

The Senate

Legal and Constitutional Affairs
Legislation Committee

Migration Amendment (Strengthening the
Character Test) Bill 2021 [Provisions]

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Recommendation

Recommendation 1

2.72 The committee recommends that the Senate pass the bill.

Chapter 1

Introduction

- 1.1 On 25 November 2021 the Senate referred the provisions of the Migration Amendment (Strengthening the Character Test) Bill 2021 (the bill) to the Legal and Constitutional Affairs Legislation Committee (the committee) for inquiry and report by 28 January 2022.
- 1.2 The Senate referred the bill to the committee following a recommendation of the Selection of Bills Committee. The report of the Selection of Bills Committee presented a range of reasons for referring the bill, including to allow stakeholders an opportunity to inform the committee of concerns, and that the bill appeared to be materially different from previous iterations.¹

Previous bills and committee inquiries

- 1.3 The bill is almost identical to two previous bills of a similar name: the Migration Amendment (Strengthening the Character Test) Bill 2019 (the 2019 bill) and the Migration Amendments (Strengthening the Character Test) Bill 2018 (the 2018 bill).

2018 bill

- 1.4 The 2018 bill was introduced into the House of Representatives on 25 October 2018 by the Minister for Immigration, Citizenship and Multicultural Affairs, the Hon David Coleman MP.² It lapsed at the dissolution of the 45th Parliament on 11 April 2019.³
- 1.5 On 15 November 2018 the Senate referred the provisions of the 2018 bill to the committee for inquiry and report by 18 January 2019.⁴ The committee received 17 submissions and did not conduct any public hearings. The committee presented its report on 17 December 2018 with one recommendation: that the bill be passed.⁵ Labor senators presented a dissenting report with four recommendations, including that the bill not be passed in its current form. The

¹ Senate Standing Committee for the Selection of Bills, *Report No. 12 of 2021*, 25 November 2021, [pp. 8–9].

² *House of Representatives Votes and Proceedings*, No. 148, 25 October 2018, p. 1933.

³ Parliament of Australia, *Migration Amendment (Strengthening the Character Test) Bill 2018 homepage*, <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr6214%22> (accessed 21 January 2022).

⁴ *Journals of the Senate*, No. 129, 15 November 2018, p. 4149.

⁵ Legal and Constitutional Affairs Legislation Committee, *Migration Amendment (Strengthening the Character Test) Bill 2018 [Provisions]*, December 2018, p. 29.

Australian Greens presented a dissenting report recommending that the Senate not pass the bill.⁶

2019 bill

- 1.6 The 2019 bill was introduced into the House of Representatives on 4 July 2019 by the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, the Hon David Coleman MP.⁷
- 1.7 On 4 July 2019 the Senate referred the provisions of the 2019 bill to the committee for inquiry and report by 13 September 2019.⁸ The committee received 32 submissions and conducted one public hearing in Canberra on 19 August 2019. The committee presented its report on 13 September 2019 with one recommendation: that the Senate pass the bill.⁹ Labor senators presented a dissenting report with two recommendations, including that the bill not be passed.¹⁰ The Australian Greens presented a dissenting report recommending that the bill not be passed.¹¹
- 1.8 The 2019 bill was negatived at second reading in the Senate on 20 October 2021.¹²

Conduct of this inquiry

- 1.9 Details of the current inquiry were advertised on the committee's web page, and the committee also wrote to a number of organisations inviting them to make a submission to the inquiry. The committee called for submissions to be received by 17 December 2021. The committee received 41 submissions, which are listed at Appendix 1.

Acknowledgements

- 1.10 The committee thanks all submitters for the evidence they have provided to this inquiry.

⁶ Legal and Constitutional Affairs Legislation Committee, *Migration Amendment (Strengthening the Character Test) Bill 2018 [Provisions]*, December 2018, p. 29.

⁷ *House of Representatives Votes and Proceedings*, No. 3, 4 July 2019, p. 65.

⁸ *Journals of the Senate*, No. 3, 4 July 2019, pp. 79–81.

⁹ Legal and Constitutional Affairs Legislation Committee, *Migration Amendment (Strengthening the Character Test) Bill 2019 [Provisions]*, September 2019, p. 32.

¹⁰ Legal and Constitutional Affairs Legislation Committee, *Migration Amendment (Strengthening the Character Test) Bill 2019 [Provisions]*, September 2019, p. 40.

¹¹ Legal and Constitutional Affairs Legislation Committee, *Migration Amendment (Strengthening the Character Test) Bill 2019 [Provisions]*, September 2019, p. 46.

¹² *Journals of the Senate*, No. 124, 20 October 2021, pp. 4174–4175.

Structure of this report

1.11 This report consists of two chapters:

- This chapter (Chapter 1) outlines the key provisions of the bill and provides administrative details relating to the inquiry.
- Chapter 2 examines the key issues raised in evidence and provides the committee's view.

Purpose of the bill

1.12 The bill was introduced on 24 November 2021 by the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, the Hon Alex Hawke MP.¹³ The minister stated in his second reading speech that:

At present, not all noncitizens convicted of serious criminal offences objectively fail the character test. Certain criminal offences against Australian or foreign laws may involve violence against a person and have a significant impact on victims. Nevertheless, the perpetrator may receive a sentence of less than 12 months for their crimes.

The bill sends a clear message that the Australian community has no tolerance for noncitizens who have been convicted of such crimes.¹⁴

1.13 The explanatory memorandum for the bill further explains that:

The amendments in the bill will ensure the character test aligns directly with community expectations that non-citizens who are convicted of offences such as murder, sexual assault or aggravated burglary will not be permitted to enter or remain in the Australian Community.¹⁵

Background

1.14 Section 501 of the *Migration Act 1958* (Migration Act; the Act) relates to the operation of a 'character test' which applies to all non-citizens holding or applying for an Australia visa. The provision has undergone significant change since 2014.¹⁶

1.15 In 2017 the Joint Standing Committee on Migration (migration committee) published a report focused on migrant settlement outcomes titled '*No one teaches you to become an Australian*'.¹⁷ The explanatory memorandum for the bill

¹³ *House of Representatives Votes and Proceedings*, No. 155, 24 November 2021, p. 2347.

¹⁴ The Hon Alex Hawke MP, Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, *House of Representatives Hansard*, 24 November 2021, p. 10683.

¹⁵ Explanatory memorandum to the Migration Amendment (Strengthening the Character Test) Bill 2021 (explanatory memorandum), p. 1.

¹⁶ Further background is in Chapter 1 of Senate Legal and Constitutional Affairs Legislation Committee, *Migration Amendment (Strengthening the Character Test) Bill 2018 [Provisions]*, December 2018.

¹⁷ Joint Standing Committee on Migration, *No one teaches you to become an Australian*, December 2017.

states that the bill was introduced in response to the recommendations in this report, in particular:

Recommendation 15: The Committee recommends that the Australian government amend the *Migration Act 1958* requiring the mandatory cancellation of visas for offenders aged between 16 and 18 years who have been convicted of a serious violent offence, such as car jacking's or serious assaults. If legislation is amended, this should be accompanied by a caveat that no retrospective liability is thereby created.

Recommendation 16: The Committee is also recommending that anyone over 18 years of age who has been convicted of a serious violent offence which is prescribed, such as serious assaults, aggravated burglary, sexual offences, and possession of child pornography, have their visa cancelled under section 501 of the *Migration Act 1958*.¹⁸

1.16 The migration committee reflected on the 2018 bill in the report for its inquiry into review processes associated with visa cancellations made on criminal grounds, published in February 2019:

This important legislation will ensure violent offenders can be removed from Australia at the earliest possible opportunity.

The Committee believes this legislation would address a number of community concerns around non-citizens who commit acts of violence in Australia. As such, the Committee urges the Australian government to pass and enact this legislation without delay.¹⁹

Existing character test

1.17 The Migration Act currently provides that the minister or their delegate may, and in some cases *must*, refuse or cancel a non-citizen's visa if they are not satisfied that the person passes the character test under section 501.

1.18 As described in the committee's previous report, subsection 501(6) sets out the circumstances in which a person does not pass the character test, including:

- The person has a 'substantial criminal record', which is defined to include a person who has been sentenced to a term or terms of imprisonment totalling 12 months or more.²⁰
- The person has been convicted of an offence that was committed while they were in immigration detention or during an escape from immigration detention.²¹

¹⁸ See, explanatory memorandum, p. 1. And Joint Standing Committee on Migration, *No one teaches you to become an Australian*, December 2017, p. 175.

¹⁹ Joint Standing Committee on Migration, *The report of the inquiry into review processes associated with visa cancellations made on criminal grounds*, February 2019, p. 92.

²⁰ Paragraph 501(6)(a) and subsection 501(7) of the *Migration Act 1958*. Subsequent references are to provisions in this Act.

²¹ Paragraph 501(6)(aa).

-
- The person has been convicted of an offence against section 197A of the Act, which provides that detainees must not escape from immigration detention.²²
 - The minister reasonably suspects that the person has had or has an association with a group, organisation or person that has been or is involved in criminal conduct.²³
 - The minister reasonably suspects that the person is or has been involved in conduct constituting certain listed offences including people smuggling, trafficking in persons, and genocide, whether or not the person has been convicted of the offence.²⁴
 - Having regard to the person's past and present criminal conduct or their past and present general conduct, the person is not of good character.²⁵
 - In the event that the person were allowed to remain in Australia, there is a risk that the person would:
 - engage in criminal conduct in Australia;
 - harass, molest, intimidate or stalk another person in Australia;
 - vilify a segment of the Australian community;
 - incite discord in the Australian community or a segment of that community; or
 - represent a danger to the Australian community or to a segment of that community.²⁶
 - A court in Australia or a foreign country has found the person guilty of one or more sexually based offence involving a child.²⁷
 - The person has, in Australia or a foreign country, been charged with or indicted for one or more listed crimes, including the crime of genocide, a crime against humanity, and a war crime.²⁸
 - The person has been assessed by the Australian Intelligence Security Organisation to be directly or indirectly a risk to security.²⁹
 - An Interpol notice in relation to the person, from which it is reasonable to infer that the person would present a risk to the Australian community or a segment of that community, is in force.³⁰

²² Section 197A and paragraph 501(6)(ab).

²³ Paragraph 501(6)(b).

²⁴ Paragraph 501(6)(ba).

²⁵ Paragraph 501(6)(c).

²⁶ Paragraph 501(6)(d).

²⁷ Paragraph 501(6)(e).

²⁸ Paragraph 501(6)(f).

²⁹ Paragraph 501(6)(g).

³⁰ Paragraph 501(6)(h).

- 1.19 If an individual does not meet any of the above criteria, the individual passes the character test.³¹

Consequences of failing the character test

- 1.20 In circumstances where a person is serving a prison sentence and they have a 'substantial criminal record' (sentenced to at least 12 months, or life imprisonment) or have been convicted of sexually based offences involving a child, cancellation of the person's visa is mandatory.³²
- 1.21 The decision to cancel a visa in other circumstances where a person does not pass the character test is a discretionary decision of the minister or their delegate. Guidance for the exercise of this discretion is set out in *Direction No. 90 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA* (Direction No. 90), which commenced 15 April 2021, replacing the previous Direction No. 79.
- 1.22 Decisions to refuse or cancel a visa on character grounds that are made by a delegate using discretionary powers may in some cases be subject to merits review by the Administrative Appeals Tribunal (AAT).³³ Merits review is not available if the decision is made by the minister personally, however, decisions made by the minister and their delegates under section 501 of the Act may be reviewed by the Federal Court or High Court.³⁴

Key provisions of the bill

- 1.23 This bill seeks to amend the Migration Act to include a new ground under which an individual may fail the character test under section 501(6) of the Migration Act.

'Designated offence'

- 1.24 As with previous versions of the bill, item 5 of the bill seeks to add a new 'designated offence' ground to the character test in subsection 501(6) of the Act. Under proposed paragraph 501(6)(aaa), a person will not pass the character test if they have been convicted of a 'designated offence'.³⁵
- 1.25 'Designated offence' is defined in proposed subsection 501(7AA). In general terms, an offence is a 'designated offence' if:
- the offence is punishable by life imprisonment or a maximum or fixed term of imprisonment of not less than two years; and

³¹ Subsection 501(6).

³² Subsections 501(3A) and 501(7).

³³ Paragraphs 500(1)(b)-(ba).

³⁴ Paragraph 476A(1)(c).

³⁵ Schedule 1, item 5.

- the offence satisfies one or more of the listed 'physical elements' set out in proposed subparagraphs 501(7AA)(a)(i) to (viii), which include:
 - violence (including a threat of violence) against a person;
 - non-consensual conduct of a sexual nature;
 - breaching an order made by a court or tribunal for the personal protection of another person;
 - using or possessing a weapon (defined to include a thing made or adapted for use for inflicting bodily injury); and
 - ancillary offences capturing conduct in connection with the commission of the above offences.
- 1.26 Offences against a law of a foreign country (that also satisfy one of the physical elements) will be designated offences provided that, if the act or omission constituting the offence had taken place in the Australian Capital Territory (ACT):
- the act or omission would have constituted an offence against a law in force in the ACT; and
 - the ACT offence would have been punishable by imprisonment for a maximum term of not less than two years.³⁶
- 1.27 The explanatory memorandum states that the purpose of this new subsection 501(7AB) is to 'provide a non-exhaustive list of the types of acts that would constitute violence against a person, noting that the terminology for such offences may vary depending on the State or Territory where the offence occurs'.³⁷
- 1.28 A person who fails the character test because they have been convicted of a 'designated offence' will not automatically have their visa cancelled or refused. Rather, the amendments in the bill provide a discretionary ground for the minister or a delegate to cancel or refuse a visa. The Department of Home Affairs (department) stated that it would be incumbent on the decision-maker to consider the circumstances of an individual case, including 'factors in relation to the nature of the conviction, any sentence applied and countervailing considerations before deciding whether to exercise the discretionary power under section 501'.³⁸

Amended definition of 'character concern'

- 1.29 Section 5C of the Migration Act currently defines 'character concern' to reflect the existing character test in section 501. According to the department, the definition of 'character concern' in section 5C is relevant in determining:

³⁶ Explanatory memorandum, p. 8.

³⁷ Explanatory memorandum, p. 8.

³⁸ Department of Home Affairs, *Submission 1*, p. 8.

- the circumstances in which the department can disclose personal information for the purposes of data matching; or
- the reasons for which biometrics captured by the department can be used.³⁹

1.30 Items 1 to 4 of the bill would amend the section 5C to effectively provide that a person who is convicted of a designated offence would be of 'character concern'. These amendments would also have the effect of ensuring that the definition of 'character concern' continues to reflect the character test requirements in section 501 of the Migration Act.

Differences between this bill and previous bills

1.31 The definition of 'designated offence' in the current bill is narrowed compared to the 2019 bill. Proposed subsection 501(7AC) provides that a person's conviction for an offence of common assault (or equivalent) would not be a conviction for a designated offence unless the act constituting the offence:

- causes or substantially contributes to bodily harm to another person, or harm to another person's mental health, in both cases either temporarily or permanently; or
- involves family violence (as defined by subsection 4AB(1) of the *Family Law Act 1975*).⁴⁰

1.32 Proposed subsection 501(7AE) would also provide that an ancillary or accessory offence committed in circumstances where the primary offender would not be taken to have committed a designated offence would also not constitute a 'designated offence'.⁴¹ Consequential amendments to section 5C of the Migration Act reflect the above amendments.

1.33 The department advised the committee that the provisions in the current bill are 'substantively the same' as those in previous versions of the bill but incorporate proposed government amendments that were circulated in the Senate on 19 October 2021.⁴²

1.34 The department stated that the effect of these amendments is to explicitly stipulate that 'convictions for low-level offending such as minor scuffles will not be taken to be convictions for a designated offence', but that 'any offence of common assault that involves family violence will be taken to be a designated offence regardless of whether the offence causes bodily harm or harm to a

³⁹ Department of Home Affairs, *Submission 1*, p. 9.

⁴⁰ Department of Home Affairs, *Submission 1*, p. 6.

⁴¹ See, Leah Ferris, *Parliamentary Library Flagpost: Proposed changes to the Migration Act: Migration Amendment (Strengthening the Character Test) Bill 2021*, 10 January 2022, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2022/January/Strengthening_the_Character_Test_Bill (accessed 21 January 2022).

⁴² Department of Home Affairs, *Submission 1*, p. 4.

person's mental health'.⁴³ The explanatory memorandum to the bill also notes that, for the purposes of the bill, harm to a person's mental health is defined in the *Criminal Code* as including 'significant psychological harm' but not does not include 'ordinary emotional reactions'.⁴⁴

Consideration by other parliamentary committees

Senate Scrutiny of Bills Committee

1.35 The Senate Standing Committee for the Scrutiny of Bills (the scrutiny committee) considered the bill in *Scrutiny Digest 18 of 2021*, published on 1 December 2021.

1.36 The scrutiny committee reiterated its previous scrutiny concerns, in relation to the 2018 bill, including that:

- the current provisions in the *Migration Act 1958* already provide a broad discretionary power to the minister to refuse or cancel a visa in the absence of procedural fairness obligations and where merits review is largely unavailable; and
- expanding powers to empower the minister to cancel a visa (which could lead to the detention and removal of a non-citizen), raises scrutiny concerns as to whether the measure unduly trespasses on rights and liberties.⁴⁵

1.37 More detailed consideration of the scrutiny committee's comments is contained in this committee's report in relation to the 2019 bill.⁴⁶

Parliamentary Joint Committee on Human Rights

1.38 The Parliamentary Joint Committee on Human Rights (PJCHR) raised a number of concerns regarding the bill in its Human rights scrutiny report published 8 December 2021.⁴⁷ The PJCHR had made comments previously in relation to the 2018 bill, which the PJCHR noted was 'substantially the same as this bill'.⁴⁸

1.39 In relation to the current bill, the PJCHR noted that the amendments sought to be enacted by the bill differ from the current character test provisions in the *Migration Act 1958* which require that a person has been *sentenced* to two or

⁴³ Department of Home Affairs, *Submission 1*, p. 4.

⁴⁴ Explanatory memorandum, pp. 9–10.

⁴⁵ Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 18 of 2021*, p. 21.

⁴⁶ Legal and Constitutional Affairs Legislation Committee, *Migration Amendment (Strengthening the Character Test) Bill 2019 [Provisions]*, September 2019, pp. 8–9.

⁴⁷ Parliamentary Joint Committee on Human Rights, *Report 15 of 2021*, December 2021, p. 17.

⁴⁸ Parliamentary Joint Committee on Human Rights, *Report 15 of 2021*, December 2021, p. 18.

more years imprisonment.⁴⁹ The PJCHR also noted that cancellation of a person's visa:

- subjects a person to mandatory immigration detention prior to removal;
- will result in a person's expulsion from Australia;
- could include cancellation of a protection visa; and
- may be decided by the minister personally (meaning that the rules of natural justice do not apply).⁵⁰

1.40 The committee therefore considered that amending the bases on which visas may be cancelled or refused on character grounds engages and may limit a number of human rights including:

- the right to liberty;
- the rights of the child;
- the prohibition on expulsion of aliens without due process;
- the right to freedom of movement;
- the right to protection of the family; and
- the obligation of non-refoulement.⁵¹

1.41 The committee recognised that protecting the safety of the Australian community and the integrity of the migration programme are important objectives, but considered that it had not been established that the measures proposed in the bill were necessary to address a pressing and substantial concern for the purposes of international human rights law. The committee also considered that it had not been established that the measures in the bill would, in all instances, be proportionate to the objectives of the bill.⁵²

1.42 The committee therefore concluded that there was a risk that the bill would be incompatible with a number of human rights, highlighting:

In particular, in the absence of any opportunity to challenge mandatory detention in substantive terms, the committee considers expanding the bases on which visas may be cancelled increases the risk of a person being arbitrarily deprived of liberty.⁵³

1.43 The committee further explained that expanding the bases on which visas may be cancelled:

- risks breaching the prohibition on expulsion of aliens without due process;

⁴⁹ Parliamentary Joint Committee on Human Rights, *Report 15 of 2021*, December 2021, p. 33.

⁵⁰ Parliamentary Joint Committee on Human Rights, *Report 15 of 2021*, December 2021, p. 33.

⁵¹ Parliamentary Joint Committee on Human Rights, *Report 15 of 2021*, December 2021, p. 33.

⁵² Parliamentary Joint Committee on Human Rights, *Report 15 of 2021*, December 2021, p. 33.

⁵³ Parliamentary Joint Committee on Human Rights, *Report 15 of 2021*, December 2021, pp. 33–34.

- significantly risks impermissibly limiting the right to return to one's 'own country' (as part of the right to freedom of movement), the right to protection of the family and rights of the child; and
- creates some risk that the measure, in applying to a protection visa, could expand the risk of Australia not meeting its non-refoulement obligations.⁵⁴

1.44 The PJCHR drew its human rights concerns to the attention of the minister and the Parliament.

⁵⁴ Parliamentary Joint Committee on Human Rights, *Report 15 of 2021*, December 2021, p. 34.

Chapter 2

Key Issues

- 2.1 This chapter outlines key issues raised in evidence from submissions provided to the committee. These issues include:
- the need for the bill;
 - the definition of 'designated offence';
 - Australia's international and human rights obligations;
 - disproportionate impacts on certain groups; and
 - various other issues.
- 2.2 Given the similarities between the current bill to two previous iterations, many submitters – in addition to making a submission to this inquiry – either provided their previous submissions or referred the committee to their previous submissions. This report focuses on issues raised in submissions for the current inquiry.

The need for the bill

- 2.3 Many submitters expressed concern that the bill was being put forward, given the responses of submitters to the previous bills, and the fact that the previous bills, which were substantially similar to this bill, failed to progress through both houses of the Parliament.¹
- 2.4 Many submitters contended the amendments proposed in the bill are not necessary as the current arrangements under the *Migration Act 1958* (Migration Act; the Act) are adequate.²

Justification for the bill

- 2.5 Liberty Victoria submitted that the explanatory memorandum for the bill 'fails to provide an adequate policy justification for the proposed amendments'.³ Further, in asserting that the bill amends the Act by 'providing a new, specific and objective ground to consider visa refusal or cancellation', the explanatory

¹ See for example, Human Rights Law Centre, *Submission 21*, p. 1; Liberty Victoria, *Submission 20*, p. 4; Legal Aid NSW, *Submission 18*, p. 2; Victoria Legal Aid, *Submission 28*, p. 2; Refugee Legal, *Submission 6*, [p. 1]; Kaldor Centre, *Submission 26*, p. 1; Refugee Council of Australia, *Submission 15*, p. 1; Asylum Seeker Resource Centre, *Submission 32*, p. 1; Migration Institute of Australia, *Submission 29*, p. 4.

² See for example, Legal Aid NSW, *Submission 18*, p. 7. See also Refugee Legal, *Submission 6*, p. 2; Refugee Council of Australia, *Submission 15*, p. 2; Visa Cancellations Working Group, *Submission 17*, p. 7.

³ Liberty Victoria, *Submission 20*, p. 4. See also Dr Anthea Vogl and Dr Elyse Methven, *Submission 33*, p. 2; Ms Lauren Honcope, *Submission 38*, p. 1.

memorandum may be misleading as it implies that these newly added offences are not already considered when determining a visa refusal or cancellation.⁴ The Immigration Advice and Rights Centre (IARC) also considered that the amendments proposed in the bill are unnecessary as subsection 501(6) of the Migration Act provides the minister and the minister's delegates with adequate discretion in deciding whether to refuse or cancel a visa.⁵

- 2.6 Liberty Victoria argued that, despite the bill being introduced as a response to recommendations of the Joint Standing Committee on Migration (in the 2017 *No one teaches you to become Australian* report), there are fundamental differences between these recommendations and the bill. These differences include that the recommendations relate to 'migrant youth', and that the report recommended mandatory cancellation, whereas the response to certain offences in the bill is discretionary in nature.⁶
- 2.7 The Department of Home Affairs (department) advised the committee that the amendments in the bill 'reflect that certain serious criminal offences... have a significant impact on victims, and that non-citizens who commit these crimes, regardless of the sentence actually imposed, should be appropriately considered for visa cancellation'.⁷

Community safety

- 2.8 Several submitters told the committee that the bill is unlikely to have any additional influence on community safety, given the broad nature of the current character test. Mr Benjamin Cronshaw suggested that 'on face value' the bill is reasonable as the ability to deport individuals who have been convicted of a serious offence, and may possibly reoffend, could be 'beneficial to protect the community', but considered that the bill needs to provide additional evidentiary support regarding benefits to community safety.⁸
- 2.9 Legal Aid NSW argued that 'no cogent reasons' had been put forward to justify changes to the minister's legislative powers on character grounds, as the minister already has 'wide legislative powers to cancel or refuse visas on character grounds' and that these powers 'are more than adequate to deal with

⁴ Liberty Victoria, *Submission 20*, pp. 4–5. See also Western Sydney University (School of Law), *Submission 2*, p. 2; Explanatory memorandum, p. 4.

⁵ Immigration Advice and Rights Centre (IARC), *Submission 16*, pp. 2–3.

⁶ Liberty Victoria, *Submission 20*, p. 5. See Also Kaldor Centre, *Submission 26*, p.3; Department of Home Affairs, *Submission 1*, p. 3.

⁷ Department of Home Affairs, *Submission 1*, p. 6.

⁸ Mr Benjamin Cronshaw, *Submission 12*. See also Federation of Ethnic Communities Councils of Australia (FECCA) *Submission 9*, p. 2.

individual cases of serious offending and to weigh up the risk to, and protection of, the community'.⁹

- 2.10 Western Sydney University (School of Law) suggested that the 'mere conviction' of an individual for a designated offence in the context of the bill does not necessarily correlate to the individual being a risk to the safety of the community as 'the question of risk is an inherently complex issue that requires various factors to be considered'.¹⁰
- 2.11 In contrast, the department submitted that, under the current character framework, some grounds under which an individual can fail the character test are 'more complex' and that 'the subjectivity of these grounds has proven to be difficult to defend in merits and judicial review'. Examples included: where an individual is convicted of serious offences (including breach of an apprehended violence order and sexual assault), where a person does not receive a 12-month sentence or more. The department told the committee that in some instances, decisions of the department have been overturned at review, 'despite the department's assessment that the person poses a risk to the Australian community'.¹¹

Definition of 'designated offence'

- 2.12 Liberty Victoria contended that the bill introduces 'confusion and incoherence' with reference to determining what is and isn't a 'designated offence' and pointed out that maximum terms for certain offences may differ between jurisdictions.¹² As such, the determination of an offence as a designated offence will vary based on the state or territory in which the offence was committed.¹³
- 2.13 Legal Aid NSW was of the view that proposed subsection 501(7AC) of the bill is 'confusing and unclear' and that, in addition to adding 'unnecessary evidentiary complexity', the provision would lead to 'great uncertainty' around what acts will constitute a designated offence.¹⁴ Victoria Legal Aid expressed similar concerns, stating that the 'broad and poorly defined' nature of the designated offences category in the bill would lead to difficulties in

⁹ Legal Aid NSW, *Submission 18*, p. 7. See also Refugee Legal, *Submission 6*, p. 2; Refugee Council of Australia, *Submission 15*, p. 2; Visa Cancellations Working Group, *Submission 17*, p. 7.

¹⁰ Western Sydney University (School of Law), *Submission 2*, p. 4.

¹¹ Department of Home Affairs, *Submission 1*, pp. 4–5.

¹² Liberty Victoria, *Submission 20*, p. 8.

¹³ Liberty Victoria, *Submission 20*, p. 8.

¹⁴ Legal Aid NSW, *Submission 18*, p. 6. See also Refugee Legal, *Submission 6*, p. 4.

implementation, and that the interpretation of the designated offences category carries 'a real risk of error, potentially resulting in unjust outcomes'.¹⁵

- 2.14 Legal Aid NSW also argued that the requirement for decision makers to determine whether an offence 'causes, or substantially contributes to, either temporary or permanent bodily harm or harm to another person's mental health', would result in inconsistencies around the application of proposed subsection 501(7AC), particularly as indications of harm 'may not always be evident on the facts'.¹⁶
- 2.15 The department stated that the strengthening of the character test proposed by the bill would allow for individuals who have committed serious offences to objectively fail the character test and therefore allow their existing visa or application for a visa, to be 'appropriately considered – on a discretionary basis'.¹⁷

Capturing of low-level offences

- 2.16 Western Sydney University (School of Law) submitted that 'there is no express principle reflected in Direction no. 90 (the current ministerial direction under section 499 of the Migration Act) that provides that low level, petty or historical offending would not generally lead to the adverse exercise of discretion'.¹⁸
- 2.17 The Legal Services Commission of South Australia considered that the provisions would 'capture almost any offending, no matter how minor'.¹⁹
- 2.18 The department told the committee that the bill would exclude instances of 'petty and trivial offending' as an offence will only be considered a 'designated offence' for the purpose of the bill where the maximum sentence is at least two years imprisonment.²⁰

Maximum available sentence versus sentence imposed

- 2.19 The committee heard a substantial amount of evidence regarding the contrast between the approaches of the courts and the proposed approach of decision-makers empowered under the bill in their consideration of the seriousness of an offence. Submitters raised concerns about the approach in the bill to

¹⁵ Victoria Legal Aid, *Submission 28*, p. 2. See also Kaldor Centre, *Submission 26*, p. 4; University of Canberra, *Submission 4*, p. 5.

¹⁶ Legal Aid NSW, *Submission 18*, pp. 6–7.

¹⁷ Department of Home Affairs, *Submission 1*, p. 10.

¹⁸ Western Sydney University (School of Law), *Submission 2*, p. 8.

¹⁹ Legal Services Commission of South Australia, *Submission 8*, pp. 1–2. See also Legal Aid NSW, *Submission 18*, p. 6.

²⁰ Department of Home Affairs, *Submission 1*, p. 6.

defining 'designated offences' by the maximum available sentence for an offence, rather than a sentence imposed by a court.

2.20 Victoria Legal Aid was of the view that 'Australia's criminal courts are the most appropriate forum for determining the seriousness of offending, risk and penalties'.²¹ This view was echoed by Legal Aid NSW, which told the committee that the 'assessment of these matters should be left to the sentencing court'.²²

2.21 Professor Alison Gerard and Professor Leanne Weber detailed the specialised role of courts in sentencing and determining the seriousness of an offence in individual cases:

Sentencing is a highly specialized task requiring the careful exercise of discretion...Magistrates and Judges have considerable expertise in weighing up a range of factors including the seriousness of the offending, ongoing risks to the community and potential for rehabilitation in deciding between alternative sanctions, taking into account detailed information about offenders that is presented and tested in court. Disregarding the sentence imposed by the Court in relation to liability for visa cancellation would shift the focus exclusively to assumptions about future risk of offending made entirely on the basis of the legal offence category, not the individual offender.²³

2.22 Victoria Legal Aid submitted that the bill, in considering the maximum sentence that may be available for an offence rather than the sentence received by an individual, fails to consider an individual's mitigating circumstances in the way that sentencing courts do.²⁴

2.23 Liberty Victoria emphasised the expertise of Australian courts as 'a valuable resource for administrative decision-makers' and that ignoring the role of courts would be likely to 'affect the integrity of administrative decision-making'.²⁵

2.24 The department advised, however, that the bill does 'not in any way seek to undermine the Courts or their role', as the seriousness of the offence is determined by 'the maximum sentence imposed by the relevant States and

²¹ Victoria Legal Aid, *Submission 28*, p. 1. See also Dr Anthea Vogl and Dr Elyse Methven, *Submission 33*, pp. 4–5.

²² Legal Aid NSW, *Submission 18*, p. 7. See also Dr Anthea Vogl and Dr Elyse Methven, *Submission 33*, pp. 4–5.

²³ University of Canberra, *Submission 4*, p. 4. See also New South Wales Council for Civil Liberties (NSWCCL), *Submission 3*, p. 5; Western Sydney University (School of Law), *Submission 2*, p. 3.

²⁴ Victoria Legal Aid, *Submission 28*, pp. 1–2. See also FECCA, *Submission 9*, p. 3; Migration Institute of Australia, *Submission 29*, p.5.

²⁵ Liberty Victoria *Submission 20*, p. 7. See also Western Sydney University (School of Law), *Submission 2*, pp. 10–11; Refugee Council of Australia, *Submission 15*, p. 3

Territories'.²⁶ Further, under the bill it 'would remain a matter for the decision-maker, in the circumstances of the individual case, to consider factors in relation to the nature of the conviction, any sentence applied and countervailing considerations before deciding whether to exercise the discretionary power under section 501'.²⁷

Australia's international and human rights obligations

2.25 Several submitters expressed concern that the bill is inconsistent with Australia's human rights obligations. Among a range of human rights concerns, submitters particularly highlighted concerns that the bill may engage Australia's non-refoulement obligations and identified rights that are affected when a person is placed in immigration detention.

Non-refoulement

2.26 The United Nations High Commissioner for Refugees (UNHCR) submitted that 'a further expansion of the character test would increase the risk that asylum seekers, refugees and stateless persons may be subject to detention or removal from Australia in circumstances other than those permitted by International law'.²⁸ The UNHCR expressed concern that it is not a mandatory statutory requirement to comply with Australia's non-refoulement obligations in the decision-making process for character-related visa cancellation and refusal decisions, given the significant consequences of such decisions.²⁹

2.27 Dr Anthea Vogl and Dr Elyse Methven stated that, in relation to the potential refoulement of refugees and asylum seekers, the bill was in conflict with Australia's international obligations:

As with existing cancellation powers under s 501, the expanded powers are in direct conflict with Australia's non-derogable non-refoulement obligations to refugees and asylum seekers under international and domestic law....Furthermore, refugees and asylum seekers subject to visa cancellation who are not or cannot be refouled potentially face indefinite, life-long detention – a consequence once again exacerbated by the reforms.³⁰

2.28 The department submitted that Australia's obligations with regard to non-refoulement are considered when discretion is applied to individual cases, stating that 'a non-citizen will not be removed to a country in relation to which

²⁶ Department of Home Affairs, *Submission 1*, p. 5.

²⁷ Department of Home Affairs, *Submission 1*, p. 8.

²⁸ United Nations High Commissioner for Refugees (UNHCR), *Submission 7*, pp. 1–2.

²⁹ UNHCR, *Submission 7*, pp. 6–7.

³⁰ Dr Anthea Vogl and Dr Elyse Methven, *Submission 33*, p. 3.

the person has been found to engage non-refoulement obligations through the protection visa process'.³¹

Immigration detention

2.29 Submitters raised concerns regarding a potential increase in the number of individuals who would be held in immigration detention as a result of the bill, including in situations where individuals cannot be sent to their country of origin.³²

2.30 The Refugee Council of Australia expressed concern that refugees who had their visas cancelled would be subject to indefinite detention, as refugees would not be able to be returned to their country of origin as per Australia's non-refoulement obligations.³³

2.31 The UNHCR told the committee that under the 'ordinary operation of Australian law', an individual who has their visa cancelled or refused on character grounds would either remain in detention until they are removed from Australia, or in circumstances where an individual cannot be removed, can remain in detention indefinitely.³⁴ The UNHCR further elaborated on the risk of indefinite detention to individuals who may have their visa cancelled or refused, stating:

Refugees, asylum-seekers and stateless persons are particularly vulnerable to arbitrary detention as a result of visa cancellation or refusal... UNHCR has observed first-hand the severe and detrimental impact long-term immigration detention can have on the health and psycho-social wellbeing of those affected, many of whom have already suffered from torture or trauma before arriving in Australia. Family separation, inadequate transparency surrounding processes and timeframes for release also contribute greatly to diminished mental health, often leading to insomnia, depression, anxiety and feelings of hopelessness and resignation.³⁵

2.32 Dr Anthea Vogl and Dr Elyse Methven raised similar concerns regarding the detrimental effects that detention might have on non-citizens, including 'serious physical and mental harm to individuals and families'.³⁶

³¹ Department of Home Affairs, *Submission 1*, p. 10.

³² See for example Bayside Refugee Advocacy and Support Association (BRASA), *Submission 10*, p. 1; FECCA, *Submission 9*, p. 3.

³³ Refugee Council of Australia, *Submission 15*, p. 2. See also, Immigration Advice and Rights Centre (IARC), *Submission 16*, p. 5.

³⁴ UNHCR, *Submission 7*, p. 4.

³⁵ UNHCR, *Submission 7*, pp. 7–10.

³⁶ Dr Anthea Vogl and Dr Elyse Methven, *Submission 33*, p. 2.

- 2.33 NSW Council for Civil Liberties (NSWCCL) argued that the amendments in the bill are incompatible with Article 9 of the International Covenant on Civil and Political Rights, and that where an individual's visa is cancelled, the resulting 'protracted detention' can be considered 'arbitrary under international law'.³⁷
- 2.34 The department advised that the bill is compatible with the relevant human rights and freedoms, stating that where the bill might have the effect of limiting some rights, this is 'reasonable, necessary and proportionate to the objective of protecting the Australian Community from the risk of harm posed by non-citizens who have been convicted of designated offences'.³⁸ The department again emphasised that the 'individual circumstances of a non-citizen who does not pass the character test on this ground can be taken into account in both considering visa refusal and cancellation, and throughout the removals process'.³⁹

Impact on certain groups

- 2.35 Submitters considered that the bill would have negative impacts on certain groups within the Australian community including:
- victims of family violence;
 - young/juvenile offenders;
 - families;
 - long-term Australian residents; and
 - Indigenous Australians.

Victims of family violence

- 2.36 The committee heard that the bill may increase the reluctance of victims of family violence to report offences for fear that the victims themselves may face adverse immigration outcomes including the cancellation of the victim's visa.⁴⁰
- 2.37 Safe and Equal submitted that the bill 'fails to recognise the complex nature of family violence' and could have the effect of increasing the safety risk to victims of family violence. Safe and Equal argued that the bill should not be passed 'until safeguards and unintended consequences for victim-survivors of family violence are fully considered'.⁴¹

³⁷ NSWCCL, *Submission 3*, p. 8.

³⁸ Department of Home Affairs, *Submission 1*, p. 10.

³⁹ Department of Home Affairs, *Submission 1*, p. 10.

⁴⁰ See for example Dr Anthea Vogl and Dr Elyse Methven, *Submission 33*, p. 3; Refugee Legal, *Submission 6*, p. 3.

⁴¹ Safe and Equal, *Submission 14*, p. 1.

- 2.38 Refugee Legal similarly argued that the inclusion of family violence convictions as an automatic ground for failure of the character test 'removes agency from the victims of that violence, to express their own views as to the character of the perpetrator'.⁴²
- 2.39 The Federation of Ethnic Communities' Councils of Australia (FECCA) stated that the inclusion of 'aiding and abetting' in the amendments would 'disproportionately' impact women who are victims of family violence who may be in a relationship with an offender.⁴³ This view was shared by Safe and Equal, which added that the inclusion of 'aiding and abetting' would have consequences for victims of family violence who may be experiencing 'coercive control'.⁴⁴
- 2.40 Refugee Legal suggested that the bill fails to consider the effect that the measures could have on victims of family violence who may be financially dependent on the perpetrator, or the implications for victims who might be aware that they will 'lose their source of financial support'.⁴⁵
- 2.41 The department told the committee that the prevention of family violence and the protection of vulnerable people is an 'ongoing and urgent priority' for the Australian government and noted that the existing visa cancellation framework already provides broad grounds to refuse or cancel a visa due to family violence offending. The department advised that the bill would strengthen these visa cancellation provisions 'by providing a clear, objective basis on which to [cancel or refuse a non-citizen's visa], where family violence is involved'.⁴⁶ The department also assured the committee that, '[i]n the case of family and domestic violence, a victim's visa will not be consequentially cancelled... if the visa of the primary visa holder (and perpetrator) is cancelled on character grounds'.⁴⁷

Young offenders and families

- 2.42 The Kaldor Centre submitted that the amendments in the bill would result in young offenders being 'more susceptible to visa cancellation in a far wider range of circumstances'.⁴⁸ This view was shared by the Refugee Council of

⁴² Refugee Legal, *Submission 6*, p. 5.

⁴³ FECCA, *Submission 9*, p. 3. See also Refugee Council of Australia, *Submission 15*, p. 5.

⁴⁴ Safe and Equal, *Submission 14*, p. 2.

⁴⁵ Refugee Legal, *Submission 6*, p. 3. See also Visa Cancellations Working Group, *Submission 17*, p. 11.

⁴⁶ Department of Home Affairs, *Submission 1*, p. 7.

⁴⁷ Department of Home Affairs, *Submission 1*, p. 8.

⁴⁸ Kaldor Centre, *Submission 26*, p. 3.

Australia, which noted that the bill does not contain legislative provisions that would indicate any 'differential treatment' for children.⁴⁹

- 2.43 The Migration Institute of Australia argued that children under 18 could be subject to a visa cancellation where the offence committed may not have incurred a criminal sentence but might still fall within the bounds of a designated offence as stipulated by the bill.⁵⁰
- 2.44 Refugee Legal stated that minors who are convicted of offences and who would subsequently fail the character test are at 'heightened risk of being subject to serious psychological harm as a result of indefinite detention'.⁵¹
- 2.45 Professors Alison Gerard and Leanne Weber suggested the bill would 'result in the targeting of an increased number of children' to be deported, and further contended that 'the pursuit of children and adults for deportation, some of whom have been propelled into the criminal justice system as a result of inadequate access to, or experience of, government service provision, is manifestly unfair and unjust'.⁵²
- 2.46 The Immigration Advice and Rights Centre (IARC) emphasised the impact the proposed amendments could have on families and the broader communities of individuals whose visas may be refused, stating that the amendments may contribute to 'unnecessary distress' for families:

The decision to cancel or refuse a person's visa under the character provisions and the removal that inevitably follows can have devastating consequences for all involved including the non-citizen, their family, community and in some cases, the victims of the offence. IARC is aware of numerous people who have been removed from Australia following a decision under the character provisions and, in many of those cases, the removal has left families broken and children without a parent and at great risk of intergenerational disadvantage. The proposed amendments will see to the breakdown of a greater number of Australian families...⁵³

- 2.47 FECCA expressed concerns that the bill would have negative consequences for families, particularly in relation to the separation of children, in some cases who are still dependant, from their parents and other family members.⁵⁴
- 2.48 The department stated that, when making a decision to cancel or refuse a visa, the minister or delegate will, at their discretion, consider the effect that the

⁴⁹ Refugee Council of Australia, *Submission 15*, p. 5.

⁵⁰ Migration Institute of Australia, *Submission 29*, p. 6.

⁵¹ Refugee Legal, *Submission 6*, p. 3.

⁵² University of Canberra, *Submission 4*, p. 2.

⁵³ IARC, *Submission 16*, p. 3.

⁵⁴ FECCA, *Submission 9*, p. 3. See also Refugee Legal, *Submission 6*, p. 3; NSWCCCL, *Submission 3*, p. 7; Migration Institute of Australia, *Submission 29*, p. 6.

decision will have on any minors.⁵⁵ Further, the department advised that refusal or cancellation of a minor's visa would only occur in 'exceptional circumstances'⁵⁶ and that it approaches 'the possible refusal or cancellation of minors with a high degree of caution and consultation'.⁵⁷ The department reiterated that such decisions are 'made after full consideration of the person's individual circumstances, the best interests of the child, and Australia's international obligations—including those under the Convention on the Rights of the Child'.⁵⁸

Long-term Australian residents

2.49 FECCA was concerned about the consequences for individuals such as refugees and long-term permanent residents in Australia:

An individual may be removed to a country where they do not speak the language; where they have spent little time (or never lived); and where they have no familial, social or economic connections.⁵⁹

2.50 Bayside Refugee Advocacy and Support Association (BRASA) noted with concern that offenders would be at risk of being separated from their families and other support networks, which would have a detrimental impact on the ability of offenders to undergo reform and re-integrate into society.⁶⁰

2.51 The department emphasised the discretionary nature of the decision to cancel or refuse someone's visa and detailed a number of considerations that are taken into account when making such a decision, including, but not limited to, the length of time someone has resided in Australia and the ties that person has to the community.⁶¹

Indigenous Australians

2.52 Liberty Victoria contended that significant numbers of Aboriginal and Torres Strait Islander people have had their visas cancelled. Liberty Victoria told the committee that some Indigenous Australians, despite having Indigenous heritage, may be non-citizens as a result of being born overseas.⁶²

⁵⁵ Department of Home Affairs, *Submission 1*, p. 8.

⁵⁶ Department of Home Affairs, *Submission 1*, p. 9.

⁵⁷ Department of Home Affairs, *Submission 1*, p. 10.

⁵⁸ Department of Home Affairs, *Submission 1*, p. 10.

⁵⁹ FECCA, *Submission 9*, p. 3. See also Migration Institute of Australia, *Submission 29*, p. 6; Dr Anthea Vogl and Dr Elyse Methven, *Submission 33*, p. 3; Mr Benjamin Cronshaw, *Submission 12*.

⁶⁰ BRASA, *Submission 10*, p. 1.

⁶¹ Department of Home Affairs, *Submission 1*, p. 8.

⁶² Liberty Victoria, *Submission 20*, p. 10.

Other issues raised in evidence

Diplomatic relations

- 2.53 In a letter received on 6 December 2021, New Zealand's High Commissioner to Australia referred to past concerns raised by New Zealand with regard to previous iterations of the bill, including 'the corrosive effect that Australia's existing visa cancellation and deportation policies have had on the New Zealand-Australia bilateral relationship'.⁶³
- 2.54 Similarly, Dr Anthea Vogl and Dr Elyse Methven considered the effect the bill could have on Australia's bi-lateral relationship with New Zealand, suggesting that the operation of the bill could weaken a relationship that is already fractured as a result of deportations to date.⁶⁴

Expansion of minister's powers

- 2.55 Submitters expressed concern regarding the proposed expansion of the minister's powers under the bill, and the reliance this would place on the discretionary power afforded to the minister and delegates.
- 2.56 FECCA noted that the amendments proposed in the bill have the effect of increasing the powers of the minister and remarked that 'unchecked executive power creates a climate of fear and opacity both for Australians with family members who are not yet citizens and for the broader community of migrants currently in Australia'.⁶⁵
- 2.57 The Australian Human Rights Commission told the committee that the introduction of additional avenues for failing the character test may have the effect of limiting the applicant's ability to challenge ministerial decisions, as where an individual has 'objectively' failed the character test, 'they will not be able to successfully seek revocation under s501C'.⁶⁶
- 2.58 The department submitted that while the bill does establish a new ground in the character test, the ground would 'operate within the established framework under section 501 and related provisions of the Migration Act, with a Ministerial Direction and departmental policy and procedural instructions to support decision-makers [to] appropriately consider relevant matters and circumstances in each individual case'.⁶⁷

⁶³ Letter from the New Zealand High Commissioner to Australia, received 6 December 2021, p. 1.

⁶⁴ Dr Anthea Vogl and Dr Elyse Methven, *Submission 33*, p. 3.

⁶⁵ FECCA, *Submission 9*, p. 3.

⁶⁶ Australian Human Rights Commission, *Submission 37*, p. 2.

⁶⁷ Department of Home Affairs, *Submission 1*, p. 10.

Retrospectivity

- 2.59 FECCA argued that the retrospective nature of the amendments in the bill are 'unjust' where an individual has received, and in some cases completed, a sentence, but may now additionally face separation from their home and community.⁶⁸
- 2.60 Similarly, BRASA contended that it would be 'unfair and anomalous' to impose the additional consequences of deportation or indefinite attention on an individual who has already been appropriately convicted and sentenced in a court of law.⁶⁹
- 2.61 Western Sydney University (School of Law) stated that the retrospective operation of the bill was inconsistent with the rule of law doctrine, which provides that 'justice will be done according to laws that are certain and knowable in advance'.⁷⁰
- 2.62 The department however advised the committee that the retrospective nature of the bill allows the decision-maker to consider previous convictions in relation to section 501, where the individual in question 'may continue to pose a risk to the Australian community'.⁷¹

Increased burden on the court system

- 2.63 Legal Aid NSW submitted that where an individual is aware they may have their visa cancelled or refused, the provisions of the bill may discourage individuals from pleading guilty to a designated offence, which results in 'more defended hearings in the Local Court and trials in the District Court'. Legal Aid NSW stated that the bill would undermine current reforms in NSW which aim to increase 'early appropriate' guilty pleas and have 'an adverse impact on resources across the justice system, including those of police, prosecution and defence'.⁷²
- 2.64 Victoria Legal Aid highlighted the impacts that an increase in contested hearings could have on the court system in Victoria, which has already experienced additional delays as a result of COVID-19:

Our concerns about the implications for the criminal justice system, including the anticipated increase in contested hearings because of the visa consequences of pleading guilty, are even greater with the impact of the COVID-19 pandemic. The substantial backlogs in criminal courts will

⁶⁸ FECCA, *Submission 9*, p. 3.

⁶⁹ BRASA, *Submission 10*, p. 1.

⁷⁰ Western Sydney University (School of Law), *Submission 2*, p. 9. See also The Kaldor Centre, *Submission 26*, p. 4.

⁷¹ Department of Home Affairs, *Submission 1*, p. 8.

⁷² Legal Aid NSW, *Submission 18*, p. 5. See also Victoria Legal Aid, *Submission 28*, p. 2.

affect the court system for the immediate future and amendments that unnecessarily add to this burden and to these delays should be avoided.⁷³

2.65 The department acknowledged that the measures in the bill 'may have a consequential impact upon other bodies or systems', but argued that the primary purpose of the bill is 'to protect Australia from non-citizens convicted of serious offences who pose a risk to the safety of the community'.⁷⁴

Other issues

2.66 Submitters identified other concerns, including that the bill would:

- place additional burdens on Australia's 'already stretched detention system' and lead to additional cost implications for the Australian community;⁷⁵
- lead to an increase in the workload of the minister's delegates, requiring considerable economic resources',⁷⁶ and place an increased burden on 'primary-stage decision makers';⁷⁷
- increase the burden on legal aid and volunteer legal representation organisations,⁷⁸ thereby further disadvantaging community members who already have limited access to legal representation;⁷⁹ and
- negatively impact social cohesion between members of the Australian community and between the community and the government.⁸⁰

Committee view

2.67 The committee continues to view community safety as a critical objective for government and maintains that it is appropriate for the government to have the power to refuse or cancel the visas of non-citizens who pose a threat to the safety of the Australian community.

2.68 The committee further considers that it is appropriate for the government to have discretion to cancel or refuse a non-citizen's visa where this discretion aids in furthering community safety and protection.

⁷³ Victoria Legal Aid, *Submission 28*, p. 2.

⁷⁴ Department of Home Affairs, *Submission 1*, p. 9.

⁷⁵ Liberty Victoria, *Submission 20*, p. 14. See also Victoria Legal Aid, *Submission 28*, p. 2. See also Ms Jane Touzeau, *Submission 31*, p. 1.

⁷⁶ Western Sydney University (School of Law), *Submission 2*, pp. 6–7. See also Migration Institute of Australia, *Submission 29*, p. 6.

⁷⁷ Liberty Victoria, *Submission 20*, p. 13.

⁷⁸ See for example Legal Aid NSW, *Submission 18*, pp. 5–6; Legal Services Commission of South Australia, *Submission 8*, p. 2; Visa Cancellations Working Group, *Submission 17*, p. 12.

⁷⁹ FECCA, *Submission 9*, p. 3.

⁸⁰ ANU Ascend, *Submission 22*, [pp. 8–11].

2.69 The committee acknowledges the concerns raised by some submitters about the impact of visa cancellation on individuals. However, the committee remains of the view that conviction of a designated offence is a serious matter, and that, in the interests of community safety, it is appropriate for the minister to be given discretionary powers in relation to non-citizens convicted of these offences. The committee also notes that the bill expands a discretion to cancel or refuse visas by changing the definition of the character test. It does not create a blanket obligation to cancel or refuse a visa on the basis that a non-citizen has committed a designated offence. As the preamble to the explanatory memorandum outlines:

It would, however, remain a matter for the Minister or a delegate to consider the factors in relation to the nature of the conviction, any sentence applied and countervailing considerations before deciding whether to exercise the discretionary power under s 501 of the Migration Act to refuse to grant or cancel a visa. In other words, a determination that a person does not pass the character test under the new ground would enliven the discretion whether to refuse to grant or cancel a visa but would not dictate the outcome of the exercise of the discretion.⁸¹

2.70 The committee also notes that concerns were raised with regard to Australia's human rights obligations and the impact of the operation of the bill on certain groups within the community.

2.71 While recognising these concerns, the committee is reassured by the departmental advice that the bill is consistent with human rights and allows decision makers to consider a range of matters in the exercise of their discretion in individual cases. The committee is therefore of the view that the bill provides appropriately balanced measures to provide protection to the Australian community and mitigate the risks posed by individual non-citizen offenders.

Recommendation 1

2.72 The committee recommends that the Senate pass the bill.

**Senator the Hon Sarah Henderson
Chair**

⁸¹ Explanatory memorandum, p. 1.

Labor Senators' dissenting report

- 1.1 Labor senators declare, as we did from the outset in response to previous versions of this bill, that Labor is committed to keeping the Australian community safe. We accept that the Commonwealth must be able to refuse or cancel the visas of non-citizens who pose a risk to the good order and safety of the community.
- 1.2 The Minister for Home Affairs already has extremely broad powers to act in this way. Section 501 of the Migration Act allows, and in some cases requires, the minister to cancel or refuse a visa if a person is deemed to have failed the character test.
- 1.3 Labor supported the strengthening of the character cancellation provisions in the Migration Act in 2014. This included introducing mandatory visa cancellation where a non-citizen is serving a full time custodial sentence, and has either been sentenced to a term of imprisonment of 12 months or more, or has been found guilty of a sexually based crime involving a child.

Previous bill - Migration Amendment (Strengthening the Character Test) Bill 2019 [Provisions]

- 1.4 Labor senators reiterate the issues and concerns that were raised by senators in the dissenting report to the Migration Amendment (Strengthening the Character Test) Bill 2019, which was tabled on the 13th of September 2019.
- 1.5 The government introduced that bill at the commencement of the 46th Parliament, after a previous iteration – introduced on the 25th of October 2018 - had lapsed at the dissolution of the previous Parliament.
- 1.6 In September 2019, the shadow minister for Immigration and Citizenship, Kristina Keneally, wrote to the then-Immigration Minister, David Coleman, and outlined three amendments to the bill that would secure Labor's support for the legislation. The shadow minister also stated that if the government did not agree to those three changes, Labor would oppose the bill.
- 1.7 The then-Immigration minister never responded to Labor's offer of negotiation.
- 1.8 The government proceeded with the bill – in the House of Representatives – without any of Labor's requested changes in September 2019. Labor voted against the bill in the House of Representatives.
- 1.9 In October 2020, the Minister for Immigration, Alex Hawke, wrote to the shadow minister seeking Labor's support for the bill. The minister argued that he needed the bill to pass urgently so he could deport perpetrators of domestic violence who reside in Australia on temporary visas.

- 1.10 Through an exchange of letters in October 2020, the shadow minister pointed out that the minister already has the power to deport family violence perpetrators of domestic violence.
- 1.11 The shadow minister reiterated Labor's three conditions for support of the bill: the removal of retrospectivity in visa cancellations, a reduction in the risk that low-level offending could lead to the cancellation of a visa, and a review of ministerial directions, specifically with regard to the cancellation of visas held by New Zealanders.
- 1.12 In return, the minister offered one amendment that altered the definition of a 'designated offence' involving violence, to clarify that a cancellation or refusal of a visa can only occur when a common assault causes bodily harm, significant psychological harm or involves domestic violence.
- 1.13 This amendment only partially addressed Labor's concern about low-level offending.
- 1.14 The government listed the bill for debate in the Senate in October without addressing further concerns, and the bill was negatived at the Second Reading stage on Wednesday, 20 October 2021.
- 1.15 Labor engaged in good faith with the government on negotiating passage of the bill. However, as the shadow minister outlined in her second reading speech, the government reneged on undertakings that it had made to her:
- The minister sat there in his office and agreed with me that he and I would work together, over the next fortnight, to finalise these changes to the ministerial direction to keep women and children safe. The minister also agreed that he and I would work together over the next fortnight to consider what, if any, changes we might make to the government's own amendment to its own bill to ensure that low-level offending was not inadvertently captured by the bill. That was at noon yesterday. Just before 5 pm, the minister's office called mine and pulled that deal.¹
- 1.16 In total, the 2018 and 2019 versions of this bill sat on the notice paper for a combined period of more than 1,100 days before being voted down in the Senate.

Conduct of the inquiry

- 1.17 On 25 November 2021, the Senate referred the Migration Amendment (Strengthening the Character Test) Bill 2021 [Provisions] to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 28 January 2022.
- 1.18 The deadline for submissions to this inquiry was 17 December 2021.

¹ Senator the Hon Kristina Keneally, Deputy Leader of the Opposition in the Senate, *Senate Hansard*, 20 October 2021, p. 6117.

- 1.19 The way in which the government sought to refer the bill for inquiry was shameful and contemptuous of the Senate committee system.
- 1.20 Having such a short reporting period over the end of year shutdown meant that submitters only had 22 days to review the bill, its implications, unintended consequences and make submissions to the committee.
- 1.21 The Senate – particularly the Selection of Bills Committee – must understand that this is not how a bill can be properly scrutinised and submissions carefully considered. It does not allow the secretariat and the committee members adequate time to consider the submissions and attempt to hold public hearings.
- 1.22 As a result of the reporting constraints, the time of year and other inquiries that the Senate referred to the committee it was not practicable for the committee to hold public hearings and meet the reporting date set by the Senate.
- 1.23 This was a point that was stressed by the New Zealand High Commissioner, Dame Annette King, in her correspondence to the committee on 6 September 2021:
- I note that a shortened Senate Committee process has been scheduled for this version of the bill. Given the serious impacts this bill could have, including on the hundreds of thousands of New Zealand citizens who live and work in Australia, we believe that a full Committee Process that allows for meaningful input from all potentially affected stakeholders would be appropriate.²
- 1.24 The government front bench, in referring the bill in this manner, have shown no consideration for people's time and efforts in engaging with the Senate committee process on a bill that will have direct and serious implications on individual lives.

Trans-Tasman relations

- 1.25 In her letter to the committee, High Commissioner King noted that New Zealand had expressed serious concerns about the previous versions of this bill, through a submission on 28 November 2018 and in an appearance before the committee on 19 August 2019. In language echoing that used by New Zealand Prime Minister Jacinda Ardern, she said that the High Commissioner's submissions had drawn attention to the 'corrosive effect' that Australia's visa cancellation and deportation policies are having on bilateral relations.³

² Letter from the New Zealand High Commissioner to Australia, received 6 December 2021, p. 1.

³ Letter from the New Zealand High Commissioner to Australia, received 6 December 2021, p. 1.

- 1.26 The High Commission was still analysing the differences between the 2019 and 2021 versions of the bill, Dame Annette said, but the 'initial impression is that they do not address New Zealand's concerns in any meaningful way'.⁴
- 1.27 In the High Commission's submissions and in her letter, Dame Annette criticised Australian government policy in more vigorous and forthright language than is usual in diplomatic exchanges between countries with a long and close tradition of friendship. Her remarks imply a clear warning that Australia's attitude towards visa cancellation and deportation is in danger of causing the bonds of friendship to fray.
- 1.28 That prospect would shock most Australians, who would expect their government to do everything possible to restore cordial relations with our neighbour across the Tasman. Alarming, however, the Morrison-Joyce government appears completely indifferent to the effect that this bill is likely to have on a relationship that, as Prime Minister Ardern and High Commissioner King have indicated, is already under strain, at least so far as deportations are concerned.
- 1.29 That was already the case with the previous versions of the bill and nothing in the present bill will do anything to reverse this deterioration in the relationship with New Zealand.
- 1.30 As Labor senators noted in our dissenting report on the 2019 version of the bill, the reason for the New Zealand Government's concern is that New Zealand citizens are disproportionately affected by Australia's character-test expulsions. More than 50 per cent of deportations from Australia are to New Zealand, whereas only one per cent of deportations from New Zealand are to Australia.
- 1.31 In many cases, the New Zealand citizens deported on character grounds are people who arrived in this country as young children, have spent all their lives here, and identify as Australian.
- 1.32 As High Commissioner King suggested, that is almost certainly part of the explanation for the fact that 44 per cent of New Zealanders deported on character grounds re-offend in New Zealand. They have been sent to a country where they might no longer have close family and have no social support.
- 1.33 New Zealand also cancels the visas of non-citizens who commit offences or are judged to be a risk to the community. However, in New Zealand these exclusions are applied on a 'sliding scale': persons who have lived in the community for 10 years or more cannot be deported.
- 1.34 As Labor senators stated in their dissenting report on the 2019 bill, Labor believes a similar sliding scale is worth considering for Australia. It would

⁴ Letter from the New Zealand High Commissioner to Australia, received 6 December 2021, p. 1.

remove the problem created by deporting New Zealand citizens who have lived here either all their lives or for very long periods and who identify as Australians.

Pre-Existing Powers under the Migration Act

- 1.35 As previously stated, Labor strongly supports the current powers to cancel or refuse visas on character, criminal or other grounds relating to the safety and good order of the Australian community which exist under section 501 and section 116 of the *Migration Act 1958* (the Act).
- 1.36 In 2014, Labor supported amendments to the Act which strengthened the character test and gave the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs the power to cancel the visas of non-citizens, and, ultimately, deport them.
- 1.37 It is important to again reiterate the full extent of the extremely broad, discretionary powers currently available to the minister to refuse or cancel visas on character grounds under section 501 of the Act.
- 1.38 Today, the minister can cancel or reject the visa of an individual who has committed a serious crime, including offences involving violence, sexual offences, weapons offences, breaches of apprehended violence orders, and offences against women and children.
- 1.39 Importantly, the minister's powers are so broad that a visa can be cancelled or rejected without the visa holder – or visa applicant – having spent a single day in jail or having been formally convicted of a crime.
- 1.40 Further, the minister has the power under to cancel or reject the visa of a person who they believe to be of bad character.
- 1.41 For example, the minister could refuse the visa of an individual if they believed that their entry into Australia would pose a risk to the community at large, either due to a violent or criminal past, or due to the risk that the individual would seek to vilify a segment of the community or incite discord or violence during their time in Australia.
- 1.42 Under the Act, the federal government has cancelled and rejected thousands of visas since 2014 on character grounds. Again, Labor supports the application of these powers to cancel or refuse visas on character grounds.
- 1.43 Moreover, as the recent Novak Djokovic saga demonstrates, the minister has extremely broad, discretionary powers under other provisions of the Act to cancel a person's visa to protect the Australian community – even if the minister believes that the visa holder is a person of good character.
- 1.44 In his written reasons for cancelling Mr Djokovic's visa, the minister for Immigration found that Mr Djokovic was 'a person of good standing and is known for his philanthropic efforts'.

- 1.45 And yet, because the minister believed Mr Djokovic's presence in Australia could pose a risk to public health and safety, the minister had the power to cancel Mr Djokovic's visa anyway.
- 1.46 Given the strength of these existing powers, much has been made of the necessity of the legislation subject to this inquiry. The saga involving Mr Djokovic has provided a timely case study of the almost-boundless power conferred to the minister under the Migration Act.
- 1.47 Mr Djokovic was initially granted a temporary entry visa (subclass 408) to enter Australia for the Australian Open on 18 November 2021. It is important to note that Mr Djokovic's public statements on COVID vaccinations – a core element of the minister's later decision – occurred well before he received this initial visa, as early as April 2020.
- 1.48 Upon arrival on 6 January 2022, Mr Djokovic's temporary entry visa was cancelled by a delegate of the Minister for Home Affairs from the Australian Border Force on the basis that he did not meet the criteria for quarantine-free entry because he could not prove that he was either double-vaccinated for COVID-19 or had a medical exemption. As a result, he was taken to a temporary detention facility at the Park Hotel in Melbourne.
- 1.49 This initial cancellation was later by quashed in Federal Circuit and Family Court proceedings on 10 January when the Minister for Home Affairs conceded that Australian Border Force had not provided Mr Djokovic with procedural fairness, and agreed to restore Mr Djokovic's visa and pay his costs.
- 1.50 On 14 January, the Minister for Immigration announced that he had exercised his power under subsection 133C(3) on section 116 character grounds of the Act to again cancel Mr Djokovic's visa 'on health and good order grounds, on the basis that it was in the public interest to do so'.
- 1.51 Mr Djokovic applied to the Federal Circuit and Family Court for judicial review of the minister's decision, as Ministerial decisions under subsection 133C(3) are not subject to merits review. This provides a very narrow avenue for appeal, especially given that the minister's discretionary power under subsection 133C(3) is so broad and the rules of natural justice do not apply.
- 1.52 The proceeding was transferred to the Federal Court of Australia and a full bench of the Federal Court heard the appeal on 16 January and unanimously upheld the minister's decision.
- 1.53 As Mr Djokovic's case illustrates, the minister's powers to cancel or refuse a visa under the pre-existing powers contained within the Act are exceptionally broad. The minister's reasons in cancelling Mr Djokovic's visa cited 'the perception' that Mr Djokovic was anti-vaccination.

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- 1.54 The minister did not even seek to establish the facts of what Mr Djokovic's current views on Covid vaccination are. A few public comments of Mr Djokovic's from several years ago and the minister's contention that his presence in Australia might incite discord in the Australian community was sufficient to cancel the visa.
 - 1.55 The conduct of the Morrison government, especially of the Minister for Home Affairs for granting a visa to Mr Djokovic in the first place, and the Australian Border Force in failing to provide procedural fairness, deserves closer inspection and review, but the final outcome demonstrates the broad, significant powers the government has under the Migration Act to cancel a visa.
 - 1.56 In the case of Mr Djokovic, no crime had been committed. Indeed, the minister for Immigration relied on very few facts and actual statements from Mr Djokovic, but rather cited the perception of the risk that Mr Djokovic might pose to public health and safety if he remained in Australia.
 - 1.57 As Mr Djokovic's deportation demonstrates, the Minister for Immigration already has extraordinarily broad powers – with no merits appeal – to cancel a visa. This raises the obvious question: what legal purpose does this legislation actually serve?
 - 1.58 The Djokovic case demonstrates two key points. One, the first visa cancellation – on failure to meet vaccination requirements for quarantine free entry – was overturned when the Minister for Home Affairs conceded that the Australian Border Force failed to provide procedural fairness to Mr Djokovic.
 - 1.59 That the Minister for Home Affairs granted a visa to Mr Djokovic on 18 November, then cancelled it, and then restored it after conceding Mr Djokovic was denied procedural fairness in no way points to a failure or flaw in the Migration Act, but rather a failure of management and competence on the part of the Department of Home Affairs and the Australian Border Force.
 - 1.60 Two, the successful cancellation of Mr Djokovic's visa by the minister for Immigration demonstrates the immense, broad powers the Minister for Immigration holds under the Migration Act.
 - 1.61 In the near-1,200 days since this legislation was first introduced to the Parliament, Labor – like the overwhelming majority of stakeholders – has maintained that there is no need to further broaden the powers of the minister, as there is ample scope to cancel or reject visas under the current laws.
 - 1.62 The minister admitted as such in his own statement of 14 January 2022 in announcing his decision on the Djokovic visa, where he said that "The Minister for Immigration has broad discretionary powers to cancel visas where it is in the public interest to do so, including relying on a health, safety or good order basis."

- 1.63 Members of the Morrison government – including the minister – argued during debate on the 2019 version of this bill that the proposed legislation was necessarily in order to combat the scourge of domestic violence in Australia.
- 1.64 These comments demonstrate a lack of understanding about the minister’s powers and are now particularly absurd in light of recent events.
- 1.65 If the minister can cancel one tennis player’s visa on the basis of a few public statements several years ago overseas, and a perception of a risk to public health, safety and good order, there is no doubt the minister has the power to cancel the visa of persons who have perpetrated actual domestic violence, or threatened domestic violence, against others, especially women and children.
- 1.66 The perpetrators of violent crime, particularly, domestic violence, are a clear risk to the health, safety and good order of our community. As such, it is in the public interest – and within the minister’s current remit – to cancel their visas.
- 1.67 As such, this bill – similar to other legislative efforts by the Morrison government in this space – appears to serve political rather than practical purposes in the day-to-day functioning of Australia’s border security apparatus.
- 1.68 It is through no lack of power by the Minister for Immigration to cancel their visa on public health, safety or good order grounds.

Conclusion

- 1.69 Labor believes that the present bill, like its predecessors, is unnecessary and risks infringing the rights of visa holders without increasing protection for the community.
- 1.70 As the shadow minister stated in her letter to Minister Hawke on 13 January 2022, the Morrison-Joyce government has been unable to identify, throughout two Senate inquiries, what the bill enables the minister to do in cancelling a visa on character grounds that the minister cannot already do under the Migration Act.
- 1.71 The cancellation of Mr Novak Djokovic’s visa in January 2022 has served to further highlight the tremendous power currently available to the minister to cancel visas under the Migration Act.
- 1.72 In the present bill, the only substantial change from its predecessors is in the definition of a ‘designated offence’ involving violence, to clarify that a cancellation or refusal of a visa can only occur when a common assault causes bodily harm, significant psychological harm or involves domestic violence.
- 1.73 As drafted, this does not remove the risk of visas being cancelled for low-level offending. On the contrary, as Refugee Legal stated in their submission to the committee, the language used introduces a “further complication, due to the

uncertainty of what constitutes physical or mental harm. It also adopts a definition of family violence that is very broad.”

- 1.74 And, as the Federation of Ethnic Communities Councils pointed out in its submission, without the consideration of circumstance in the assessment of a person’s character the impact of these changes will reach far beyond ‘serious crimes’.
- 1.75 As noted earlier, in his correspondence with the shadow minister, Minister Hawke has urged Labor to support the bill so that he can deport temporary visa holders who are domestic violence perpetrators.
- 1.76 It remains unclear what power he believes he lacks in this regard, particularly given the recent exercise of his powers during the Djokovic saga. Nor is there any indication that he intends to take up the shadow minister’s suggestion that he review reports and recommendations on the matter made by the Australian Women Against Violence Alliance and the InTouch Multicultural Centre Against Family Violence.
- 1.77 These two reports contain copious information on the plight of victims of domestic-violence victims who are themselves temporary visa holders. Theirs is a precarious situation, often made worse by the fact that sponsors of their visas use the threat of visa cancellation to deter them from seeking help or legal remedies. Nothing in this bill, however, addresses the plight of these victims.
- 1.78 Finally, this latest version of the bill continues to ignore the damage that is being done to Australia’s relationship with New Zealand by cancelling the visas on character grounds of people who have lived for a long period, or even most of their lives, in Australia and who identify as Australian.
- 1.79 For all these reasons, Labor senators believe the bill should be rejected in its entirety.

Recommendation 1

1.80 Labor senators recommend that the bill not be passed.

Recommendation 2

1.81 Labor senators are particularly concerned about the impact this legislation could have on Australia's crucial relationship with New Zealand. We therefore recommend further consultation and communication with the New Zealand Government.

**Senator the Hon Kim Carr
Deputy Chair**

Australian Greens dissenting report

- 1.1 The Australian Greens thank everyone who made a written submission to this inquiry.
- 1.2 The Migration Amendment (Strengthening the Character Test) Bill 2021 (the 2021 bill) is the third draft of this legislation to be tabled over two parliaments. The Migration Amendment (Strengthening the Character Test) Bill 2019 (the 2019 bill) was tabled earlier in this Parliament, and the Migration Amendment (Strengthening the Character Test) Bill 2018 (the 2018 bill) tabled in the previous Parliament.
- 1.3 The 2019 bill was identical to the 2018 bill. The 2021 bill differs slightly from the previous two bills as it includes a minor technical amendment proposed by the government to its 2019 bill (sheet QJ105). This amendment simply tidies up the legislation's definition of a designated offence.
- 1.4 As there is no substantive difference between the 2021 bill and its previous iterations, our dissenting reports to the inquiries conducted by this committee into the 2018 and 2019 bills continue to reflect our concerns with the legislation. These concerns include the:
 - lack of evidence to support a need for this legislation;
 - expansion of section 501 powers to include people who have received non-jail sentences and pose no real threat to the Australian community;
 - move from an individual sentence-based model to an arbitrary penalty model;
 - retrospectivity of the legislation to capture people who have lived in Australia for many decades, with no recent criminal history;
 - devastating and irreparable effects on people, families, and communities;
 - failure to prioritise the rights and welfare of children; and
 - failure to recognise a person's time spent in and ties to Australia.
- 1.5 On this last concern, the Australian Greens recommend bringing the *Migration Act 1958* (the Act) into line with New Zealand law, which takes in account how long a person has lived in the country. This recommendation would return protections to the Act that until 1998 were provided under section 201, and which the Australian Greens and many stakeholders believe should never have been removed in the first place.

Recommendation 1

- 1.6 The Australian Greens recommend that the Migration Act 1958 be amended to prevent any non-citizen who has either lived in Australia for more than 10 years, or who arrived in Australia before the age of 10, from having their visa cancelled.**
- 1.7 This draconian legislation continues the expansion of the Minister's powers to arbitrarily detain and deport people who do not constitute a real or significant threat. It continues the ongoing erosion of rights and freedoms in Australia and reinforces the need for a Charter of Rights.

Recommendation 2

- 1.8 The Australian Greens recommend that the Senate reject the Bill.**

Senator Lidia Thorpe
Greens Senator for Victoria

Senator Nick McKim
Greens Senator for Tasmania

Appendix 1

Submissions and Additional Information

- 1 Department of Home Affairs
- 2 Western Sydney University (School of Law)
- 3 NSW Council for Civil Liberties
- 4 University of Canberra
- 5 Ms Dominique Millar
- 6 Refugee Legal
- 7 United Nations High Commissioner for Refugees
- 8 Legal Services Commission of South Australia
- 9 FECCA
- 10 The Bayside Refugee Advocacy and Support Association
- 11 Ms Bernadette Carroll
- 12 Mr Benjamin Cronshaw
- 13 Ms Eileen O'Brien
- 14 Safe and Equal
- 15 Refugee Council of Australia
- 16 The Immigration Advice and Rights Centre
- 17 Ms Keila Waksvik
- 18 Legal Aid NSW
- 19 Visa Cancellations Working Group
- 20 Liberty Victoria
- 21 Human Rights Law Centre
- 22 ANU ASCEND Team
- 23 *Name Withheld*
- 24 Refugee Advocacy Network
- 25 Coordinator Grandmothers for Refugees NSW
- 26 The Kaldor Centre
- 27 Ms Ann Renkin
- 28 Victoria Legal Aid
- 29 Migration Institute of Australia
- 30 Dr Gael Walker
- 31 Jane Touzeau
- 32 Asylum Seeker Resource Centre
- 33 Dr Anthea Vogl and Dr Elise Methven
- 34 Tasmanian Refugee Rights Action Group
- 35 Labor 4 Refugees
- 36 Mr Gordon Kennard
- 37 Australian Human Rights Commission
- 38 Lauren Honcope
- 39 Law Council of Australia

- 40 Victorian Immigration Solicitors' Alliance
- 41 Nancy Oosterhoff

Additional Information

- 1 Letter from the New Zealand High Commissioner to Australia, (received 6 December 2021).