



30 January 2017

Joint Standing Committee on Migration  
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Canberra ACT 2600

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Dear Committee,

[www.harriswake.com](http://www.harriswake.com)  
[www.migrationmatters.com](http://www.migrationmatters.com)

**RE: Submission: *Inquiry into Migrant Settlement Outcomes***

We are an incorporated Law firm with offices in Dandenong in Melbourne, and Canberra. Our firm specialises in immigration and criminal law.

Given our experience in immigration and criminal law, and especially as we are located in Dandenong, we have direct exposure to youth involved with APEX and their family members.

We take the following positions:

1. Youth migrants over the age of 18 who do not meet the character test should be subject to the prospect of cancellation of permanent residency, as long as Australia's non-refoulement obligations are met. There needs to be some incentive for them to respect the opportunity they have been given over many hundreds of other perhaps equally worthy applicants who were declined.
2. The current cancellation powers on character grounds under the Migration Act 1958 are sufficient and no changes are required.
3. We are opposed to extending cancellation powers to children under the age of 18. To do so would be in breach of Australia's obligations under the Convention on the Rights of the Child (CRC), specifically under:
  - **Article 9:** '*Children should not be separated from their parents unless it is for their own good.*' Cancelling and removing migrant youths under the age of 18 would result in forced separation from parents, which if enacted, would be a clear breach of Article 9;
  - **Article 22:** "*Children who come into a country as refugees should have the same rights as children who are born in that country.*" Most migrant youth who have been involved in groups such as APEX have come to Australia as refugees. Australian born children would never face removal

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from the country for anti-social behaviour or gang activity. As such, removal of under 18 migrant youths, who entered as refugees, would be in breach of Article 22 as they would not be afforded the same rights as children born in Australia;

- **Article 37:** *“Children who break the law should not be treated cruelly. They should not be put in a prison with adults and should be able to keep in contact with their family.”* It is our position that to cancel permanent residency of migrant youths under the age of 18 years and remove them from Australia is not humane and would be in breach of Article 37. Removing them from Australia would result in forced separation from family and in the children not being able to maintain proper contact with parents and family.
4. Often the youth migrants who have joined groups such as APEX, have been issued permanent residency on the basis of being refugees, in particular those from war-ravaged areas such as the Sudan and proxy war areas such as Syria, Iraq and Afghanistan, Yemen (coincidentally the very areas that the US is banning as we write this). Removing such individuals would potentially result in breaches of Australia’s non-refoulement obligations under several international human rights instruments, including the:
    - Convention relating to the Status of Refugees (Refugee Convention);
    - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
    - International Covenant on Civil and Political Rights (ICCPR).
  5. Cancellation of permanent residency on character grounds of youth migrants over the age of 18, who are involved in anti-social and gang behaviour, may, in some instances act as a deterrent, both general and specific. However, it does not address the core issue of why youth migrants are joining groups like APEX.
  6. Removal of a small number of undesirable immigrants may seem like an effective strategy for combating crime, but it comes at a cost:
    - a. increasing alienation in the broader migrant community; and
    - b. reinforcing societal divisions;
    - c. migrants may perceive that they cannot overcome racial or religious stigma, and be turned away from contributing to Australian society.
    - d. Dramatic risk of increased extremism (“us and them”) which is the exact opposite of what we should be trying to do in these sensitive and vulnerable communities.
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7. Understanding why youth migrants join gangs and participate in anti social behaviour is key in breaking the cycle and reducing such activities. There is a lack of Australian based research in this area. Although research has been undertaken in the UK and US, the youth subcultures in these countries are different to those in Australia, so it is of little relevance to what we have seen emerge with the likes of APEX and how we may be able to address the issues.
8. Both the Federal Government and local State/Territory governments need to commission independent research on the causality of youth migrants participating in anti social behaviour and gang activity and develop strategies to minimise such activities.
9. This research should focus specifically on why these gangs evolve from or spring up in the bottom socio-economic areas (eg Dandenong). Is it because this is where the refugees end up? Or are they simply fodder for existing gang infrastructure?

We believe the committee may be interested in some anecdotal first hand interactions we have had with our clients who have children involved in APEX.

Our clients have relayed the following in their discussions with us:

1. They do not feel supported by the Government/schools or other authorities when they attempt to extricate their children from groups such as APEX. They have subsequently become so desperate for their children to not be involved in APEX, they have sent them back to countries such as South Sudan to live with distant relatives until such time as they mature and no longer desire to be involved with antisocial behaviour and are ready to contribute constructively to Australian society.
2. They feel that Human Services are on occasion removing children from family homes because a child has made an allegation that the parents are abusing them. However, there is no basis for such a claim, the child had simply made the allegation because a parent had attempted to discipline a child for wrongdoing, or to limit their interactions with individuals involved with APEX.
3. There is a lack of programmes such as extra-curricular activities, or sport at schools to engage the youth migrants to ensure they are kept busy to limit boredom. This problem is not limited to migrant youth. This problem is endemic across the country, particularly in rural areas.

The issues the committee are considering relating to social engagement of youth migrants are complex. Developing strategies to tackle the issues is equally as

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complex. It is critical though, when considering these issues that two important things are noted:

1. The majority of youth eventually mature and no longer participate in crime and anti-social behaviour. This is recognised and accepted. The Australian Institute of Criminology recognises youths are “...*more likely to ‘grow out’ of offending, becoming more law-abiding as they mature.*”<sup>1</sup> This is a critical factor when considering how we respond to young people and migrant youth.
2. Migrant youth do not statistically represent the majority in our criminal justice system.<sup>2</sup>

**Recommendations:**

1. Do not extend cancellation powers to youth migrants under the age of 18. The current regime has the balance right.
2. Commission comprehensive independent research into why youth migrants may be inclined to participate in anti-social behaviour such as gang activity.
3. Develop socially inclusive programmes to engage local youth.

We thank the committee for taking the time to read and consider our points and recommendations.

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<sup>1</sup> [http://www.aic.gov.au/crime\\_types/in\\_focus/juvenilejustice.html](http://www.aic.gov.au/crime_types/in_focus/juvenilejustice.html) .

<sup>2</sup> See Victorian Crimes Statistic Agency: Crimes committed by 10-18 year olds based on country of birth for the period of 2012-2016 for ‘Home invasions (aggravated burglary)’; ‘Car theft offences’ and ‘Aggravated robbery’.