Senate Legal and Constitutional Affairs Committee Inquiry Migration Amendment Bill 2024

Introduction

Founded in 2001, the Asylum Seeker Resource Centre (ASRC) is Australia's largest independent aid and advocacy organisation for people seeking asylum and refugees, supporting and empowering people at the most critical junctures of their journey. Our services include legal, casework, housing, medical, education, employment and emergency relief. Based on what we witness through our service delivery, we advocate for change with refugees to ensure their human rights are upheld.

The ASRC welcomes the opportunity from the Senate Legal and Constitutional Affairs Committee to provide a submission regarding the Migration Amendment Bill 2024 (**the Bill**). The ASRC's Human Rights Law Program has extensive experience representing people seeking asylum and refugees, including all stages of the protection visa application process, visa cancellations, and immigration detention matters. Also, the ASRC's Detention Rights and Advocacy Program provides casework support to people held offshore in Nauru and Papua New Guinea, and can bear witness to the trauma and devastation caused by offshore detention. Many of the case studies in our submissions reflect how the Bill would impact our clients and their families.[1]

The ASRC is gravely concerned by the Bill, which introduces unprecedented powers to deport people to unspecified third countries and limit any accountability, overturn people's protection findings, and breach people's privacy. This Bill is yet another attack on migrants, refugees and people seeking asylum in the wake of the High Court of Australia's decision in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs*,[2] which ruled that indefinite detention is unlawful.[3] The debate since *NZYQ* has led to the demonisation of refugees and migrants and misleading narratives about community safety. Australia has numerous structures for managing risk to the community, including our health and criminal justice systems, and there is no valid justification for this Bill. Also, **the scope of this Bill is broader than people released from detention due to *NZYQ*, and will have unintended and devastating consequences for the Australian community, including permanent family separation and exposing refugees to serious harm.**

The Government is opportunistically using this moment to rush through parts of the widely-criticised Migration Amendment (Removal and Other Measures) Bill 2024, which stalled in the Senate earlier this year due to overwhelming community backlash. The Government's trend of hurriedly passing legislation without adequate scrutiny or consultation, which significantly impacts the rights of refugees, people seeking asylum and their families, is troubling. This type of government decision-making jeopardises our democracy and transparent governance. Plainly, it must stop.

The ASRC recommends the Committee opposes the Migration Amendment Bill 2024 in its entirety.

[1] All case studies are deidentified and include pseudonyms.
[2] *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37.
[3] Ibid.

Deporting refugees, people seeking asylum and migrants to serious harm

The Bill will expose refugees, people seeking asylum and migrants to deportation to third countries where they will face serious harm, including death, consequently breaching Australia's obligations under the Refugee Convention and international law.

Expanded regime of offshore warehousing

The Bill permits the Australian Government to deport people to countries that are party to 'third country reception arrangements'.[4] There is no indication by the Australian Government in the Bill or Explanatory Memorandum regarding which countries may be included. However, it is possible that Regional Processing Countries (such as Nauru) could be involved in such arrangements.

Once a person's visa expires, ceases or is cancelled, they will be considered an unlawful non-citizen and be exposed to detention and removal under sections 189 and 198 of the *Migration Act 1958* (Cth) (**Migration Act**). Currently, people subject to removal from Australia are generally sent to their country of origin or former habitual residence. However, the Bill seeks to expand the scope of where people could be deported to include any third country willing to accept them which the Australian Government will pay via a 'third country reception arrangement'.[5] If a person refuses to cooperate with the Australian Government's attempts to remove them to a third country, the Minister can detain them in Australia.[6] Concerningly, the Bill provides no details regarding what 'third country reception arrangements' will involve, including safeguards for people deported to third countries.

Australia's offshore processing regime is a dark chapter of our history, of which there has been extensive international condemnation. The United Nations has made no less than 70 statements since 2012 criticising these arrangements.[7] Despite this, successive governments have shirked their moral responsibility and legal duty of care[8] to refugees and people seeking asylum in the name of political point scoring and turned a blind eye to the devastating consequences. This Bill is yet another example of this and disturbingly seeks to expand offshore warehousing.

For years, national and international human rights and medical associations have raised their concerns regarding the physical and mental health conditions of people held offshore in Nauru and PNG. **14 people subject to offshore processing have died, and many others have been**

[4] Proposed section 198AHB.
[5] Ibid.
[6] Explanatory Memorandum, Migration Amendment Bill 2024 (Cth), 16.
[7] UNHCR, United Nations observations on Australia's transfer arrangements with Nauru and Papua New Guinea (2012-present), 11 October 2021, https://www.unhcr.org/en-au/publications/legal/6163e2984/united-nations-observations-on-australias-transfer-arrangements-with-nauru.html.
[8] See *Plaintiff S99/2016 v Minister for Immigration and Border Protection* [2016] FCA 483; F*RX17 as litigation representative for FRM17 v Minister for Immigration and Border Protection* [2018] FCA 63.

subjected to human rights abuses and neglect. ASRC caseworkers have daily contact with people held offshore, as they resist and continue to expose the cruelty inflicted upon them and their rights that have been denied. Also, in 2017 the ASRC visited PNG, including Manus Island, and witnessed first-hand the dire medical crisis facing people seeking asylum and refugees who had been abandoned by the Australian Government.

Currently, 42 people remain abandoned in Papua New Guinea, and around 100 people are held in Nauru with no pathway to permanent safety. By the Australian Government contemplating entering into 'third country reception arrangements', which may include Regional Processing Countries, it is signalling its disregard for the safety and wellbeing of people who will be deported offshore.

Case study

Mohammad is a Hazara man from Afghanistan who is in PNG. He has been recognised as a refugee. He is currently under severe mental stress because he is worried about his family in Afghanistan who are living under Taliban rule. He is engaged in the Canadian resettlement process.

Mohammad has suffered in offshore detention in PNG for over 9 years. He has a multitude of untreated health conditions which makes it difficult for him to eat. He also suffers from depression. His doctor suggests he exercises, but Mohammad does not want to leave his house for fear of his safety.

"My hopes are to be with family, find work, stand on my own feet, feel independent and feel like a human. To have a peaceful life. Just do not forget us and hopefully, you can help us get out of this situation. We are stuck and cannot do anything to change our life for the better".

In addition to the lack of medical treatment for people sent to Regional Processing Countries, many of the people offshore face difficult living conditions and safety concerns in Nauru and PNG, which make them unsuitable places for people to be deported to.[9] In May 2022, leaked emails from the Nauruan Police demonstrated their disregard for the safety of refugees and people seeking asylum who were at risk of suicide and self-harm.[10] Also, in August 2022, two Iranian refugees in PNG were robbed at gunpoint after armed attackers broke into their unit.[11]

[9] SBS News, Asylum seekers in PNG scared and devastated after reportedly being held at gunpoint, 22 April 2021; Human Rights Watch, Australia/PNG: Refugees Face Unchecked Violence, 25 October 2017, https://www.sbs.com.au/news/article/asylum-seekers-in-png-scared-and-devastated-after-reportedly-being-held-at-gunpoint/i7rgzed39; The Guardian, Refugees attacked on a daily basis on Nauru, human rights groups say, 3 August 2016, https://www.theguardian.com/australia-news/2016/aug/03/refugees-attacked-on-a-daily-basis-on-nauru-says-amnesty-report; Al Jazeera, Beyond the Park Hotel: Australia's immigration detention network, 13 January 2022, https://www.aljazeera.com/news/2022/1/13/beyond-the-park-hotel-australias-immigration-detention-network.

[10] Crikey, Appalling disregard: Australia's offshore processing slammed after leaked emails show Nauru people mocking suicide, self-harm threats, 5 May 2022, https://www.crikey.com.au/2022/05/05/nauru-police-force-emails-refugees-asylum-seeker-self-harm-suicide/.

[11] RNZ Pacific News, Refugees robbed at gunpoint in Papua New Guinea's Capital, 15 August 2022, https://www.rnz.co.nz/international/pacific-news/472893/refugees-robbed-at-gunpoint-in-papua-new-guinea-s-capital.

In addition to the harms that people would face offshore, it is very likely that people would be subject to prolonged periods of detention in Australia while awaiting removal to third countries. The Parliamentary Joint Committee on Human Rights shared these concerns, noting that there "may be a significant intervening period" before a third country accepts a person and people "could be subject to extended immigration detention for years in Australia while awaiting their removal to a foreign country".[12]

The Australian Government has already spent billions of Australian taxpayer dollars to fund the offshore processing regime in PNG and Nauru. The 2024-25 Federal budget committed $604.4 million to hold refugees offshore, an increase of $40.6 million on actual spending in 2023-24.[13] The total allocation for offshore processing since the policy was reintroduced in 2012 is now $12.8 billion.[14] In January 2023, the Albanese Government contracted the US private prison company, Management and Training Corporation (MTC), until September 2025 to hold refugees in Nauru, costing $422 million. MTC, described in a recent US lawsuit as "a private corporation that traffics in human captivity for profit", is currently accused of pandemic profiteering and unlawful use of solitary confinement, amongst various other instances of negligence and unnecessary use of force. In stark contrast, the annual average cost of a person seeking asylum living in the community on a bridging visa is $2,575.[15] It is astounding that given these costs, the Australian Government is seeking to expand offshore warehousing by funnelling more money to deport refugees and people seeking asylum, despite the moral, practical and humane alternatives. The ASRC also refers to the Human Rights Law Centre's submission outlining the successive failures of third country arrangements regarding the transfer of migrants and refugees as further evidence of the futility of such arrangements.[16]

[12] Parliamentary Joint Committee on Human Rights, Human Rights Scrutiny Report, Report 10 of 2024, 20 November 2024, 1.16-1.17.
[13] Refugee Council of Australia, The 2024-25 Federal Budget: What it means for refugees and people seeking humanitarian protection. 14 May 2024, https://www.refugeecouncil.org.au/the-federal-budget-what-it-means-for-refugees-and-people-seeking-humanitarian-protection/.
[14] Ibid.
[15] Refugee Council of Australia, Offshore processing statistics, 16 October 2024, https://www.refugeecouncil.org.au/operation-sovereign-borders-offshore-detention-statistics/7/.
[16] Human Rights Law Centre, Submission No 2 to Senate Legal and Constitutional Affairs Committee Inquiry - Migration Amendment Bill 2024, 20 November 2024, p 9 (HRLC Submission).

Broad impact of offshore warehousing

These expanded offshore warehousing powers will have far-reaching impacts to a significant proportion of visa holders, including refugees and people seeking asylum, and there is a real risk that people who are owed protection will be refouled to life-threatening situations.

People transferred from Nauru or Papua New Guinea (PNG) to Australia

Many people seeking asylum and refugees who were transferred from Nauru or PNG to Australia are bridging visa E (**BVE**) holders. Often these BVEs are granted on departure grounds, even where people are not medically fit to travel or engage in resettlement processes. These people have lived in our community for years, seeking to rebuild their lives after the trauma that they endured offshore. A growing number of people in this cohort also have family members, including children and partners, who are Australian citizens and/or permanent residents.

If the Government does not renew their BVEs, people in this cohort will be exposed to detention and removal. If the obligation to remove them to a regional processing country does not apply,[17] then people will be subject to removal under section 198 and could be removed to a third country.

The Government has indicated it intends to rely on this Bill to deport people who have been transferred from Nauru or PNG to Australia.[18] This Bill threatens to permanently separate families and deport people to countries where they face persecution, including countries not signatory to the Refugee Convention or countries where they have been found to be owed protection under Nauruan and/or Papua New Guinean refugee status determination processes. As their protection claims were not assessed in Australia, they do not have a 'protection finding' as defined under section 197C of the Migration Act which would prevent their removal to a country from which they are owed protection,[19] and are at risk of refoulement to countries where they face serious harm.[20]

Case study

Sara fled Ethiopia and sought asylum in Australia. She was transferred to Nauru and held offshore for several years. Sara was recognised as a refugee under the Nauruan refugee status determination process. She was later transferred to Australia for medical treatment.

Sara has been living in the Australian community for several years on a BVE granted on departure grounds, which she is required to renew every 6 months. She is married to Juan, an Australian citizen, and together they have 2 children, Emmanuel and Jacob. Sara is not eligible

[17] *Migration Act 1958* (Cth), s 198AD.
[18] Paul Karp, The Guardian, 'We don't want them in Australia at all': Labor wants more powers to re-detain and remove non-citizens to third countries, 7 November 2024, https://www.theguardian.com/australia-news/2024/nov/07/labor-immigration-detention-bill-tony-burke-pay-countries-unlawful-citizens.
[19] *Migration Act 1958* (Cth), s 197C(3).
[20] Proposed section 76AAA(1)(d)(ii).

for resettlement in New Zealand as it would separate her from her Australian citizen family members and be against UNHCR's principles of family unity.

If the Bill is passed, once Sara's current BVE expires, she would be exposed to detention and deportation to a third country that has agreed to accept her. Sara would be permanently separated from her husband and children, and is at risk of serious harm upon being deported as the third country could detain her or deport her to Ethiopia.

She could also be deported directly to Ethiopia from Australia even though she has been found to be a refugee in relation to this country because her refugee claims were assessed by the Nauruan government (and not the Australian government).

After surviving years of trauma and cruelty in Regional Processing Countries, the Bill seeks to further punish people within this cohort in Australia by exposing them to indefinite offshore warehousing and permanent family separation.

People seeking ministerial intervention

There are thousands of people seeking asylum who are seeking ministerial intervention and waiting for the Minister to intervene to allow them to apply for a protection visa due to:

- being subjected to unfair processes (including the Fast Track process); and/or
- who have had changes to their circumstances, including updated or new protection claims since their protection visa application was assessed.

People in these circumstances are often granted a BVE on departure grounds to regularise their migration status (i.e. grant them a visa so they are not unlawful), often after living in Australia for over a decade, while they await a decision from the Minister. People are required to renew their BVEs (often every 3 to 6 months), and if they become unlawful, they would be exposed to detention and removal to third countries under the Bill.

Also, people in these circumstances who have been through the unjust Fast Track process and had their protection claims unfairly refused could be removed to a third country where they fear harm.[21] From 2015 to 2023, 37% of IAA decisions reviewed by the courts were found to be unlawful,[22] noting that many people would not have been able to access judicial review or legal representation, meaning the number of unlawful decisions is likely to be considerably higher. This demonstrates that thousands of people seeking asylum have had their protection claims unfairly refused by the

[21] As this group of people do not have a 'protection finding' as defined under section 197C of the Migration Act, which would prevent their removal to a country from which they are owed protection, they are at risk of refoulement to countries where they face serious harm.

[22] Kaldor Centre Data Lab, Submission No 11 to Standing Committee on Social Policy and Legal Affairs, Inquiry into Administrative Review Tribunal Bill 2023 (ART Bill) and the Administrative Review Tribunal (Consequential and Transitional Provisions No.1) Bill 2023 (Consequential and Transitional Bill), 25 January 2024, [5]-[6].

IAA. **The Labor government has acknowledged that the Fast Track process is unfair and abolished the IAA, yet there are no protections in this Bill to protect people who were subjected to the Fast Track process from offshore warehousing.**

Case study

Geetha fled Sri Lanka and applied for a protection visa. She was subjected to the Fast Track process, and her protection visa application was refused by the Department and Immigration Assessment Authority (IAA) without a fair opportunity to present her protection claims, which included experiences of severe gender-based violence. Geetha sought judicial review of her IAA decision before the courts. After 4 years, her court application was dismissed.

Geetha has sought ministerial intervention under section 48B of the Migration Act to lodge a new protection visa application and raise her gender-based violence protection claims. Geetha has been granted a 6-month BVE on departure grounds while she awaits her ministerial intervention request outcome.

If the Bill is passed, once Geetha's BVE expires, she would be exposed to detention and deportation to any country that has entered a 'third country reception arrangement' with Australia, including Sri Lanka or Regional Processing Countries such as Nauru.

If Geetha is sent to a third country, she would be at risk of serious harm as the third country could detain her or deport her to Sri Lanka.

People released from immigration detention due to NZYQ

People released from detention due to *NZYQ* have been punished again and again, and have been deprived of hope, liberty, and safety for years. For those who served a sentence of imprisonment, unlike any other Australian who is given the opportunity to rebuild their lives, they were then unconstitutionally detained, often for years. When that was deemed unlawful, they were further singled out, with the imposition of visa conditions including ankle bracelets, which the High Court has confirmed are unconstitutional and punitive. **Now, this Bill seeks to further punish them by exposing them to deportation to third countries, where they will be permanently separated from their families and face serious harm.**

People released from immigration detention due to *NZYQ* are currently granted a bridging visa R (**BVR**). The Bill has specific provisions for the cessation of a person's BVR if they have permission to enter and remain in a country party to a 'third country reception arrangement'. The Bill includes limited exceptions for BVR holders, including if the person is waiting for their protection visa application to be finally determined or has a 'protection finding' in relation to that third country.[23] However, these exceptions will not apply to the vast majority of BVR holders, who would be liable to

[23] Proposed section 76AAA(1)(d)(ii).

re-detention and deportation once a third country is willing to accept them, regardless of whether they have any connection to that country.

Case study

Ahmed fled to Australia from Iraq as a 15-year-old boy on a Global Special Humanitarian visa. He arrived in Australia with his parents and 2 siblings.

Ahmed struggled to adjust to life in Australia as he was suffering from post-traumatic stress disorder from witnessing violence in Iraq. He developed serious mental health issues, and in this context was convicted of offences and his visa was cancelled.

Ahmed spent 5 years in immigration detention while he sought review of his visa cancellation, which was unsuccessful. He was released in 2023 on a BVR.

Ahmed has started accessing mental health support and is rehabilitating with the support of his family, who have since become Australian citizens.

If this Bill is passed, Ahmed could be deported to any country that has entered into a third country reception arrangement with Australia, including Iraq[24] or Nauru. He would be permanently separated from his Australian citizen family members and not have any support.

People exposed to harm in third countries

The Bill does not provide for any guarantee to a person's safety or minimum human rights standards that must be adhered to by the third country upon receiving a person. Concerningly, the Bill acknowledges that a person may be detained in a third country.[25] The Bill also does not require that the receiving country is a signatory to the Refugee Convention or other international human rights treaties such as the Convention Against Torture.[26] **Consequently, there is no obligation on a receiving country to treat people deported there in accordance with human rights standards and people could be exposed to indefinite detention, extradition or refoulement to countries in relation to which they have been found to be owed protection, including under Australia's**

[24] Even though Mohammad is a refugee, as he was granted a Global Special Humanitarian visa outside Australia, he is not owed a 'protection finding' as defined under s 197C of the Migration Act in relation to Iraq and could be removed there under s 198.
[25] Proposed section 198AHB(5), definition of 'third country reception functions'.
[26] UN General Assembly, Convention Relating to the Status of Refugees, United Nations, Treaty Series, vol. 189, p. 137, 28 July 1951, https://www.refworld.org/legal/agreements/unga/1951/en/39821; UN General Assembly, Convention Relating to the Status of Refugees, United Nations, Treaty Series, vol. 189, p. 137, 28 July 1951, https://www.refworld.org/legal/agreements/unga/1951/en/39821.

refugee status determination process. If people are refouled from a third country, this would be in breach of Australia's obligations under the Refugee Convention.[27]

> **Case study**
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> *Hamzah fled Iran due to his sexuality and applied for a protection visa in Australia. As he arrived by sea, he was subjected to the flawed Fast Track process and his sexuality protection claims were not accepted by the Department and Immigration Assessment Authority (IAA).*
>
> *Hamzah could not afford a lawyer, so was unable to seek judicial review of his IAA decision. He has sought ministerial intervention and has new evidence to provide in support of his sexuality claims, namely that he has been in a homosexual relationship with an Australian citizen man for 4 years. Hamzah has been granted a BVE on departure grounds, which expires in 1 month.*
>
> ***If the Bill is passed and Hamzah's BVE is not renewed, he will be exposed to detention and deportation to a country who has entered into a third country reception arrangement, including Nauru. This could be a country where it is unlawful and unsafe for people who identify as LGBTI, and where Hamzah would face serious harm, including refoulement to Iran.***

Further, as observed by the Human Rights Law Centre, the Bill does not require that a person have any right to reside permanently in a third country to which they are deported.[28] While the Bill states that BVR holders must have permission to "enter and remain" in a third country before they can be sent there, there is no minimum length of time they must be granted permission to remain. For all other people who might be subjected to offshore warehousing, the Bill is silent on whether they must have even this limited right to "enter and remain" before being sent to a third country. This increases the risk that people will be deported from third countries and exposed to refoulement.

Minister's expanded powers to overturn protection findings

Concerningly, the Bill expands the Minister's powers to overturn a person's 'protection finding' (which would then expose them to deportation). Currently the Minister has the power to overturn a 'protection finding' in relation to a person who is an unlawful non-citizen.[29] In practice, this mainly applies to people in immigration detention who do not have a visa. The Bill seeks to expand these ministerial powers to people who are lawful non-citizens (i.e. people who are visa holders and not in immigration detention), including people who are BVR holders and certain BVE holders.[30]

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[27] See UN Human Rights Committee, General Comment No. 31, UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004 [12]; UN Committee against Torture, General Comment No. 1, "Implementation of Article 3 of the Convention in the Context of Article 22", UN Doc. A/53/44, Annex IX, 21 November 1997, [2], [3].
[28] HRLC Submission, p 7.
[29] *Migration Act 1958* (Cth), s 197D.
[30] Migration Amendment Bill 2024 (Cth), Schedule 1, Item 4.

The Bill includes the ability for the government (or any future government) to expand the visa categories covered by these draconian provisions by regulations (which is currently undefined and could impact thousands of people).[31] As a result, the **Bill has the potential to give the Minister for Immigration the power to overturn the 'protection finding' of a Protection visa holder (who is an Australian permanent resident),[32] and thereby proceed to deport them from Australia.** Since the government can expand the scope of these new provisions via the Migration Regulations, this circumvents any parliamentary scrutiny and reduces accountability. Consequently, refugees who have been living in our community for years could be exposed to deportation once the Minister overturns their 'protection finding', including people who have Australian citizen family members.

Case study

Abdul fled to Australia from Iran on a visitor visa, and then applied for a protection visa. The Department made a protection finding, and Abdul was recognised as a refugee and granted a permanent protection visa.

Abdul's protection visa was cancelled and he was taken into immigration detention. He sought review of his visa cancellation, however was unsuccessful. Abdul was held in detention for 6 years until the Minister intervened to grant him a BVR in 2022. Abdul has rebuilt his life in the community and recently married Grace, an Australian citizen.

If the Bill is passed, the Minister can overturn Abdul's protection finding to deport him to Iran despite the risk to his safety and separation from his wife.

The Minister's powers to overturn 'protection findings' and expose refugees to refoulement are unfounded and contrary to the rule of law. The government should not have unfettered discretion to override assessments regarding a person's protection claims for the sole purpose of deporting refugees from Australia. The Senate Scrutiny Committee also shared these concerns in relation to similar provisions in the Migration Amendment (Removal and Other Measures) Bill 2024 and observed that "this is clearly a significant and rights affecting matter and it is not clear to the committee why such a power is necessary".[33] **The ASRC recommends that section 197D in its entirety should be repealed from the Migration Act.**

[31] Migration Amendment Bill 2024 (Cth), Schedule 1, Item 4, subsection (d).
[32] Proposed section 197D(1)(a)(ii).
[33] Senate Standing Committee for the Scrutiny of Bills, Scrutiny Digest 5 of 2024 (27 March 2024) [1.17].

Lack of accountability for offshore warehousing

The Bill attempts to protect the Government against accountability for the harm that people will suffer if sent offshore, including to Regional Processing Countries like Nauru or other countries.[34] This could also include limiting the Government's liability for people's prolonged detention in Australia while they await removal to third countries. The Bill proposes provisions to avoid civil liability for the Minister, the Commonwealth and its officers in relation to action taken to remove people from Australia, and for harm they might experience offshore.[35] The fact that the Australian Government considers such provisions are necessary indicates that it is foreseeable that people deported offshore will face serious harm similar to what has occurred with people subjected to regional processing.

While the Australian Government repeatedly maintains that it owes no duty of care to people subjected to offshore processing, Australian courts have found otherwise, and UN bodies have concluded that Australia exercises effective control over regional processing centres.[36] In 2018, an Australian coroner found that one young refugee man's death was directly related to inadequate medical care and the Australian Government's failure to transfer him for appropriate medical treatment in a timely manner.[37] The Coroner's observations on offshore healthcare state:

> "19. As outlined in these findings, Mr Khazaei was entitled to receive care that was "the best available in the circumstances and broadly comparable with health services available within the Australian community"...
>
> 20. It would be possible to prevent similar deaths by relocating asylum seekers to other places, such as Australia or New Zealand, where better health care would be provided.
>
> 21. The Australian Government retains responsibility for the care of persons who are relocated, for often lengthy periods, to offshore processing countries where standards of health care do not align with those in Australia. It is incumbent on the Australian Government to implement sustainable systems for the delivery of health care that meet the requisite standard. Those systems should also be subject to ongoing and independent scrutiny on behalf of the Australian community, which is required to meet the ongoing and considerable costs of the current arrangements."[38]

[34] Migration Amendment Bill 2024 (Cth), Schedule 2.
[35] Proposed sections 198(12),198(13), 198AD(11).
[36] See eg Committee Against Torture, Concluding observations on the sixth periodic report of Australia, UN Doc CAT/C/AUS/CO/6 (5 December 2022).
[37] Inquest into the death of Hamid Khazaei by Queensland State Coroner, File 2014/3292, 30 July 2018, https://www.courts.qld.gov.au/__data/assets/pdf_file/0005/577607/cif-khazaei-h-20180730.pdf.
[38] Ibid.

Civil proceedings were crucial for people subjected to regional processing to access critical medical care, and the ASRC represented people in Nauru in such court proceedings. Without Australian courts intervening in these matters and ordering the Australian Government to transfer people to receive urgent healthcare, people would have lost their lives.

Also, access to civil proceedings is important for people to receive compensation for the serious harm they have suffered which has had a lasting impact on them and their families. As outlined in the Human Rights Law Centre's submission, settlements to Reza Berati's family after his death on Manus Island and the tort claims for medical negligence experienced by people held in Nauru - many of which are still before the courts - would not have been possible had the provisions in this Bill been law.[39]

The Bill's civil liability provisions would prevent people deported offshore from accessing these potentially life-saving remedies. It is unconscionable that the Australian Government is seeking to avoid its responsibility for offshore warehousing while being fully cognisant of the probable devastating consequences to people's safety and wellbeing.

Invasive and unlawful monitoring conditions

The High Court of Australia's decision in *YBFZ v Minister for Immigration, Citizenship and Multicultural Affairs*[40] held that imposition of electronic monitoring devices (i.e. ankle bracelets) and curfew conditions on BVR holders who were released from immigration detention are unconstitutional and invalid. Instead of respecting the High Court's decision that these visa conditions are unlawful, the Government is attempting to find a legal loophole to skirt their responsibility and continue to impose these visa conditions, which is likely to be unconstitutional.

The Bill, in combination with new Migration Regulations, seeks to reintroduce visa conditions that infringe people's liberty and personal dignity and cause permanent harm. On 7 November 2024, the Albanese Government introduced new regulations under the Migration Act to introduce a new test to impose curfew and ankle bracelets for BVR holders, which requires the Minister to impose certain visa conditions, including the curfew and ankle bracelet conditions, on BVR holders if the Minister is satisfied on the balance of probabilities that:

- the person poses a substantial risk of seriously harming any part of the Australian community by committing a serious offence; and

[39] HRLC Submission, p 11.

[40] [2024] HCA 40. In YBFZ, the High Court ruled that it is unlawful for the Australian government to impose curfew and ankle bracelet visa conditions on people upon their release from immigration detention. These harsh visa conditions were introduced in November 2023 as a knee-jerk reaction to the NZYQ High Court ruling, which held that indefinite immigration detention is unlawful, and that the Australian Government cannot detain a person if there is no real prospect they could be removed from Australia.

- the imposition of the condition is reasonably necessary, and reasonably appropriate and adapted for the purpose of protecting the Australian community from serious harm by addressing that risk.[41]

The Bill refers to the new test introduced in the new Migration Regulations and provides that the Minister can only grant a BVR without the prescribed conditions (including the ankle bracelet and curfew conditions) if they are satisfied that the new test is met.[42] While the new test means that curfews and ankle bracelets will no longer be automatically applied to all BVR holders and can only be imposed in more limited circumstances, it attempts to permit the Government to continue imposing punitive conditions, which the High Court ruled were unlawful in *YBFZ*. Also, the recent introduction of Schedule 7 to the Bill indicates that the Government intends to grant BVRs to people beyond the NZYQ-affected cohort and impose these restrictive visa conditions on them - it is unclear how many more people will be subjected to these onerous conditions.[43]

Ankle bracelet and curfew visa conditions have made it almost impossible for people to re-establish themselves in the community after years of detention, and prevented people from finding employment, reuniting with family, and living with dignity. These demeaning visa conditions also have had a significant impact on people's mental health. The threat of re-imposition of the ankle bracelet and curfew conditions is pushing people to breaking point. People are in mental anguish, unable to move forward with their lives and fearful of how the Government will punish them next.

Case study

Charles fled to Australia from South Sudan and applied for a protection visa. The Department made a protection finding, and Charles was recognised as a refugee and granted a permanent protection visa.

Charles' protection visa was cancelled and he was taken into immigration detention. Charles was held in detention for 6 years until the Minister intervened to grant him a BVR in 2024. Charles' BVR conditions included wearing an ankle bracelet and being subjected to a curfew from 10pm to 6am.

Charles has been trying to rebuild his life in the community, but has struggled to find a job because of the stigma associated with the ankle bracelet. Also, he is required to charge his ankle bracelet for hours each day, which prevents him from working and attending medical appointments. As Charles has not been able to find secure employment, he is experiencing poverty and homelessness. Consequently, as Charles does not have a place to stay, he is unable to regularly charge his ankle bracelet and breaches his BVR conditions. Charles feels ashamed

[41] Migration Amendment (Bridging Visa Conditions) Regulations 2024 (Cth); *Migration Regulations 1994* (Cth), Schedule 2, cl 070.612A(1).
[42] Proposed section 76E(4)(b).
[43] Migration Amendment Bill 2024, Schedule 7.

of his situation, which has made it hard for him to reunite with his Australian citizen family members.

Recently Charles' ankle bracelet was removed because of the YBFZ High Court case. Charles is now looking for a job and can attend his medical appointments. He has started to reconnect with his family. Charles is very scared about what will happen if he is forced to wear an ankle bracelet again, and thinking about it makes him feel depressed.

Instead of continually punishing this small group of people, the Australian Government should enable people to rebuild their lives and provide them with adequate support so that they can live in safety and with dignity.

Breaching people's privacy

The Bill seeks to permit the Australian Government to breach people's privacy by collecting and sharing personal information with a wide range of bodies. The Bill provides that a Minister or an officer of the Department may collect, use, or disclose to a person or body, criminal history information for the purpose of informing, directly or indirectly, the performance of a function or the exercise of a power under this Act or the regulations.[44] This includes information that would be protected from disclosure such as spent convictions.[45] This power is not limited to persons being removed from Australia or visa holders, and could apply to Australian citizens. The scope of this power is unjustified, troubling and contrary to Australian privacy principles.

Also, the Bill empowers the Minister to disclose personal information about a 'removal pathway non-citizen' to foreign governments for the purpose of removing the person from Australia or to subject them to a third country reception arrangement.[46] This would cover a broad range of information, including whether people have sought asylum but do not have 'protection findings' and other information that could put them at risk of harm such as their sexual orientation.

Further, the Bill seeks to validate any unlawful sharing of such information that may have occurred in the past.[47] It is concerning that the Government is seeking to retrospectively validate past unlawful information sharing, which strongly suggests that unlawful sharing of information has occurred and the Government wants to avoid any accountability.

The Government has provided no justification for why these powers are necessary, and we caution the Committee against allowing people's privacy rights and civil liberties to be eroded for no apparent reason.

[44] Proposed section 501M(1).
[45] Proposed section 501M; Explanatory Memorandum, Migration Amendment Bill 2024 (Cth), 66.
[46] Proposed section 198AAA.
[47] Migration Amendment Bill 2024 (Cth), Schedule 3, Item 4.

Conclusion

We should all be equal before the law, regardless of where we were born, and, as a community, we must be very careful that people's lives and freedoms are not traded for political convenience. The ASRC is deeply troubled by the introduction of this Bill, which infringes the rights of refugees, people seeking asylum and migrants. The unparalleled expansion of the Government's powers to deport people to unspecified third countries will have dire consequences for many Australians and their families, including permanent family separation. Refugees and people seeking asylum will be exposed to severe harm, including death, due to expanded offshore warehousing with countries who are not Refugee Convention signatories or under any obligation to ensure the safety of people it receives. This will be exacerbated by the Minister's increased powers to overturn protection findings and return people to their countries of origin where they fled from. Further, the troubling immunity provisions which seek to prevent any accountability for detention and offshore warehousing indicates that the Government is cognisant that people are likely to face harm. This Bill has no place in our democracy.

The ASRC recommends the Committee opposes the Migration Amendment Bill 2024 in its entirety.