

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

12 April 2024

UNICEF Australia submission to the Migration Amendment (Removal and Other Measures) Bill 2024 inquiry

Guided by the United Nations Convention on the Rights of the Child (CRC) and informed by our work in over 190 countries improving the lives of children, UNICEF Australia welcomes the opportunity to provide a submission to the Migration Amendment (Removal and Other Measures) Bill 2024 inquiry.

UNICEF Australia holds concern that several provisions within the Bill may have significant negative impacts on children and their families and we call for their reconsideration. These include provisions that allow the Minister to issue directions in relation to the children of removal pathway non-citizens, provisions that allow the Minister to issue directions to the immediate family members of children, and the lack of provisions that allow children to express their views in relation to decisions made about them. These provisions place at risk the best interests of the child, the family unit as the fundamental unit of society, and the rights of children to have a say in matters that affect them.

The best interests principle is one of the fundamental principles of the CRC and requires that children's best interests be a primary consideration in all matters that affect them including through appropriate procedures which require an assessment of their best interests when decisions are being made.ⁱ Provisions in the Bill are contrary to this in that they allow for the Minister to issue directions in relation to the children of removal pathway non-citizens, even if they may not be in children's best interests, with no requirement for an assessment of their best interests to be considered.

As recognised in the Universal Declaration of Human Rights, families are the fundamental unit of society and require protection by society and the state.ⁱⁱ The CRC outlines that, provided it is in a child's best interests, family unity needs to be supported.ⁱⁱⁱ Being with their families protects children's lives, their wellbeing, and their healthy development.^{iv} Concerningly, there are provisions within the Bill which empower the Minister to issue directions in relation to dependent children of Australian citizens and permanent residents, in addition to immediate family members of children. With no accompanying requirement to consider the importance of the family unit in the context of these directions, they may be made contrary to a child's right to remain with their family.

Finally, according to the CRC, every child and young person under 18 has the right to participate and have their opinions included in decision-making processes that relate to their lives.^v This recognises the notion that decisions that are made in consultation with children are better tailored to meet their unique needs. However, the above-mentioned provisions in the Bill which allow the Minister to issue directions in relation to children that will have a significant impact on their lives, are not accompanied with any provisions for children to express their views or have them considered in the decision-making process, and may therefore be contrary to their right to be heard.

The complex balancing of the rights of children and their families requires deep consideration. UNICEF Australia believes that several provisions in the Migration Amendment (Removal and Other Measures) Bill may be contrary to the rights of children and their families and should be reconsidered, and that the Bill should not be passed in its current state.

We thank you for the opportunity to provide this submission.

Warm regards,

Australian Committee for UNICEF Limited
Suite 4.02 Building B, 33-35 Saunders Street PYRMONT NSW 2009
P: +61 2 9261 2811 F: +61 2 9261 2844 E: unicef@unicef.org.au
PO Box 488, Queen Victoria Building, NSW 1230 | ABN 35 060 581 437
www.unicef.org.au | Donation Hotline: 1300 884 233

Katie Maskiell
Head of Child Rights Policy and Advocacy
UNICEF Australia

ⁱ Committee on the Rights of the Child, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, 62nd sess, CRC/C/GC/14 (29 May 2013).

ⁱⁱ UNICEF (2018), *UNICEF Working Paper – Family Unity in the Context of Migration*,
<https://www.unicef.org/media/58341/file/Family%20unity%20issue%20brief.pdf>

ⁱⁱⁱ UNICEF (2018), *UNICEF Working Paper – Family Unity in the Context of Migration*,
<https://www.unicef.org/media/58341/file/Family%20unity%20issue%20brief.pdf>

^{iv} UNICEF (2018), *UNICEF Working Paper – Family Unity in the Context of Migration*,
<https://www.unicef.org/media/58341/file/Family%20unity%20issue%20brief.pdf>

^v *Convention on the Rights of the Child*, opened for signature 20 November 1989, Treaty Series Vol. 1577 (entered into force 2 September 1990) Art 12