Victorian Council for Civil Liberties Inc
Reg No: A0026497L
GPO Box 3161
Melbourne, VIC 3001
t 03 9670 6422
info@libertyvictoria.org.au

22 November 2024

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

Dear Committee,

Inquiry into the Migration Amendment Bill 2024 (Cth)

1 Liberty Victoria is a peak civil liberties organisation in Australia that has worked to defend and extend human rights and freedoms in Victoria since 1936. For more than eighty years, we have advocated for civil liberties and human rights. These are spelled out in the United Nations international human rights treaties, agreed to by Australia. We speak out when such rights and freedoms are threatened by governments or other organisations.

2 We welcome the opportunity to provide a submission to the inquiry into the Migration Amendment Bill 2024 (Cth) (**the Bill**). The focus of our submissions and recommendations reflect our experience and expertise as outlined above. We otherwise endorse and refer to the submissions of the Human Rights Law Centre.

3 For the reasons that follow, **Liberty Victoria strongly opposes the Bill in its entirety**.

4 As a preliminary matter, we note with concern the Government's derisory provision for scrutiny and consultation of this proposed legislation, allowing just 3 business days for submissions and 5 business days between referral to this Committee and the report deadline. Many experts and people with lived experience will not be able to meaningfully participate in this scrutiny process.

5 Attempts to rush through legislation without adequate scrutiny undermines public confidence and the Government's commitment to transparent governance, and, as we saw with the initial Government response to *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37; (2023) 97 ALJR 1005 (***NZYQ***), leads to flawed law-making with devastating individual and societal consequences. The timeframe, outside usual parliamentary processes, is particularly unacceptable given the Bill's severe impact on people's rights and liberties, including refoulement, permanent family separation, and other harms including indefinite detention.

6 Similar concerns have been raised by the Parliamentary Joint Committee on Human Rights (**PJCHR**) and the Senate Standing Committee for the Scrutiny of Bills in their reports of 21 November 2024, and by the Law Council of Australia. This inquiry must follow due process and the legislation should not proceed without this guarantee.

A. SUMMARY

7 The Bill was introduced on 7 November 2024, alongside the Migration Amendment (Bridging Visa Conditions) Regulations 2024 (Cth), in response to the High Court of Australia's decision in *YBFZ v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] HCA 40 (***YBFZ***) on 6 November 2024.

8 The Bill is the latest in a disturbing raft of rushed, defective, punitive measures vilifying and punishing people in Australia without Australian citizenship – in particular, refugees and stateless people, and based purely on visa status.

9 It shores up the unequal, unjustified and discriminatory treatment of refugees. We are all entitled to equality before the law, and should expect not to be singled out for harm for perceived political gain.

10 The proposed laws would amend the *Migration Act 1958* (Cth) (**the Act**) to enable the Government to:

a Retract people's status and warehouse them in 'third countries', where they may be exposed to the worst forms of harm including persecution, forced return to persecution, indefinite detention, and permanent family separation;

b Use taxpayer money to pay unspecified third countries to enter into these 'arrangements', effectively contracting out Australia's international obligations without any guarantee that those obligations will be abided by;

c Pre-emptively absolve itself, its agents, and even third countries of responsibility for any harm done to people subjected to this regime;

d Overturn findings that people are owed protection, exposing them to refoulement and permanent family separation;

e Reimpose electronic monitoring and curfews to people who already experienced unsanctioned punishment in the form of unconstitutional detention and imposition of those conditions, at extraordinary personal, family and intergenerational cost; and

f Share information, including that protected under domestic law, retrospectively and with unprecedented lack of protections.

11 The Bill also represents a sustained disrespect for, and willingness to undermine, fundamental systems in place under Australian law intended to protect the community. The Australian *Constitution* vests power to *punish* exclusively in Australian courts; extensive systems are in place to protect the community that apply to all people equally. The High Court operates as a crucial check on Government power; the pattern of legislating without due consideration to avoid responsibility is dangerous and has proven ineffective, with knee-jerk legislative responses in the past year subsequently being found to be unlawful.

12 In *NZYQ*, the High Court of Australia found the Government was acting in breach of the *Constitution* in detaining people under the pretext of removal, when no such removal was practicable. In response, the Government introduced laws without adequate scrutiny subjecting affected people released (after what may have been years of unlawful detention) to yet more punishment and deprivation of liberty, including electronic monitoring and curfews, as well as a preventative detention regime legitimising indefinite detention by proxy.

13 When, in *YBFZ*, the High Court found the electronic monitoring and curfews unconstitutional, and concluded that the Government's approach constituted extra-judicial collective punishment, the Bill was introduced the very next day, again without appropriate scrutiny or any adequate reflection on the High Court's reasons.

14 These attempts to circumvent foundational legal protections should rightly disquiet the Committee.

15 The Bill is also unacceptably vague, pointing to undefined, as-yet *unmade* policies and procedures. This is a further avoidance of due scrutiny of the Bill.

B. RECOMMENDATIONS

16 The Committee should recommend that the Bill not be passed. It should be withdrawn without delay.

C. SUBMISSIONS

17 These submissions will focus on the proposed detention and removal powers, the evasion of responsibility, the ability to dissolve protection findings, the imposition of punitive conditions, and breaches of privacy.

18 There are a number of preliminary matters it is useful to set out.

19 First, the Bill is concerningly broad, contrary to the suggestions in the Explanatory Memorandum. The definition of a 'removal pathway non-citizen' includes:

a *anyone* for whom removal obligations arise;

b holders of bridging R visas (**BVRs**);

c holders of bridging E visas granted on departure grounds (including people who have applied for Ministerial intervention on the basis of family ties, health, refugee status or other exceptional circumstances); and

d holders of 'prescribed' visa, as yet undefined, to allow 'flexibility' in circumstances the Explanatory Memorandum does not elucidate further.

20 Liberty Victoria has previously noted the inadequate protections in Australia's refugee status determination process. There are many ways a person can fall through the gaps, as highlighted by the fast-track system failure, and many people are exposed to damaging processes that lack integrity. Refugees failed by these systems often fall within these categories, exposing them to refoulement, family separation, detention, and other serious harms.

21 Secondly, the Bill purports to target, in particular, BVR holders who were released from immigration detention after the High Court found their detention was unlawful in *NZYQ*.

22 There is an implication that this group of people are somehow outside the Australian community.

23 Many people in this group arrived in Australia as child refugees with no connection to their country of birth. The vast majority were accepted into the community as permanent residents. They lived believing they were part of the community and spent formative years in Australia. They have parents, children, families, spouses, communities, and jobs. Many experienced severe hardship as children, including in Australia. In all respects other than formal decree awarding citizenship under the *Citizenship Act 2007* (Cth) (and many did not know they were not citizens), **they *are* part of the community**.

24 For those who have been sentenced for offending in the past, those sentences are complete. Like any other person, at the conclusion of their sentence, their engagement with the justice system has ended. They have served their time and they are entitled to the presumption of innocence. Our justice system is rightly premised on sentence principles of just punishment, deterrence, protection of the community *and* rehabilitation. High Court has made plain that rehabilitation, if it can be achieved, is the most durable guarantor of community safety and clearly in the public interest.[1]

25 Now, in circumstances that may be decades later, the Department proposes to **rescind** their acceptance into the community, **detain** them repeatedly and in abhorrent, unconstitutional conditions, and pay third countries to **deport** them where they may be exposed to unimaginable harm.

26 A person has a right to enter and remain in their own country.[2] For many the Government now seeks to punish, Australia **is** their own country. The repeated incursion on this right should give all members of the Australian community cause for serious concern.

27 The singling out of this group for unconstitutional and deeply destructive punishment is unjustifiable and must end.

Detention and removal

28 The Bill's provision for the re-detention and forcible removal of people from Australia is legally indefensible and should be rejected. It provides for a BVR to cease, and detention, where arrangements with a third country have been made, and for a person to be removed from Australia to that third country.

1 *Hogan v Hinch* (2011) 243 CLR 506, 537 [32] (French CJ).
2 International Covenant on Economic, Social and Cultural Rights, article 12(1).

29 First, as the PJCHR noted, it is unclear whether and how these severely restrictive measures protect the integrity of the migration system, address a pressing and substantial concern, or how BVR holders present any particular or heightened risk. No consideration has been given to less restrictive measures, or oversight mechanisms.[3]

30 Second, the Bill is impermissibly vague and poorly drafted. Terms, timeframes, conditions and fundamental details are undefined. There are references to non-compellable powers as a catch-all defence for the breach of rights, where complete lawful guidelines do not currently exist for those powers following *Davis v Minister for Immigration, Citizenship, Migrant Services & Multicultural Affairs & Ors* [2023] HCA 10; (2023) 97 ALJR 214.

31 Third, the Bill is ill-considered, replete with gaps, and does not adequately engage with pressing matters including the risk of breach of the prohibition against torture or protections against other harms.

32 Fourth, we refer to and repeat the Human Rights Law Centre's submissions with respect to the failure of offshore policy and the extraordinary harms done under its banner.[4] People have lost their families, their health, their hope, and even their lives. **Offshore detention must be abandoned, not expanded**.

33 Fifth, the consideration of protections against permanent family separation and other compelling matters, including disability, health or refugee status, is inadequate.

34 It is disingenuous to state that a person's ties to Australia, and their right to family integrity, or any other compelling matters, would already have been considered as part of previous processes.

35 Not only is there no *contemporaneous* assessment, there is no guarantee that their circumstances were, in fact, considered. There is extremely limited access to legal assistance for people facing visa cancellations, and they typically face severe barriers to access to justice. Many people are unable to engage, including because of the impact of detention on their mental health.

36 Liberty Victoria members have extensive experience, including assisting people with severe psychiatric conditions, disabilities, and other injuries caused by unlawful detention. A glib reference to past processes obscures gross injustices and risks immensely disproportionate results.

37 The same is true with respect to the reference to Ministerial intervention as a salve. It is not.

<u>Indefinite detention by stealth</u>

38 The Bill enables the Government to re-detain a person by cessation of their bridging R visa should a foreign country give them permission, 'however described', to 'enter and remain'. That permission may be conditional on an act the person is not capable of (for example, providing an identity document that does not exist). There is no specific timeframe that permission must come into effect.

---

3 Parliamentary Joint Committee on Human Rights; Report 10 of 2024 [1.34].
4 Human Rights Law Centre, Submission 2, p 5 – 10.

39 Upon visa cessation, a person is subject to immigration detention under s 189 of the Act. That detention may be unlawful and arbitrary if it is not reasonable, necessary and proportionate.

40 It is difficult to see how withdrawing a person's lawful status and exposing them to detention and forcible removal from Australia is reasonable, necessary and proportionate, noting particularly that they had, until now, been living in the community.

41 As the Parliamentary Joint Committee on Human Rights has observed, the legislation and supporting materials "provide no justification or evidence to identify any specific (or heightened) threat that BVR holders pose to the Australian community",[5] nor is there any information regarding less restrictive alternatives (for example, refraining from re-detention) or oversight.[6]

42 This provision allows for indefinite and arbitrary detention by stealth. It is plainly punitive, allowing the Government to re-detain a person for years while awaiting ostensible 'removal' – the same fiction the Government advanced prior to *NZYQ*, and subject to analogous legal defects and constitutional concerns.

Offshore warehousing

43 Externalisation policies are unsustainable, irresponsible, and incompatible with fundamental legal protections.

44 The Bill proposes paid warehousing arrangements with undisclosed third countries, with no protections for their safety or security. For example, there is no requirement that a third country be a party to the Refugees Convention[7] or the International Covenant on Civil and Political Rights.[8] They will be at risk of detention, harms including torture and refoulement, and family separation.

45 As the Parliamentary Joint Committee on Human Rights noted, the Government has failed to identify the prohibition against torture may be engaged and has not engaged with the possibility that it would be responsible for the breaches of the absolute prohibition against torture.[9]

46 Further, the obligation not to refoul a person is not subject to any limitations. The Bill provides no protections against refoulement; to the contrary, it substantially increases the risk of, and by implication makes allowance for, refoulment including chain refoulement. In terms of protections proposed:

a the reference to Ministerial intervention as a protection against refoulement is beyond inadequate and artificial for the reasons above; and

b the reference to intended 'mechanisms to guard against chain refoulement' and 'other safeguards' is a derogation of transparency and accountability, adequate preparation of the legislation itself, and is otherwise utterly unsubstantiated and unreliable.

5 Parliamentary Joint Committee on Human Rights; Report 10 of 2024 [1.14].
6 Parliamentary Joint Committee on Human Rights; Report 10 of 2024 [1.18].
7 Refugees Convention, opened for signature 28 July 1951, 198 UNTS 137 (entered into force 22 April 1954).
8 ICCPR, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).
9 Parliamentary Joint Committee on Human Rights; Report 10 of 2024 [1.25].

47 The externalisation of Australia's international legal obligations marks a dark chapter in Australian history. It has been proven to be an abject failure on all fronts, particularly in terms of the egregious and irreversible harms done to men, women and children and its incompatibility with international refugee law and the apportionment of responsibility on the global stage.[10]

48 The Bill imposes no restrictions or protections for third-country arrangements. There is no specification regarding the duration or conditions of a person's stay, or even their liberty or bodily integrity (indeed, the Bill specifically contemplates their detention). There is no requirement that a country have even a cursory commitment to minimum standards of human rights, including not to return refugees to persecution.

49 There is also no process set out for adequate determination of harm in a third country, including that giving rise to protection obligations.

50 As the Parliamentary Joint Committee on Human Rights has observed, this impacts a person's right to liberty both in Australia and in third countries.[11]

51 The reliance on policies, practices and procedures that are yet to be made, and are not subject to scrutiny, raises serious concerns.

Broader impacts

52 As set out above, the Bill does not just affect the small group of BVR holders the Government refers to.

53 The Government has indicated the Bill is also intended to apply to so-called 'transitory persons' in Australia who were previously subjected to regional processing in Nauru or Papua New Guinea but were brought to Australia for medical treatment, family or other reasons, placing this group at risk of re-detention and facing offshore detention once again.

54 This is an extreme and distressing measure. This group of people typically arrived in Australia over a decade ago, and experienced severe harm including sexual and physical assault and medical neglect in offshore detention. The psychological impact of these measures is severe.[12]

55 The Bill may also apply to the thousands of people failed by the 'fast-track' system, which the Government recently abolished due to its defects, being neither robust nor fair. People should be entitled to due process: instead, they may face re-detention, including offshore detention, and the suite of harms raised herein.

56 The Bill also gives the Government to expand these powers to other as-yet undefined groups.

---

10 See eg United Nations High Commissioner for Refugees, UNHCR Note on the "Externalization" of International Protection (Position Paper, 28 May 2021); UNHCR Representation in Australia, New Zealand and the Pacific, Externalisation (online legal publication, 24 January 2022).

11 Parliamentary Joint Committee on Human Rights; Report 10 of 2024 [1.9].

12 See, eg, Specker P, Liddell B, Bryant R, O'Donnell M, Nickerson A. Investigating whether offshore immigration detention and processing are associated with an increased likelihood of psychological disorders. The British Journal of Psychiatry. Published online 2024.

Evasion of responsibility

57 Exclusion of civil liability for officials and agents is proposed in the Bill by amendments to ss 198 and 198AD of the Act.

58 As the Parliamentary Joint Committee on Human Rights observed, the Government has failed to articulate "why such an immunity is necessary and why it needs to be so broad".[13] Similar concerns have been raised by the Senate Standing Committee for the Scrutiny of Bills.[14]

59 The Bill appears to absolve Australian and foreign governments and agents (indeed, 'any person in a regional processing country or another foreign country') of responsibility for things including actions which lead to death, disability or severe harm of people in the course of removal. It places people above the law, contrary to principles of the rule of law, and actively facilitates breaches of rights.

60 Again, immunity for privacy breaches is included, indicating awareness by the Government of such breaches and an attempt to avoid responsibility.

61 The right to an effective remedy is well recognised under international law (see, eg, the 2009 decision of the UN Human Rights Committee in *Horvath v Australia*, Communication No. 1885/2009). It is strongly arguable that the Bill, if enacted, would breach this foundational vital human right, contrary to Australia's obligations under the International Covenant on Civil and Political Rights.

62 In pursuing this warehousing legislation, the Government also seeks to absolve itself of its human rights obligations by other means whereby "[p]ersons subject to third country reception arrangements would be outside Australia's territory".[15]

63 Such derogations are plainly deeply irresponsible and immoral.

64 Aside from those concerns, issues of intention are not relevant when considering whether Australia does, in fact, have sufficient control with respect to affected people and thereby whether we owe obligations and should be held accountable despite the Federal Government's attempts to pardon itself. Where there are powers such as those proposed, including spending authority, such obligations may arise regardless, meaning Australia would still be responsible and potentially liable for human rights breaches that may include torture, arbitrary detention and refoulement. As it has in the past, the Government may find itself liable despite its attempts to immunise itself.[16]

65 The Government's overt attempts to absolve itself and others of liability for such severe wrongdoing belies clear knowledge – and even an acceptance – that such wrongs will occur. The Government is, in effect, asking for legislative permission to commit these wrongs – for itself and its unnamed partners. That permission should not be granted.

13 Parliamentary Joint Committee on Human Rights; Report 10 of 2024 [1.30].
14 Senate Standing Committee for the Scrutiny of Bills; Scrutiny Digest 14 of 2024.
15 Migration Amendment Bill 2024, statement of compatibility, pp. 30-31.
16 See, for example, Committee Against Torture, Concluding observations on the sixth periodic report of Australia, UN Doc CAT/C/AUS/CO/6 (5 December 2022).

Dissolution of protection findings

66 The Bill amends the Act to expand the circumstances in which a protection finding can be reversed. There is no justification for doing so; these provisions create insecurity and division, and place at risk the multiculturalism at the heart of the Australian community.

67 This amendment expands the power to overturn protection findings even to people *with* visas: current law limits that power to people without lawful status – a significant and foreboding shift.

68 As the PJCHR noted, there is again an absence of information or detail allowing appropriate scrutiny of this serious measure.[17]

69 It also flags a willingness by the Government to exclude refugees and long-standing or recognised members of the Australian community, and to operate a system of short-term protection in breach of international obligations and exposing people, families and communities to harm. A refugee has the right to durable protection. To retract that protection, noting again that many arrived in Australia as children, is a grave act.

70 The so-called 'fast-track' system, only recently dismantled by the Government, was an abject failure, and we must not repeat past mistakes.

71 Although the Bill contemplates merits review of such decisions, the practical reality must be grappled with. In particular, after repeated unconstitutional punishments including years-long detention, electronic monitoring and curfews, and then reversal of protection findings, many may not have the capacity to undertake what may be years-long review; those who do, deprived of employment and education over years, may be unable to obtain support or legal advice.

72 The median time it took the Administrative Appeals Tribunal to resolve a protection visa review matter was 1,776 days[18] (nearly 5 years). It is our members' experience that many people in similar circumstances cannot face further processes and lose all hope.

73 Constructive refoulement is a tragic and unacceptable reality of a migration system that indefinitely detains and causes deterioration of mental health. Liberty Victoria is aware of people 'voluntarily' returning to countries of birth, where they face unimaginable harm, after being subjected to egregious treatment in Australia and with a lack of faith in legal systems or unable to access advice.

74 Australia has robust processes to determine refugee status. Once it is recognised, and a person accordingly becomes part of the community, that status must be respected.

Imposition of punitive and discriminatory conditions

75 The High Court, in *YBFZ*, called electronic monitoring and curfew conditions the Government proposes "unjustifiable", *prima facie* punitive, and found they were unconstitutional restraints on liberty. Punishment is the proper constitutional function of the judiciary, an expert function, and not the executive.

---

17 Parliamentary Joint Committee on Human Rights; Report 10 of 2024 [1.49].

18 Processing times for the former AAT's Migration and Refugee Division, available at https://www.art.gov.au/about-us/accountability-and-reporting/former-administrative-appeals-tribunal/processing-times-former-aats-migration-and-refugee-division.

76 The Bill and the accompanying Regulations reintroduces those conditions a day after the Court's conclusions. This may be clever politics, it is terrible for our system of government and the rule of law.

77 Most affected people who have been sentenced for criminal offending have served any sentence, and often years ago. They have a right not to be punished again for the same offending, including under international law.[19] These provisions are plainly punitive.

78 The imposition of mandatory minimum sentences removes judicial discretion and is neither necessary, reasonable nor proportionate.[20] Indeed, such mandatory sentencing is contrary to Labor's national platform which correctly warns that:

> Labor opposes mandatory sentencing. This practice does not reduce crime but does undermine the independence of the judiciary, lead to unjust outcomes and is often discriminatory in practice.[21]

79 The amendments to the previous regime appear superficial, and are again poorly articulated and defined. Risk assessment parameters are undefined, and protocols used by the Government in the past have been criticised as unfit for purpose. Again, many people lack access to advice and support to enable them to engage meaningfully in any process. The lack of clarity and inbuilt protections raises concern the changes are cosmetic.

80 Even more bizarrely, these measures are *additional* to the powers of courts, police and other authorities to manage risk. Courts have long had the power to impose supervisory conditions where considered appropriate, and do so. Further, the Government's own *additional* preventative detention measures are also available.[22]

81 Again, there is simply no justification for exposing people to further, additional punishment based solely on their visa status. There can be no question that is what the Government is doing, and yet it has not articulated any proper basis for doing so.

82 These provisions are likely to be challenged on a constitutional basis, with the High Court's comments applying with equal force to the new proposed framework. In particular, it is difficult to see how the provisions could be 'capable of being seen as necessary' for community protection.

83 There is also a plain lack of procedural fairness, with inadequate notice requirements that will devastate individuals and families.

84 Other concerns include the different standard of risk required for imposition of conditions. The Bill requires 'substantial' risk, whereas CSO regimes require 'unacceptable' risk. Again, noting the importance of equality before the law, the reason for this divergence is unclear.

---

19 International Covenant on Civil and Political Rights, Article 14(7).

20 See, eg, Law Council, Policy Discussion Paper on Mandatory Sentencing, May 2014. See also M D Stanton, "Instruments of Injustice: The Emergence of Mandatory Sentencing in Victoria" (2022) 48(2) Monash University Law Review 1.

21 See further M D Stanton, "Labor's Mandatory Sentencing Problem", *Right Now*, 8 April 2024, https://rightnow.org.au/opinion/labors-mandatory-sentencing-problem/.

22 *Migration and Other Legislation Amendment (Bridging Visas, Serious Offenders and Other Measures) Act 2023* (Cth).

85 As at 1 July 2024, there were 182 *NZYQ*-affected BVR holders in the community; over 15,000 people are released into the community after serving their sentence *every three months*.[23] In our experience, for those with criminal histories, many years may have passed since any conviction. Extrapolating those numbers, in a year where 60,000 people may be released from criminal custody, 99.7% are permitted to resume and rebuild their lives, to complete their rehabilitation as is the purpose of the criminal justice system, and to be subject to the same laws as every other person, and 0.3% - and their families – would face relentless vilification and incursion of rights.

86 The Government has not advanced any justification for this glaring disparity. There is none.

87 Restrictions on a person's liberty and bodily integrity should only be authorised by courts applying the law. This is a crucial protection for all members of the Australian community.

88 In setting out serious concerns about the legislation, the Scrutiny Committee said:

> The committee notes it raised these concerns when the bill providing for these powers was introduced a year ago and requested detailed information from the minister in relation to these scrutiny concerns. The committee expresses its disappointment that the minister (and former minister) has failed to provide a response to these concerns which has now been overdue for 10 months. The committee notes that its scrutiny function can only be performed effectively with cooperation from the executive government. The committee considers that the lack of engagement on this matter is particularly alarming given the significant and undue trespass on personal rights and liberties posed by this scheme.[24]

89 Again, the lack of due process is intolerable given the significance of the proposal.

Breaches of privacy

90 The Bill gives the Government extreme powers that infringe on individual privacy, dismantling protections established under Australian law. It permits information collection and sharing, including with foreign countries and agents, and including where domestic law specifically prohibits it (for example, with respect to spent convictions and where there was no conviction at all).

91 The information may be shared with any level of government of a foreign country, including its agents. There are no safeguards in place managing collection or disclosure. As the Senate Standing Committee for Scrutiny of Legislation observed, the provision is so broad as to be absurd:

> … personal information, including an amended definition of criminal history information, may be disclosed to any person or body within Australia, which may then be further disclosed to any other person or body, and the same information may also be disclosed to any foreign government (except for a government of a country that an affected person cannot be removed to on protection grounds).[25]

---

23 Minister brief prepared for the Assistant Minister for Immigration The Hon Matt Thistlethwaite MP sworn in on 29 July 2024, released under FOI.

24 Senate Standing Committee for the Scrutiny of Bills; Scrutiny Digest 14 of 2024 [1.90].

25 Senate Standing Committee for the Scrutiny of Bills; Scrutiny Digest 14 of 2024 [1.53].

92 The sharing of this information in such an unconstricted way not only breaches a person's right to privacy but exposes them to persecution in a third country as well as other harms, including exposure to double jeopardy and the death penalty.

93 The provisions are also incredibly broad, and permit domestic collection and disclosure for "informing, directly or indirectly, the performance of a function or the exercise of a power under this Act or the regulations", and foreign collection and disclosure for any person in the groups affected by this legislation.

94 The inclusion of spent convictions and outcomes where courts determined no conviction should be recorded are of considerable concern. In *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Thornton* [2023] HCA 17; (2023) 276 CLR 136, the High Court found the Government is not entitled to take these matters into account: the Bill *again* seeks to circumvent that principled finding.

95 The discretions available to the court, and the existence of spent convictions, recognises rehabilitation and distinguishes severity of offending. To make an exception in this manner again subverts the expert role of the courts.

96 In short, there is no proper justification for why privacy protections ought to be different for people based solely on their visa status.

97 The retroactive nature of this provision raises concerns that the Government has knowingly been breaching the law with respect to disclosure. There is no justification for retrospectivity where the consequences are so severe. Indeed, retrospectivity is in itself an affront to the principles of the rule of law requiring particularly clear rationalisation.

98 Again, the PJCHR raised significant concerns with this proposal and the lack of information advanced in support of it.[26]

99 The Bill exposes people to severe harm and persecution, and dismantles fundamental privacy and criminal justice principles. It must be rejected.

D. A PATHWAY FORWARD

100 This Bill should be withdrawn without delay.

101 Politicised attacks on people based on their visa status must end. The harms inflicted are severe, generational, and go to the heart of Australian culture and community.

102 We must all be equal before the law. Refugees and migrants are members of the community like any other, and should be permitted to live in dignity, security and peace – not in a parallel, ever-shifting universe where they are relentlessly vilified, punished, and discarded.

103 Real reform is needed to end the scourge of immigration detention, visa cancellation and its impact on families, and to ensure Australia's respectability on the global stage.

104 People must be given the tools to rebuild their lives after objectionable and unlawful treatment by the Government, not subject to a panicked doubling down. This means ability to work, study, and reunite with family in dignity and safety.

[26] Parliamentary Joint Committee on Human Rights; Report 10 of 2024 [1.71].

105 The immense harm and waste of resources of legislating in this manner cannot be overstated. Liberty Victoria again calls for consultative and meaningful reform to establish an evidence-based and fair migration system in Australia.

106 Thank you for the opportunity to make this submission. Please do not hesitate to contact the Liberty Victoria office at info@libertyvictoria.org.au if we can provide any further information or assistance.

Michelle Bennett
President, Liberty Victoria