

## Using a sledgehammer to crack a walnut – Bill to ban people from some countries being able to come to Australia

June 2024

*“For I was hungry, and you gave me something to eat, I was thirsty, and you gave me something to drink. I was a stranger, and you invited me in.” Matthew 25:35.*

The Australian Government faces a problem. When a person seeking asylum in Australia is assessed as not having a valid claim for protection, they are usually removed from Australia and returned to the country they came from. However, some governments will not accept the person's return unless they are willing to return voluntarily. In the past, the Australian Government's solution to the problem was to imprison the person indefinitely until the coercion of indefinite detention compelled the person to agree to return to the country they came from.

The same problem and solution existed for cases where a person who is not an Australian citizen has committed a criminal offence and, after serving their time in prison, the Australian Government wishes to deport them.

However, the High Court decision in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37 decided it was not lawful to detain people indefinitely. The decision forced the Government to release people on temporary visas from indefinite incarceration, including some people who had previously committed serious criminal offences.



The Australian Government has provided a heavy-handed response to the High Court ruling. It introduced the *Migration Amendment (Removal and Other Measures) Bill 2024* into the Parliament and hoped to rush it through with little discussion or debate in the Parliament. The opposition parties did not play along and sent the Bill to a Parliamentary Committee.

The Bill gives the Minister for Immigration the power to demand actions from a person to assist with their departure from Australia and have the person incarcerated or fined if they refuse to comply. When their sentence for non-compliance is fulfilled, the Minister could again require the same or another set of actions from the person to coerce them to leave, or the person would face another round of incarceration or fines. It engineers a pathway to indefinite incarceration.

The Bill is highly unethical as it will create cases where the Australian Government seeks to deceive the country's government of the person who is to be removed by coercing the person to create an illusion they are returning voluntarily or lie and say they are returning voluntarily. A person who is unwilling to lie to the government they are being sent to could face a minimum incarceration period of a year. Lying on documents that the other government seeks to ensure the departure from Australia is voluntary could be an offence under the laws of the jurisdiction in question. Thus, the Minister could be seeking to compel the person to commit an illegal act under the laws of the jurisdiction the Minister wishes them to travel to. It is unclear if the Bill would allow a person to refuse to break the law of the country to which the person is to be sent.

The Bill will set up a regime where the intention is to incarcerate people who cannot safely leave Australia.

The Bill does not require the Minister to consider the best interests of any children who might be impacted by the incarceration or coerced removal of their parents from Australia.

In addition, the Bill would give the Minister for Immigration the ability to designate a country a “removal concern country” that would prohibit people from that country from being able to apply for visas to come to Australia unless the Minister, on a case-by-case basis, grants an exemption. The power would be open to significant misuse by a future government with reduced Parliamentary scrutiny and risks disadvantaging both people seeking to come to Australia for legitimate reasons and people in Australia who would benefit from the people being able to come. The Minister is not required to consult with the community in Australia whose family members will be banned from coming to Australia or with businesses that may require the skills of workers from those the countries being placed on the ban list.

The potential for the Minister to grant individual exemptions is a serious concern, as it is open to procedural unfairness, abuse, and soft corruption risks. For example, political donors in Australia could successfully lobby the Minister, directly or indirectly, to grant exemptions to family, friends, or associates, which would not be illegal but highly unethical.

We have an opportunity to ask the Australian Government to rethink its approach. For example, it could more actively seek agreements with other countries to accept people being removed. They could also pursue reforms to the criminal justice system, focusing on rehabilitation to reduce the likelihood of reoffending among all those who have broken the law, not just people on temporary visas.

### **What You Can Do**

Write polite and respectful letters to:

#### **The Hon Andrew Giles MP**

Minister for Immigration, Citizenship, and  
Multicultural Affairs  
PO Box 6022  
House of Representatives  
Parliament House  
Canberra ACT 2600

#### **The Hon Anthony Albanese MP**

Prime Minister  
PO Box 6022  
House of Representatives  
Parliament House  
Canberra ACT 2600

Salutation: Dear Prime Minister

Salutation: Dear Minister

Points to make in your letters:

- Express concern at the *Migration Amendment (Removal and Other Measures) Bill 2024*, which will allow the Minister for Immigration to ban the issuing of visas to people from any country of their choosing. Such a power will likely cause significant distress to people seeking to reunite with family members from that country and undermine our reputation as a friendly, multicultural country.
- Also express concern that the Bill will seek to deceive other governments by coercing people to lie and say they are willing to voluntarily depart Australia, when the government in question will not accept people being sent to them involuntarily. In some cases, such lies may be criminal offences under the laws of the country in question.
- Ask that the Government withdraw the Bill and find alternative solutions to cases where a person does not wish to voluntarily leave Australia despite not being entitled to a visa that would allow them to stay in Australia and their government will not accept their involuntary return.