



ISLAMIC COUNCIL OF VICTORIA

**Submission to the Senate Legal and
Constitutional Affairs Committee:
Migration Amendment (Removal and
Other Measures) Bill 2024**

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The Islamic Council of Victoria (ICV) welcomes the opportunity to make a submission to the Senate Committee in relation to proposed amendments to the *Migration Act 1958*. As the peak representative body for Muslims in Victoria, the ICV's mission is to protect and advance the rights of its constituents wherever they may be, or whatever their connection to Australia. The majority of Australia's asylum seeker and refugee intake are Muslims. The ICV is concerned about the effect the Bill will have on the Muslim community in Australia and abroad, as well as the human rights of all who flee their country of origin seeking refuge in Australia. It is from this perspective that we write this submission.

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Introduction

1. The Islamic Council of Victoria (ICV) is the peak Muslim body in Victoria representing over 270,000 Muslims and 76 member societies. The ICV provides advocacy and social welfare services while leading state and national initiatives through community consultations and advice to all levels of government.
2. The ICV works to support all Victorian Muslims and all Muslims globally with some connection to Victoria. According to the Australian Red Cross, the majority of humanitarian visas granted by Australia were to nationals of Syria, Iraq, Myanmar and Afghanistan, all of which are Muslim-majority countries or countries with a significant Muslim population.¹
3. This submission is based on the ICV’s extensive involvement with and representation of Muslim communities over many decades.
4. The ICV is gravely concerned by the proposed *Migration Amendment (Removal and Other Measures) Bill 2024* (“the Bill”). It is unnecessarily and unreasonably punitive on ‘removal pathway non-citizens,’ and may in some instances be unfit for purpose. We are especially concerned about the impact it will have on Muslims seeking refuge in Australia.
5. **The ICV expresses its disappointment at the reckless approach adopted by the Government in proposing this bill. The criminal law should not be used to further political objectives.**
6. **We call for the Bill in its entirety to be abandoned.**

Criminalising a Failure to Cooperate with the Government on Removal Efforts

7. The Bill directly seeks to compel visa holders, or persons present in Australia without a visa, to leave Australia, regardless of their circumstances and what awaits them in their country of origin. This is a shameful and hurried attempt to impose harsh penalties on vulnerable individuals who have already faced significant challenges, without adequate

¹ <https://www.redcross.org.au/act/help-refugees/refugee-facts/>

- consideration for their safety, wellbeing or personal circumstances. Transferring the onus of removal onto a removal pathway non-citizen is also inhumane and degrading.
8. Who could fall under the label “removal pathway non-citizen” is currently unclear, given that the Bill allows for a holder of a visa prescribed under the *Migration Regulations 1994* to be designated a removal pathway non-citizen. The ICV is concerned that effectively, the Minister is granted the power to designate certain visas whose holders could be deemed removal pathway non-citizens without due consultation.
 9. The ICV is also concerned that what could fall under a ‘removal pathway direction’ issued by the Minister is far-reaching, given that the Bill does not provide for what form these directions could take. Completely removed from the equation is a legislative requirement for such directions to be appropriate or reasonable for the circumstances of the removal pathway non-citizen, or how practicable it is for the non-citizen to comply with the direction.
 10. The ICV takes this opportunity to express how bizarre the operation of the Bill would be. For example, the reality of many of those who seek refuge, asylum or residence in Australia is that they possess little to no grasp of the English language, and far from the language competency required to travel to an appointment with the Department of Home Affairs or satisfactorily complete migration forms. Many refugees also struggle to access support services, if and when they are available to them.
 11. Another example would be a removal pathway non-citizen with immediate family and a network in Australia, with stable employment, being directed to remove themselves from the country following a minor offence, and to return to their country of origin. There are serious concerns as to how the Minister would take into consideration the personal circumstances of the individual, as well as the dangers to safety which await the individual upon removal. The Bill will no doubt lead to instances where non-citizens will suffer a cruel separation from their families only to face danger in their country of origin. This Bill facilitates the separation of families, undermines social cohesion and erodes trust in public institutions across Australian society.
 12. Beyond this, it is reasonably foreseeable or even likely that in many instances, coercing non-citizens to leave Australia will not achieve the objective of their removal from

Australia. For example, Iran’s historical practice has been that it does not re-admit citizens who have sought asylum in other states. The provisions of this Bill are therefore condemning a certain class of non-citizens, whose countries of origin will not facilitate their return, to imprisonment.

13. As the Committee is no doubt aware, forcibly returning individuals to countries where they face harm or persecution could constitute refoulement, prohibited under international law. Whilst the Government claims that the Amendment provisions will only be triggered when individuals have exhausted all avenues in seeking an Australian visa, the reality is that many of these individuals are subjected to an unfair process where their protected status can be stripped arbitrarily by the Minister.
14. The consequences of such laws are severe. They compel individuals escaping persecution to choose between returning to a place where their lives are in jeopardy, or face incarceration for resisting removal orders.
15. The ICV is deeply troubled by the provision that non-cooperation could result in up to five years of imprisonment with a minimum mandatory sentence of one year. This approach fails to consider the complex circumstances that many individuals facing deportation are grappling with. It also binds the judiciary to legislated criminal penalties for offences which do not warrant minimum sentences. It is remarkable that the proposed offences by the Bill will incur a minimum sentence on par with some of the most heinous Commonwealth sexual offences.²

Designating ‘Removal Concern Countries’

16. The Bill grants the Minister unilateral power to determine who can enter Australia, upon consultation only with the Prime Minister and Minister for Foreign Affairs, and which countries are subject to travel bans. This ban bars entire nationalities from entering Australia, subject to very narrow provisos and qualifications. Such a ban is undeniably discriminatory and undermines fundamental principles of fairness and equality. Despite the Minister’s obligation to provide Parliament with the ban’s rationale after the decision

² See eg *Criminal Code Act 1995* (Cth), Schedule, s 272.20(2).

has been made, failure to do so does not impact its validity. This move, were it to become law, would be a troubling divergence from Australia's established practice of evaluating each individual visa application on its merits. It will also result in a disproportionate impact on Muslims and those from Muslim-majority countries of origin seeking refuge in Australia.

17. We remind the Committee that only in 2017, US President Trump enacted Presidential Proclamations, the infamous 'Muslim travel ban', which were the subject of international criticism from democratic leaders, human rights organisations and international institutions alike. We implore the Committee to recommend the complete removal of these provisions from the Bill.

Australia's International Human Rights Obligations

18. The Refugee Convention of 1951, which Australia has voluntarily ratified, mandates the protection of refugees and asylum seekers, including the principle of non-refoulement. This prohibits sending refugees back to places where they face persecution. The convention also prohibits 'constructive refoulement,' such as arbitrary detention to pressure asylum seekers into dropping their claims, and safeguards refugees from penalisation for illegal entry or stay. Additionally, it emphasises the broad spectrum of fundamental rights for refugees and asylum seekers, covering civil, economic, social, and cultural rights.
19. Additionally, Australia's commitment to the International Covenant on Civil and Political Rights (ICCPR) necessitates the avoidance of arbitrary detention, using it only as a last resort and ensuring justification, necessity, and regular review. The UNHCR Detention Guidelines consider factors like detention purpose, individual circumstances, proportionality, and alternatives to detention.
20. **The proposed Bill places substantial risk of harm on refugees and residents of Australia who could be deemed removal pathway non-citizens. The Bill will cause Australia to be in clear breach of its international human rights obligations. It must be scrapped.**