is potential for partnerships to be formed, including in conflict zones, and urban, camp and detention contexts, across close to 60 countries. JRS Australia supports approximately 3,000 people annually, through frontline services including specialist

casework, emergency relief and referrals to address acute needs relating to physical and mental health, domestic and family violence (DFV), and housing, food and financial insecurity. We also support people to access safe and dignified employment, training, education, childcare, legal advice, and other critical services. And we run a refugee leadership program and other activities to strengthen social and community connections, development and advocacy.

Key concerns regarding the *Migration Amendment (Removal and Other Measures) Bill 2024*

Many of the people served by JRS Australia are included within the cohorts designated by the Bill as "removal pathway non-citizens". This includes people subjected to the "fast track" assessment process, and others.

Most within these cohorts have been living in the Australian community for several years and have been subject to laws and policies that have compromised their ability to access their rights and denied them access to a fair and timely asylum procedure. Notwithstanding the protracted challenges which they have faced, most have made significant contributions to and become valued members of the Australian community. We bear witness to the depths of their trauma and resilience and are aghast at the prospect that they might be subjected to punishment and risk to their lives and safety beyond the injustices that they have already endured.

Background on the "Fast-Track" Assessment Process

In its National Platform of 2021, theAustralian Labor Party acknowledged that the "fast-track assessment process does not provide a "fair, thorough and robust assessment process for persons seeking asylum" and, as such, resolved to abolish it.[1] This abolition is due to come into effect from 1 July 2024.

Further, the ALP National Platform 2023 states that "assessment and review of protection claims will be underpinned by robust, efficient and transparent processes that ensure fair and consistent outcomes" and that "orderly and fair resolution" for those subjected to the "fast-track" process is a "highest priority." It also affirms that "Australia must not harm people seeking refuge."[2]

UNHCR has also raised consistent concerns regarding the incompatibility of Australia's national asylum determination system with international law, including stating that the "fast-track" process is "inadequate and lacks appropriate safeguards and flexibility to ensure a fair and efficient protection assessment process."[3] This has been echoed by

[1] ALP National Platform 2021, p. 124. https://alp.org.au/media/2594/2021-alp-national-platform-final-endorsed-platform.pdf
[2] ALP National Platform 2023, p. 134. https://www.alp.org.au/media/3569/2023-alp-national-platform.pdf
[3] UNHCR Factsheet on the Protection of Australia's so-called 'legacy caseload' asylum-seekers, https://www.unhcr.org/au/media/protection-australias-so-called-legacy-caseload-asylum-seekers

other authorities.

As the "fast-track" assessment process has not afforded those subjected to it a fair and timely process, many in this cohort have had their protection claims inappropriately denied in Australia. The "fast track" review process has been characterised by high rejection rates and suspicions of bias, and in some instances denied to people refused at primary determination, most of whom did not have access to legal assistance. And in many instances, changed circumstances in countries of origin have deteriorated such that protection claims warrant reassessment.

That the Bill provides for punishment of deemed "removal pathway non-citizens" appears entirely incompatible with the Labor government's affirmation that the "fast-track" process was unfair and its commitment to abolish it in order to ensure "fair and consistent outcomes".

- **Risk of *Refoulement***

JRS Australia works with individuals and families who have fled danger, conflict, and persecution in their country of origin and sought protection in Australia. We bear witness to their stories of resilience and survival as they seek a life of safety, freedom, and peace.

We believe that the measures proposed by this Bill would, if it were passed, pose a significantly heightened risk of *refoulement* for people we serve whose legitimate claims for protection may have been unfairly denied through a process formally acknowledged to have been deficient, and who maintain a genuine fear of threat to their lives and safety were they to be returned to their country of origin.

We are gravely concerned that, were the Bill to be passed, unrecognised refugees and others owed international protection could be coerced into choosing between complying with a Ministerial 'removal pathway direction' or enduring substantial criminal penalties. For some who have already endured protracted, indefinite immigration detention, the prospect of a term of imprisonment, potentially followed by further, indefinite immigration detention, will feel intolerable. In these instances, the risk of *refoulement* becomes acute.

JRS Australia serves people from a diverse array of countries of origin, who may be encompassed within the scope of the "removal pathway non-citizens" cohort, which notably incorporates discretion for the Minister to designate other prescribed non-citizens for inclusion. Amongst them, we note our present concern for people from Iran, who are amongst those manifesting high levels of distress and trauma at the prospect of potential passage of this Bill.

- **Risk of criminalisation of refugees**

JRS Australia is deeply concerned about the provision within the Bill that would criminalise non-cooperation with a removal process, without due consideration for genuine fears of harm or medical incapacity. We note that, extraordinarily, the 'reasonable excuse' defence for a failure to comply with a Ministerial 'removal pathway direction' does not include that "the person has a subjective fear of persecution or

significant harm, *is* or claims to be a person who engages Australia's *non-refoulement* obligations or believes that they would suffer other adverse consequences if they complied with the removal pathway direction".

The proposed new criminal offence for failing to engage with a deportation process would impose a mandatory minimum penalty of 1-year imprisonment to a maximum of 5 years' imprisonment, and fines so significant that there is no reasonable basis to assume that anyone in this cohort would be able to pay them.

Incarcerating individuals under this measure risks imposing harsh and unjust punishment upon unrecognised refugees and people seeking asylum. This Bill would exacerbate the flaws of the "fast track" process which has already been widely determined to be a flawed process that was not, in the words of the ALP, "fair, thorough or robust."

- **Risk of Indefinite Detention**

The Bill's provisions, if passed into law, are likely to lead to prolonged and indefinite detention for individuals unable or unwilling to cooperate with removal instructions, with no listed mechanism or instrument through which a person could appeal their detention. Without adequate mechanisms for review or release into the community, the cycle of indefinite detention would likely be perpetuated, with an individual imprisoned for 1 to 5 years, then transferred into immigration detention at the completion of that term, and then re-imprisoned if they continue not to be able to comply with their removal from Australia. The negative impact of indefinite detention in the immigration system in Australia is well documented.

Those affected by this Bill are likely to already have spent protracted time in immigration detention and the compounding trauma that further detention would cause is unconscionable and dangerous for the wellbeing of these individuals, their families, and for Australia's human rights record.

- **Risk of separation of families**

The Bill's provisions would result in the separation of families, with the Minister authorised to direct individuals regardless of the impact this would have on their families, including children - many of whom are Australian citizens. This measure represents an extraordinary power granted to the Minister, which does not appear to include a 'best interest determination' stipulation, contrary to international law.

Children of the people in this cohort may have already experienced the detention of their parents, and regardless of this, the potential of a parent being returned to the country from which they came or otherwise facing imprisonment represents a traumatic and potentially indefinite separation of child and parent.

Many children with parents in this cohort may have already been subject to significant trauma because of their journey to Australia, seeking asylum with their parent. A number of these children are Australian citizens where they are the child of a member of this cohort and an Australian citizen.

One implication of this Bill would therefore be that, in order for these children to remain with their parents, they would also be forced to relocate to an unsafe place where they would face serious risks of violations to their human rights.

And non-citizen children of "removal pathway non-citizens" may also be subject to a Ministerial direction via a parent, again without a 'best interest determination' stipulation.

The prohibition on visa applications from designated countries will enable the government to permanently separate families, including those fleeing conflict and war.

Risks associated with designation of removal concern country

The broad prohibition on visa applications of nationals from designated countries deemed to be "removal concern countries" will prevent some people from seeking protection in Australia, based on their country of origin. Whilst there are some exceptions for immediate family members and those seeking resettlement through the Humanitarian Program, the exclusion of an entire country's population from accessing a visa in Australia would undermine access to asylum, embed the separation of families in many instances, and leave affected diaspora communities in Australia bereft and stigmatised.

Risks of unprecedented Ministerial powers

The Bill proposes an unprecedented expansion to the scope and ambiguity of the Minister's discretionary powers, without adequate limits, safeguards and review mechanisms. We are alarmed by this proposed escalation in the powers vested in a Minister to exercise extraordinary discretion with potentially grievous consequences for the lives of many people – including Australian citizens – without fairness or consistency.

The Minister could decide to designate a country to be a "removal concern country" after consulting only the Prime Minister and Minister for Foreign Affairs, whilst simultaneously being under no duty to consider requests to lift that prohibition for individual cases. The Minister already has significant powers, including the ability to remove people from Australia, and this expansion of powers, if unjustified and unrestrained, is of grave significance and concern.

We are alarmed by provisions of the Bill and recommend that it be rejected in its entirety.

Once again, we thank the Committee for providing us with an opportunity to contribute to its deliberations.