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Liberty Victoria's Statement on the Home Affairs Legislation Amendment (2025 Measures No. 1) Bill 2025

The Federal Labor Government has this week continued its attack on the rights of people without Australian citizenship.

On Monday, in a rushed move, the Government introduced the Home Affairs Legislation Amendment (2025 Measures No. 1) Bill 2025. The Bill seeks to:

- **Validate with retrospective effect unlawful decisions made on an incorrect understanding of the law.**
  When making decision about visa refusal and cancellation, decision-makers are required by law to consider the consequences of their decision. *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs & Anor* [2023] HCA 37 (NZYQ) changed the law so that the consequence of visa refusal or cancellation is no longer indefinite detention. Since then, the Government has introduced laws which allow forcible exile to Nauru for people affected by NZYQ where they face indefinite insecurity and are subject to invasive and debilitating conditions. Many serious and life-altering decisions were made using the wrong information and law, meaning people have been unlawfully exposed to a cruel fate due to defective decision making.[1]

  This new law means that such decisions may stand, despite having been wrongly made, with no redress for the people and families affected. The Government has offered no justification for doing so.

[1] *AJN23 v Minister for Immigration, Citizenship and Multicultural Affairs* (2024) 304 FCR 586; [2024] FCAFC 103 at [34].

People are entitled to have decisions which affect their rights made on the basis of correct facts and law, and to be protected from unilateral and unjustified government decrees changing that law years after the fact. The administration of justice also requires that defective administrative decisions be remedied rather than retroactively affirmed. These are fundamental protections of the rule of law.

The Bill is drafted to have alarming and unconstrained reach, validating decisions that were plainly wrong and with serious consequences for people affected, but also covering "anything done, or purportedly done, under or in connection with the relevant migration law". This subverts legitimate challenges, including to tort remedy: where wrongly made decisions meant a person lost their liberty, was forcibly removed from Australia, was charged with a crime they shouldn't have been, or had their private information disclosed by the government, the Bill seeks to render the Government's actions lawful, despite the impact of otherwise unlawful Government action on those people's lives.

Disturbingly, if this retrospective validation means a person can now be said to have committed an offence – even if it wasn't an offence when it happened – the Bill means charges against them can be pursued, including resulting in mandatory imprisonment.

It is a direct reaction to the Full Court of the Federal Court's decision in *AJN23 v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] FCAFC 103; 304 FCR 586. Liberty Victoria is disturbed by the continued Government action undermining the rule of law and public confidence in the competence of the Australian judiciary by legislating in reaction to Court rulings it finds inconvenient.

- **Explicitly remove procedural fairness obligations for people facing removal to third countries.**
  Last year, the Labor Government passed unprecedented laws allowing for the removal of people to unnamed third countries. It has since sought to remove three individuals to Nauru and indicated an intention to use these powers against more of the cohort. This Bill is designed to further strip the rights of individuals affected by these laws, by legislating away procedural fairness obligations to exclude the person further from their own devastating removal process, preventing them from sharing information about serious harm they would face in Nauru, including death, torture or persecution, health conditions that would go untreated, or permanent family separation that should be taken into account.

  The three men affected to date launched individual challenges currently before the courts, separately arguing that they should have been told about these actions taken by the Government in planning for their exile. The Bill introduced to Parliament is intended to pre-empt those challenges.

  Natural justice is what entitles people to receive fair notice and a chance to respond when governments make serious decisions about them, so the decisions are made based on all the relevant information. We are all entitled to expect fair process and

correct decision-making: when the consequences are extraordinary, it is particularly critical.

- **Explicitly remove procedural fairness obligations for removal directions.** Laws introduced in 2024 created a power for the Government to issue removal directions, with failure to capitulate attracting 12 months' jail time.[2] If passed into law, the Bill means no natural justice will be given to people facing these directions, meaning the Government would not have to enquire whether the direction is impossible to comply with, including because of a person's health or capacity, or whether there is any reason it should not be issued.

Liberty Victoria joins with human rights organisations including Human Rights Law Centre, Asylum Seeker Resource Centre, and Refugee Advice & Casework Service in condemning the introduction of the Bill, echoing Opposition Leader Sussan Ley's description of the Bill as "rushed", "secretive" and "chaotic".

The Bill must be withdrawn without delay.

We call on the Labor Government to show leadership and humanity in the treatment of refugees and migrants. The continued demonisation of people without Australian citizenship harms individuals and families irreversibly, affects social cohesion, places communities at risk and undermines equality before the law.

Liberty Victoria.

[2] *Migration Act 1958*, ss 199B and 199E.