

Labor Party Senators' Dissenting Report

1.1 The Australian Labor Party (Labor Party) dissents from the majority report of the Legal and Constitutional Affairs Legislation Committee (the committee) inquiry into the Migration Amendment (Strengthening the Character Test) Bill 2018 (the bill).

1.2 The Labor Party strongly supports the current powers to cancel or refuse visas on character or criminal grounds for non-citizens under Section 501 of the Migration Act.

1.3 The Labor Party is committed to keeping the Australian community safe – including the refusal or cancellation of visas for non-citizens who may pose a risk to the good order and safety of Australia, and Australians, alike.

1.4 The character cancellation provisions under the *Migration Act 1958* were strengthened on 2014 with the support of the Labor Party – including introducing mandatory visa cancellation under section 501 of the Act where a non-citizen has been sentenced to a custodial sentence of 12 months' duration or more, or has been found guilty of a sexual crime involving a child.

1.5 Labor senators note that many submitters to the Joint Standing Committee on Migration's inquiry into Migrant Settlement Outcomes and report titled 'No one teaches you to become an Australian' held the view that 'the current character and cancellation provisions in the Act were an adequate way of addressing non-citizens who have been involved in criminal activities.'¹

1.6 Labor senators note the Joint Standing Committee on Migration's subsequent inquiry into the review processes specifically focusing on Section 501 visa cancellations made on criminal grounds which is due to report prior to the end of this term of parliament.

1.7 Labor senators believe the Immigration Minister already has extremely broad discretionary powers to refuse to issue or cancel the visa of a non-citizen and there has been insufficient justification as to why the expansion of these powers is necessary.

1.8 The inquiry received 17 submissions in regards to the bill and 16 of these submissions oppose the bill in its current form, citing significant and far-reaching concerns.

1.9 Peak bodies who oppose the Bill in its current form include but are not limited to the New Zealand Government, Law Council of Australia, Australian Human Rights Commission, Refugee Council of Australia, Legal Aid NSW, Australian Lawyers for Human Rights, NSW Council for Civil Liberties, Federation of Ethnic Communities' Council of Australia (FECCA), Asylum Seeker Resource Centre (ASRC) and Oz Kiwi.

1.10 Only one submission supports the Bill in its current form – the submission by the Department of Home Affairs.

¹ Joint Standing Committee on Migration, *No one teaches you to become an Australian*, December 2017, p. 154.

1.11 There is no stakeholder support for the bill in its current form and stakeholders hold serious concerns that, if passed, the bill could have significant unintended consequences.

1.12 In their submission the Law Council of Australia state:

... restraint must be exercised with any attempt to expand this power beyond existing parameters and must be accompanied by robust justification. In this regard, the Law Council submits that the justification for the expanded measures as proposed in the Bill has not been made sufficiently clear.²

1.13 Labor senators share the significant concerns of the Senate Standing Committee for the Scrutiny of Bills (the Scrutiny Committee) as stated in Scrutiny Digest 13 of 2018.

1.14 This includes the failure to justify the expansion of the powers as proposed by the bill, with the Scrutiny Committee stating:

...in light of the already extremely broad discretionary powers available for the minister to refuse to issue or cancel the visa of a non-citizen, the explanatory materials have given limited justification for the expansion of these powers by this bill.³

1.15 In its current form, the amendments as proposed in the bill would see the threshold for visa cancellations lowered given the new definition of 'designated offence'.

1.16 The Scrutiny Committee states the bill:

... would allow the minister the discretion to cancel or refuse to issue a visa to a person who has been convicted of a designated offence but who may have received a very short sentence or no sentence at all.⁴

1.17 This new low threshold could result in grounds for a visa cancellation for low-level offences – including shoplifting, sharing of an intimate image with a girlfriend or boyfriend, damaging property, verbal threats, or dangerous driving – regardless of whether a judge decided not to give offenders a prison sentence at all.

1.18 By lowering the threshold for visa cancellation or refusal regardless of whether the person actually receives or received a two year sentence, the Law Council of Australia stated the bill in its current form:

...has the potential to undermine the sentencing function of the judicial system and the discretion it possesses with regards to sentencing offenders.⁵

1.19 The Law Council state:

...any unnecessary expansion of existing powers will increase the number of visa cancellations and refusals and place an increasing demand on the already limited resources of the Administrative Appeals Tribunal, the Courts, detention facilities

² Law Council of Australia (Law Council), *Submission 9*, p. 5.

³ Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 13 of 2018*, 14 November 2018, p. 11 ('Scrutiny Digest').

⁴ Scrutiny Digest, p. 10.

⁵ Law Council, *Submission 9*, p. 10.

and the legal assistance sector.⁶

1.20 Labor senators share the significant concerns of the Law Council of Australia about the impact or unintended consequences of the bill on Australia's judicial system.

1.21 The Asylum Seeker Resource Centre (ASRC) state the bill's 'impact on refugees, women, children and other vulnerable persons cannot be justified in circumstances where the proposed amendments add nothing to the existing legislative regime.'⁷

1.22 The Law Council of Australia highlight one of the ways in which the bill will adversely impact women and children:

The inclusion of 'aiding [or] abetting'... in the commission of a designated offence' could have a considerable impact on vulnerable individuals and in particular women involved in a relationship with the offender.⁸

1.23 The Federation of Ethnic Communities' Council of Australia (FECCA) has also expressed concern that the inclusion of 'aiding and abetting' will disproportionately affect women, involved in a relationship with an offender, who may be victims of domestic violence.⁹

1.24 The ASRC express concern about family separation and that 'it is inevitable that more families will be separated and more children will lose a parent.'¹⁰

1.25 The Refugee Council of Australia highlights the bill:

...lowers the bar for visa cancellations to such an extent that a child could be subject to indefinite detention or deportation for sharing an intimate image of their girlfriend or boyfriend, or for shoplifting.¹¹

1.26 Labor senators share the view of stakeholders that the bill, in its current form, will adversely impact children, vulnerable people, and women.

1.27 The New Zealand Government state New Zealanders 'have been disproportionately affected by Australia's deportation policies'¹² and that these policies 'have been corrosive to the New Zealand-Australia relationship due to the disproportionate effect of Australia's policy on New Zealand and the lack of reciprocity treatment.'¹³

1.28 Oz Kiwi highlight in their submission that since the 2014 amendments to the visa cancellation provisions in s501, of the 2,850 people deported between July 2014 and June 2017, 51 per cent were New Zealanders.¹⁴

1.29 The New Zealand Government bluntly outline in their submission:

...the proposed Migration Act Amendment Bill to 'strengthen the character test'

⁶ Law Council, *Submission 9*, p. 9.

⁷ ASRC, *Submission 8*, p. 9.

⁸ Law Council, *Submission 9*, p. 11.

⁹ FECCA, *Submission 1*, p. 1.

¹⁰ ASRC, *Submission 8*, p. 6.

¹¹ Refugee Council, *Submission 10*, p. 1.

¹² New Zealand Government, *Submission 4*, p. 2.

¹³ New Zealand Government, *Submission 4*, p. 2.

¹⁴ Oz Kiwi, *Submission 6*, p. 3.

would make a bad situation worse for New Zealanders and therefore New Zealand.¹⁵

1.30 Labor senators hold significant concerns about the bill's potential to undermine, or place further strain on, Australia's bilateral relationship with New Zealand due to the potential of a larger number of New Zealand citizens being deported as a result of these amendments.

Recommendation 1

1.1 Labor Party senators recommend that the bill not be passed in its current form.

Recommendation 2

1.2 Labor Party senators recommend that amendments to the bill be considered once the Joint Standing Committee on Migration's final report into review processes associated with visa cancellations made on criminal grounds is handed down.

Recommendation 3

1.3 Labor Party senators are particularly concerned about the negative impact the legislation as currently drafted would have on our critical relationship with New Zealand and recommend further consultation and communication with the New Zealand Government.

Recommendation 4

1.4 Labor Party senators recommend the Senate committee commence a further inquiry to examine how the bill could be amended to address these serious and significant concerns of relevant stakeholders and how the Migration Act 1958 could be amended to appropriately complement existing visa cancellation powers.

**Senator Louise Pratt
Deputy Chair**

¹⁵ New Zealand Government, *Submission 4*, p. 4.