

# The barbarity of Australian government's detainee shackling laws

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The Albanese Labor government is already facing three High Court challenges by refugees to the manacled legislation that it and the Liberal-National Coalition jointly rammed through both houses of parliament in just 12 hours on November 16. Further challenges are likely as well.

In a blatant bid to evade a November 8 High Court order to release immigration detainees who had been imprisoned indefinitely, the legislation suddenly inflicted a new form of indefinite detention. It imposed an unprecedented regime of electronic monitoring by ankle bracelets, curfews and other draconian restrictions on all the detainees, as well as some previously released, potentially for the rest of their lives.

The legal challenges highlight two key reactionary features of the bipartisan parliamentary operation to effectively defy the supreme court's ruling. After sanctioning for three decades the shameful practice of indefinite incarceration of asylum seekers and other non-citizens denied visas, the court said it was unconstitutional, even according to the 1901 Australian Constitution's extremely limited restrictions on arbitrary detention.

First, the challenges show the human face of the 145 released detainees, who have been deliberately demonised by the government, the Coalition and the corporate media. Many of them are innocent refugees. They have been falsely depicted as “murderers” and “rapists” in an effort to justify police-state measures, including the government's proposed “preventative detention” bill to re-detain many of them.

In fact, two of the cases involve men who had been earlier released into the community, long before the High Court ruling, having been assessed by the immigration authorities and government as no threat to anyone. They are not alone. At least 21 of the detainees—all witch-hunted as hardened or “disgusting” criminals—had previously been released from detention facilities.

This occurred under both the current Labor government and the previous Morrison Coalition government, exposing the claims that the detainees were too dangerous to release.

Second, the speed with which the three cases have been brought forward underscores the readiness of the political establishment to overturn even minimal constitutional restraints. There is strong legal opinion that the shackling and

curfew legislation is just as unlawful, and cruel, as the indefinite detention system which the Keating Labor government pioneered in 1992.

Similar challenges are inevitable to the as-yet unseen preventative detention bill that is aimed at greatly widening the power to detain people without charge. The government is nevertheless demanding that parliament pass the legislation with equal haste this week, proclaiming that parliament must keep sitting until it does so.

In one legal challenge, the Asylum Seeker Resource Centre (ASRC) lodged a case on behalf of a 30-year-old Sudanese refugee who has been living in the community for nearly a year.

Despite his earlier release, the man has now been subjected to the same conditions—requiring him to wear an electronic monitoring ankle bracelet “at all times” and follow a strict 10 pm to 6 am curfew. Any departures from these conditions, even for an hour, could mean five years' imprisonment.

The refugee—identified only as RVJB—arrived in Australia at the age of 13 after fleeing war-torn Sudan. According to the ASRC's media release, he struggled as a young man to adjust to life in Australia and recover from trauma without adequate support. At the age of just 18, he was convicted of an offence, for which he was punished, but has had no convictions since he was 22.

“After careful assessment, health experts, the [Immigration] Department, courts and the Administrative Appeals Tribunal have all positively remarked on his character, assessing that he was not a danger to the community, and observing he had ‘turned his life around.’

“Despite this, he was subjected to seven years of immigration detention by the Australian Government, including on the notorious Christmas Island, where his health deteriorated and he experienced further trauma.”

His son, mother, two brothers, sister and nieces are all citizens and permanent Australian residents. The immigration minister finally released him from detention a year ago, but the new restrictions “will prevent RVJB from playing an active role in his son's life and finding employment, impact his health, and expose him to further detention.”

In the media release, RVJB explained: “I've been an

Australian since I was 13. I made mistakes when I was young after fleeing trauma. I served my time, and learned about consequences the hard way. I've worked so hard to change myself and make something of my life and I've proved myself over years and years...

"The last time I saw my son, he was three months old. He starts high school next year. When I got my bridging visa, his mother and I planned a special visit. But I don't want him to see me like this."

A second case is that of a 37-year-old Afghan refugee who fled Afghanistan and arrived in Australia in 2011. Refugee Legal lawyer David Manne said his client was fined \$2,000 for indecent assault while in detention, where he remained for the next 11 years.

"He was then released into community detention and for the next nine months he has been able to live in the community without an ankle bracelet or curfew," Manne said. "He is also extremely remorseful for what he did in detention and hasn't committed any further offence over the last 12 years."

The third challenge, by a Chinese refugee known only as S151, was launched less than a week after the shackling law was rushed through parliament. He arrived in Australia in September 2001 on a student visa, progressing on to other visas. After serving a sentence for an undisclosed offence, he was thrown into indefinite immigration detention, despite being determined to be a refugee in danger of persecution, preventing removal to China.

These three challenges come in the aftermath of the November 8 High Court ruling that led to the release of 145 detainees. The court declared that a stateless Rohingya Muslim asylum seeker from Myanmar, identified in a dehumanising fashion only as NZYQ, had been unlawfully detained since May, when it became clear that he could not be deported.

NZYO had arrived in Australia by boat in 2012. He was locked in immigration detention until 2014 before being granted a temporary bridging visa. In 2016, he was convicted of a sexual offence against a child but had served his time by 2018, when he was placed back into immigration detention.

Even more damning cases are coming to light. Last Thursday, a Federal Court judge ordered the government to immediately free an Iranian asylum seeker, Ned Kelly Emeralds, who had spent a decade in immigration detention after arriving by boat in 2013, despite never committing an offence.

Emeralds had applied for a refugee protection visa, but his application was eventually rejected in 2018 on the basis he did not have a well-founded fear of returning to Iran.

Matthew Albert, Emeralds' counsel, told the hearing his client had tried to kill himself in detention, vowing: "I will not go back to be tortured and killed by a regime I despise."

After the ruling, Emeralds said: "Over 10 years ago, I came to Australia to seek protection from torture in my country, and instead I was tortured. I had no way to escape. I could not go home, and the government chose not to release me. Nobody

should be asked to choose between their life and their freedom. What happened to me should not have happened, and it should not happen to anyone else."

Justice Geoffrey Kennett found Emeralds' detention was unlawful because there was "no real prospect" of his deportation "becoming practicable in the reasonably foreseeable future." That is the narrow test applied by the High Court in the initial NZYO ruling, which still permits detention, or re-detention, if deportation becomes "reasonably foreseeable."

Throughout what has become a political crisis over the detainees, the Labor government has led the way in slandering the detainees, and therefore refugees more generally. In fact, it has criticised the Coalition, especially opposition leader Peter Dutton, from the right.

Home Affairs Minister Clare O'Neil and other government ministers have branded Dutton as "weak" for releasing some detainees while he was home affairs minister in the previous Morrison government. They even accused him of protecting paedophiles by opposing an amendment last Monday to ban released "child sex offenders" from going near schools.

Dutton was actually demanding harsher measures, notably preventative detention, a reactionary proposal that the Labor government took up the next day when the High Court published its reasons for the NZYO ruling. The judges advised that detention could be reimposed via a preventive detention law.

Labor seized on that suggestion to again join hands with the Coalition to try to push through unprecedented measures this week, now to incarcerate people for what they might do in the future, according to the government's police and intelligence agencies, not for any crime they have committed.

These repressive mechanisms are a warning of a wider assault on democratic rights. They are being brought forward under conditions in which there is a parallel bipartisan line-up to support the US-backed Israeli genocide in Gaza, provoking mass protests and intensifying disaffection with the entire political establishment.



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