



Submission to the
Joint Standing Committee on Migration's
Settlement Outcomes Inquiry

February 2017

Young Peoples Legal Rights Centre
Inc No A0041616E
ABN 12 794 935 230

www.youthlaw.asn.au

Tel 9611 2412 Fax 9620 3622 Email info@youthlaw.asn.au
At Frontyard, 19 King Street, Melbourne VIC 3000

Settlement Outcomes Inquiry

Committee Secretary
Joint Standing Committee on Migration
PO Box 6021
Parliament House
Canberra ACT 2600

14 February 2017

emailed top: jscm@aph.gov.au

Dear Committee members,

Thank you for the opportunity to provide comments to the Inquiry into Migration Settlement Options by the Joint Standing Committee on Migration, and for the extension of time to submit by.

About this submission

As per the Committee's terms of reference, we provide the following comments with a particular focus on consideration to *'social engagement of youth migrants, including involvement of youth migrants in anti-social behavior such as gang activity, and the adequacy of the Migration Act 1958 character test provisions as a means to address issues arising from this behavior'*.

The submission cover the following topics:

Introduction to Youthlaw and Smart Justice for Young People	p2
Young people's settlement experiences	p3
Youth Crime: The Victorian context	p3
- gang activity in Victoria	
- attraction to gang activity	
Tackling the drivers of offending	p6
What else the Victorian Government is doing to tackle these issues	p8
What else can be done to tackle these issues?	p9
- More investment in intensive tailored interventions to tackle high volume offending	
- Extension of age of care from 18 to 21 years	
- Adopt a Justice Reinvestment approach	p10
Migration Act Character test	p11

Introduction to Youthlaw and Smart Justice for Young People

Youthlaw is Victoria's state-wide community legal centre for young people under 25 years of age. Youthlaw works to achieve systemic responses to the legal issues facing young people, through casework, policy development, advocacy and preventative education programs, within a human rights and social justice framework.

Youthlaw is co-located with seven other youth services as part of Frontyard Youth Services at 19 King St, Melbourne. Young people accessing Frontyard Services are mostly aged between 18 and 25 and are either homeless, experiencing significant family breakdown or deemed to be at risk. A significant portion of our clients are young people of migrant or refugee background.

While Youthlaw lawyers do not provide direct advocacy support to children in youth detention, we convene a Victorian youth justice advocacy coalition, Smart Justice for Young People (SJ4YP) that has many member organisations that do directly support children in detention.

Set up in 2011 by Youthlaw, SJ4YP is the youth specific arm of Smart Justice, led by the Federation of Community Legal Centres. SJ4YP brings together over 40 legal, youth, health, welfare and community organisations. All have an interest in how vulnerable and disadvantaged young people are faring in the Victorian criminal justice system and in keeping them out of or away from the system.

SJ4YP promotes evidence-based youth justice approaches and solutions, especially early intervention, prevention and diversionary approaches to youth offending that benefit those young people and their communities.

Young people's settlement experiences

Australia is repeatedly recognised as a global leader in successful settlement service delivery.

Australia uniquely has a youth specific settlement focus with programs like U Can, Youth Transitions etc.

Many young migrants that have settled in Victoria have shown remarkable strength and resilience, have transitioned into Australian life, and have proven to be great assets to the community.

Generally migrants and refugees need support as they complete their settlement journeys in Australia. It is acknowledged that the settlement process is complex and takes time, often longer than the five years of settlement supports offered. There is no one-size-fits all approach to settlement. It is also acknowledged that a small portion of new arrivals, who are particularly vulnerable, need more intensive and longer term support.

Only a very small percentage of this cohort of young people of migrant and refugee background, who are particularly vulnerable and need intensive support, end up involved in criminal activity.

There is no evidence to suggest this is a failure of settlement services (often the offending occurs beyond the five years of settlement support), but rather it may be a failing of a lack of support from mainstream, universal services.

Youth Crime: The Victorian context

We have all seen the persistent, daily Victorian mainstream media outlets report on 'predators', 'young thugs', 'terrorising', "sweeping Melbourne", "Victoria is experiencing a crime wave unlike any we've seen before"¹.

In the first instance it is important to rely on the facts and statistics and consider this issue with perspective and objectivity.

Victoria Police have identified a small cohort of young people committing increasing number of serious & violent crimes of burglaries, home invasions & car-jackings.

However there is no youth crime wave in Victoria and there is not a tsunami of ethnic gang activity.

In fact Victoria has decreasing youth offending rates. Victorian statistics show:

- The proportion of incidents committed by alleged offenders under the age of 25 has fallen from half of all incidents recorded in 2007-2008 to 40% of all incidents in 2015-2016.²

¹ Jason Wood "Combined response from government and community is the only way to defeat youth gangs", Herald Sun February 2017, <http://www.heraldsun.com.au/news/opinion/combined-response-from-government-and-community-is-the-only-way-to-defeat-youth-gangs/news-story/09135e98cfc0f1bf4e9b36f0803b89fc>

- the number of young people in detention on sentence is also down: sentenced in Children's Court halved since 2008–09 with only very small number receiving sentence of detention.
- Victoria has the lowest rate of children (10-17) under justice supervision on an average day in Australia.

Of the 550,000 10 to 17 year olds in Victoria, some 0.6% are sentenced in court with some 0.02% sentenced to custody.

Of the 1,548 sentenced to justice custodial or community orders (in 2015-6), there is an over-representation of Maori and Pacific Islander (133: or 9%), Sudanese (62: or 4%), and Koori young people (253: or 16%). But as you can see the numbers are small.

Disturbingly however, approximately 80% of the children and young people in youth justice facilities in Victoria are un-sentenced on remand. This is putting enormous strain on custodial services and frustrating the young people who cannot access most custodial services while on remand and can be on remand for up to three months.

Undeniably armed burglaries, home invasions and car-jackings are shocking forms of violence. The serious nature of these crimes is not in question by anyone.

These serious & violent crimes are part of a high frequency group of young offenders (1.6%) responsible for over 25% of all criminal incidents by young offenders.

Police have estimated this group of young offenders to be somewhere between 200 and 500 young people, committing up to 14 offences each.

Gang activity in Victoria

How much of this offending by this cohort of young people is attributable to organised "gang activity" in Victoria, from members of the likes of the APEX and Youth Crucified Warriors, is highly questionable.

Victoria Police have reported that it is "networked" offending rather than "formalised gangs", with many young people meeting each other for first time during offending.

Assistant Commissioner Robert Hill has stated *"They don't have a club house, they don't have colours. These are a group of young people committing these offenses, engaged in thrill-seeking behaviour."*³

And yet since the notorious disturbances at Moomba in Melbourne in March 2016, the "Apex gang" has taken on a life force of its own, and become the term used by journalists, commentators and politicians to link a series of criminal acts involving burglary, assault, car-jacking and home invasions into a particular narrative often with little or no evidence that the incidents are related to the 'Apex Gang' at all.⁴ Despite clear police exhortations that the criminal activity is not centred around any particular ethnicity, the term 'Apex Gang' has been racialised, by persistent association with African and Islander young people and with descriptors such as "predominantly of South Sudanese descent" and "a gang of Sudanese youths".

These media reports have provided the group APEX, whatever its status, with oxygen. Impressionable and disillusioned young men are finding it alluring and claim to be associated with APEX, whether they are or not.

² **Victorian Crimes Statistics Agency** *Changes in youth crime over the past decade* (factsheet July 2016)

<https://www.crimestatistics.vic.gov.au/media-centre/news/new-fact-sheet-released-changes-in-youth-crime-over-the-past-decade>

³ **A Current Affairs** 9 News April 28, 2016

⁴ **Anthony Kelly** *The media, 'Apex Gang' and coded racism* <http://www.policeaccountability.org.au/racial-profiling/apex-gang-and-coded-racism/>

This media is having a damaging effect on young people of Sudanese background, who feel they are automatically judged and associated with gangs, based purely on the colour of their skin. Watch this powerful video⁵ supported by the Neighbourhood Justice Centre in Victoria, which gives voice to some of their concerns.

Media and segments of the community are effectively locating the problems within these communities rather than in mainstream Australian culture, institutions or service systems that have failed these young people.

The framing of the ethnic-youth-gang-conflict problem in Victoria has existed for many years, long before the term 'Apex Gang' was ever used. The work of the Police Accountability Project, run by the Flemington Kensington Community Legal Centre in Melbourne's inner West, has focused on addressing systemic racial profiling by Victoria Police since at least 2005. A significant aspect of this work has necessarily involved challenging the 'Black-crime association' as a primary bias within both mainstream community, the media and the police.

By 2007 it was becoming apparent that the media coverage of African youth and related crime stories was affecting and intensifying policing in particular suburbs of Melbourne and that, in turn, the over-policing of ethnic and indigenous communities was generating even more heightened media portrayals.

The Police Accountability Project has attempted to disrupt this nexus over the past decade by focusing on the practice and nature of policing itself. It sought to draw research, and critical media attention to policing itself as a key but under-recognized problem and hereby 'changing the frame'. The [*Haile-Michael v Konstantinidis*](#) Race Discrimination case was settled in the Federal Court on Monday 18th February 2013 with a landmark agreement for Victoria Police to publicly review its training and field contact practices. And led to a 3 year action plan to eliminate racial profiling Equality is not the same, which included the trial of receipting in 3 regions in Victoria.

Attraction of gang activity

In the worst case scenario it could become a self fulfilling prophecy, where the negative sentiment around gangs leads to increased widespread feelings of alienation and marginalisation amongst some young people of migrant and refugee background. When young people feel they do not fit in, or have nothing to live up to, are powerless, then they sometimes are attracted to gangs and/or radicalisation.

Karl Lokko⁶ visited Australia in 2016 and shared his experience of being a gang member and leader in Brixton, UK. In his assessment, gang membership is a by-product of many things that are hard to change: like the need for more jobs, better economy, being disenfranchised, being subject of racism etc.

Given pragmatically these risk factors (financial disadvantage and discrimination) are unlikely to change, then we need to focus on the rehabilitation and behaviour of the individual. Karl sees the key as being workers, counsellors, mentors exploring what is going on for that young person, finding out why they are attracted to and involved in gangs and genuinely wanting the young person to rise from their situation and workers who genuinely are in the young person's corner.

In Victoria there is an need for more investment and resources in more peer led, pro social and community led responses that are sustainable.

⁵ Neighbourhood Justice Centre "We're not a gang" <https://vimeo.com/65222215>

⁶ See <http://www.karllokko.com/>

Tackling the drivers of offending

For the small number of young people of migrant or refugee background engaging or at risk of engaging in serious and violent high volume offending, we need to re-focus on what the data and research tells us works, on further investigating and tackling what is behind this, and reforming aspects of the service systems that are not working effectively and have failed these young people.

However the current Victorian political debate and response to the perceived “youth crime crisis” has regressed into a punitive law and order bidding war, with recent decisions including the development of a new super-max high security prison for children, incarceration of children in Barwon adult prison, moving the management of youth justice to the Department of Justice and Regulation, calls for one strike and you’re out” bail laws⁷ and announcements of a suite of other youth justice reforms some of which are highly restrictive and more punitive.

These proposals and decisions are jeopardising the humane, rehabilitative and age-appropriate treatment of children and young people that Victoria has been respected for in the past. And they risk damaging community safety rather than enhancing it. All the research tells us that imprisonment is not effective in reducing crime and therefore is not protecting the community.

As Les Twentyman eloquently puts it:

All you are creating is a University of Crime where those who come in will come out a far more dangerous threat to society. It’s a double-down of failed policies that have been in place for years, policies that have led to an institutionalisation of detained youth who are returning repeatedly to youth justice, eventually moving on to adult prisons. Repeating such a policy will see the wave of violent crime that has engulfed our city worsen. Youth crime is not an issue we can arrest our way out of - locking up kids to do “hard time” will not make our city safer.

*Instead, understanding what drives these kids to commit crimes in the first place is critical.*⁸

So who are these offenders and what is driving them? Police say they largely reflect the multicultural diversity of the community and many of the complexities across it. Many have dropped out or been suspended from school and are estranged from their families. Motivations include anger and lack of hope, feeling locked out of society, having bad stuff going on at home, and the thrill that comes with the exertion of power and being part of a peer group and of getting access to money. Most live in areas of very high youth employment and disadvantage. Some are from very dysfunctional families. Some have disengaged from school as early as primary school.

Government, police and community leaders have met to share our expertise on how best to respond. Much is already happening. There is strong agreement that early intervention in school is a key, as is targeted mentoring & support. It is recognised that there are insufficient services and long waiting lists and this needs to be addressed.

As stated by Victoria Police, Assistant Commissioner Andrew Crisp:

⁷ **Jason Wood** “Combined response from government and community is the only way to defeat youth gangs”, Herald Sun, 14 February 2017, <http://www.heraldsun.com.au/news/opinion/combined-response-from-government-and-community-is-the-only-way-to-defeat-youth-gangs/news-story/09135e98cfc0f1bf4e9b36f0803b89fc>

⁸ **Les Twentyman** “We need a new approach to handling justice for our city’s troubled youth” , Herald Sun, 12 February 2017 <http://www.heraldsun.com.au/news/opinion/we-need-a-new-approach-to-handling-justice-for-our-citys-troubled-youths/news-story/7efd84900f0489852afa8c5e3807161d>

"Whilst no-nonsense policing and tougher sentencing might provide a greater sense of short-term justice for the community, it does not address the broader, underpinning issues which are driving this increase in offending."

*"It is critical we understand that better, so that we can break the cycle of lifetime offending and imprisonment. Every criminal that is rehabilitated is one less person committing robberies, assaults and burglaries on innocent people. This is how we will make our community safe into the future."*⁹

We know there are a range of risk factors that can influence a young person's involvement in crime, including disadvantage, difficult family environments, disengagement with school and alienation from community.

*"That's why police and our government and community partners are focused on both early intervention and supporting those who have had exposure to the justice system to stay engaged with education, employment and the community in order to improve their life outcomes."*¹⁰

We should not dismantle aspects of Victoria's youth justice system that are still serving Victoria well.

Victoria has a range of early intervention, diversion programs and crime prevention programs that directly or indirectly support children and young people to stay away from the system and programs that help young people on bail to stay in the community, connected to education, employment and family life.

We need to monitor the impact of these programs and strengthen those working well.

*"When those kids are in school, we can take them in a different direction, and by providing them with access to outreach youth workers, sport, recreational and leadership programs, they can see there is more to life than gangs, drugs and crime. We know the positive results such programs have had with disadvantaged kids. Daily, we see a young life turned around as they involve themselves with our programs, building self-esteem and respect for themselves, their peers and society."*¹¹

These initiatives include:

- *Diversionary programs* such as the Youth Support Service supporting young people at risk of entering the youth justice system, and the new (soon to be legislated) statewide *Youth Diversion Program (Criminal Division of Children's Court of Victoria)* in the Children's Court,
- *Empower Youth* which supports vulnerable young people who are at risk of disengagement in their communities,
- *Navigator* and *Lookout Centres* programs both targeted at engaging vulnerable children in mainstream education,
- *Place based targeted youth crime prevention grants* and other crime prevention grants, including \$6.5 million over two years is allocated to address issues for young offenders in 8 locations (Hume, Wyndham, Ballarat, Geelong, Frankston, Casey, Latrobe, Greater Dandenong) where high frequency young offenders reside, that are also experiencing high crime and disadvantage. Local community partnership consortia will be funded with a substantial sum (at least \$700,000) to implement and evaluate evidence-based targeted initiatives that leverage existing programs and services to work intensively with target individuals to address the root causes behind their involvement in high

⁹ **Bianca Hall**, *Victoria Police says only rehabilitating young criminals will make state safer* The Age, 17 November 2016, <http://www.theage.com.au/victoria/victoria-police-say-only-rehabilitating-young-criminals-will-make-state-safer-20161117-gsrqcc.html>

¹⁰ **Bianca Hall** *Fraction of young offenders behind most crimes*, The Age 16 September 2017, <http://www.theage.com.au/victoria/fraction-of-young-offenders-behind-most-crimes-20160914-grqms8.html>

¹¹ Les Twentyman: *"We need a new approach to handling justice for our city's troubled youth"* Herald Sun, 12 February 2017 <http://www.heraldsun.com.au/news/opinion/we-need-a-new-approach-to-handling-justice-for-our-citys-troubled-youths/news-story/7efd8490f0489852afa8c5e3807161d>

frequency offending. Initiatives may include engaging at-risk young people and linking them with existing education, training or employment services; supporting their wellbeing and promoting pro-social behaviour and personal resilience; and re-connecting them with their communities <http://www.crimeprevention.vic.gov.au/home/our+grants/youth+grants/>

- *Intensive Bail Supervision Program* (DHHS) – Targets young people at risk of remand who require a high level of supervision while on bail in the community. The Victoria Government has recently committed to a state-wide Youth Justice Bail Supervision scheme and expansion of the Central After Hours Assessment and Bail Placement Service with supporting legislation will be introduced in early 2017.
- *Youth Justice Group Conferencing* – based on restorative justice principles, the program creates dialogue between people who have offended and others who have been impacted by the offending behaviour (*and possibly Community group conferencing*)
- *Dual track system* - Victoria has a unique youth sentencing option known as the ‘dual-track’ system. The *Sentencing Act 1991* provides for the adult courts to sentence a young person aged 18 to 20 years to serve their custodial sentence in a youth justice centre as a direct alternative to a sentence of imprisonment. This dual-track system is designed to provide an alternative to prison and prevent early entry into the adult system for offenders who are vulnerable or who have a greater prospect of rehabilitation.

What else the Victorian Government is doing to tackle these issues

It is important that your Committee is also aware of work underway to address the issue.

The Victorian Minister for Families and Children is currently developing a new Youth Justice Strategy. The *Government Review of the youth support, youth diversion and youth justice services* presents an opportunity to address many of the current challenges in youth justice, by providing expert advice and creating a strong policy framework for a contemporary youth justice program which will include responses to address specific serious offending behaviours.

The Review will deliver a strategy to enhance and position the Department’s youth support, youth diversion and youth justice services to respond to the needs of vulnerable cohorts into the future, drawing on opportunities across portfolios such as mental health, child protection and housing.

The Review will assess the appropriateness of current programs and services in achieving desired objectives such as:

- ability to intervene earlier and prevent the risk of offending, re-offending and reduce acute recidivism; leveraging broader first contact interventions beyond the police – health, schools, child and family services
- ability to effectively address the needs of cultural groups, specifically over-represented groups such as Aboriginal children and young people, and groups who have experienced acute trauma associated with violence in the home, or war / civil conflict in countries of origin or refugee settings , and
- consider best practice approaches to supporting mental health and well-being of young people, responding to mental health issues and the nature of current interventions and approaches deployed.

There is concurrently a Victorian Parliamentary Inquiry into Youth Justice Centres by the Legislative Council’s Legal and Social Issues Committee, inquiring into and reporting on by 1 August 2017, issues at both Parkville and Malmsbury youth justice facilities including, but not limited to —

- the security and safety of staff, employees and young offenders at both facilities;

- reasons for, and effects of, the increase in the numbers of young people on remand in the last 10 years;
- implications of incarcerating young people who have significant exposure to trauma, alcohol and/or other drug misuse and/or the child protection system, or who have issues associated with mental health or intellectual functioning, in relation to—
 - the likelihood of reoffending;
 - the implications of separating young people from their communities and cultures;
- additional options for keeping young people out of youth justice centres;
- the culture, policies, practices and reporting of management at the centres; and
- the role of the Department of Health and Human Services in overseeing practices at the centres

What else can be done to tackle these issues?

More investment in intensive tailored interventions to tackle high volume offending

As mentioned above, Victoria Police know a significant amount about the small cohort of young people who are responsible for many of the burglaries, home invasions, and car-jackings. Police data shows that about 180 young people are responsible for committing one quarter of all youth crime, and that somewhere between 180 and 500 are involved in this serious offending.

Thorough assessment of this group is required and the development and implementation of intensive, targeted and multidisciplinary interventions from highly skilled staff to address this complex issue.

While sometimes strict supervision in the community or detention orders may be required for very serious offending, Government also needs to invest in long term, tailored assertive outreach, case-management programs that offer hope and a chance to build a healthy identity, which include after hours support, family work, behavioural change management, re-engagement with education and employment, building social and cultural connections, and addressing issues such as alcohol and other drug use and mental illness.¹²

While the Government has made some initial investment in this space (namely \$8.5 million in place based youth crime prevention grants), much more is required.

This is complex and difficult work with some of the states most vulnerable young people and realistically calls for highly skilled and supported staff to work with this cohort.

For those young people who do end up in custody on sentence, therapeutic and trauma informed interventions should be utilised in youth justice settings to make sure they do not return. Approaches should be culturally appropriate and informed by awareness of the relevance of gender to children's experiences of trauma and crime.¹³

Extension of age of care from 18 to 21 years

It is our submission that it is not helpful to view criminal activity of young people of migrants and refugee background as a by-product of settlement processes or failings of the youth justice system.

¹² **Julie Edwards**, *Dealing with young offenders is difficult, but not impossible*, The Age, 28 November 2016
<http://www.theage.com.au/comment/dealing-with-young-offenders-is-difficult-but-not-impossible-20161128-gszb9r.html>

¹³ **Mendes, Baidawi and Snow** *Good Practice in Reducing the Over-Representation of Care Leavers in the Youth Justice System* (2014).

Rather it can be viewed as a failing of the universal care system. At some critical points along the continuum of care society has not provided the support these young people require.

Arguably there could be more investment in services working with young migrants, and much better integration and transition or care from settlement services to universal mainstream services.

With respect to the Refugee Minor Program and Settlement programs we submit that care should be extended 21 years. There is evidence to suggest this younger cohort have higher needs than adults and solid evidence about the continuation of care and how it can reduce criminal behaviour.¹⁴

The benefits for the Commonwealth Government of extending the age of care for this cohort to 21 years include for every \$1 dollar spent on extending care the government would get a return between \$1.80 to \$2.52.

Other benefits of extending care, include:

- delayed pregnancies for those 17-19 by 38%,
- homelessness halved and
- arrests rates drops by a third.

Adopt a Justice Reinvestment approach

There have been calls nationally and in Victoria to explore justice reinvestment as an alternative, long term criminal justice approach and to learn lessons from other jurisdictions.

The Victorian Ombudsman recommended: that the Department of Justice and Regulation:

*Using justice reinvestment methodology, pilot and evaluate local approaches to crime prevention and community safety in disadvantaged Victorian communities with the aim of reducing reoffending and increasing community safety.*¹⁵

Additionally Victoria's Deputy Chief Magistrate, Jelena Popovic, also called for Victoria to rethink its responses to criminal behaviour, by taking a longer term approach to law and order. She has encouraged decision makers to learn from other jurisdictions that are trialling justice reinvestment measures.¹⁶

Justice reinvestment promotes greater local place based investment over the longer term that is more likely to have a real and sustainable impact on the complex social issues underpinning youth crime. But it also has the flexibility and responsiveness to support communities to identify and deliver "quick wins as well as long term positive outcomes.

Justice reinvestment involves investing in disadvantaged communities to identify, develop and implement local solutions addressing economic and social determinants and risk factors behind youth offending. It will help reduce the number of children and young people at risk of becoming adult offenders or prisoners, and overtime reducing expenditure in courts and prisons, with these saving redirected to other disadvantaged communities. This approach is being trialled in Bourke in NSW and bringing police, government and community together to work up solutions that cut youth crime, save money and strengthen the community.

¹⁷

¹⁴ Deloitte Access Economics , Socioeconomic cost benefit analysis

<https://www2.deloitte.com/au/en/pages/economics/articles/guiding-young-victorians-in-care-into-adulthood-anglicare.html>

¹⁵ Victorian Ombudsman:, *Investigation into the rehabilitation and reintegration of prisoners in Victoria (2015)* Recommendation 2

¹⁶ Bianca Hall "Deputy Chief Magistrates calls for Victoria to rethink crime" The Age, 24 August 2016

¹⁷ For more info go to: <http://youthlaw.asn.au/campaigns-advocacy/justice-reinvestment-home/>

Migration Act Character test

We endorse the Law Institute of Victoria's (LIV) submission that recommends that:

- the current character threshold is too broad and the safeguards too limited to prevent visas being cancelled on individuals that may not actually present any risk to the community,
- mandatory cancellation power leaves insufficient room to consider the merits of individual cases, and
- the low threshold for visa cancellation provides limited room for considering the actual merits of individual cases.

The current test allows for a visa cancellation on the basis of a person's association with another person who may not have been convicted of any criminal offence, but whom the Minister reasonably suspects has been involved in criminal conduct without having to establish whether the non-citizen is aware of this or not.

Section 501(6)(d) of the Act lowered the threshold from 'significant risk' to 'risk' of the potential of a person engaging in criminal conduct or harassment who represents a danger to the Australian community or 'risks' being involved in activities disruptive to the Australian community.

Section 501(6)(b) of the Act provides that a person will not pass the character test if:

The Minister reasonably suspects [...] a person has been or is a member of a group or organisation or has had or has an association with a group, organisation or person and that the group, organisation or person has been or is involved in criminal conduct [...] whether or not the person, or another person, has been convicted of an offence.

These provisions are unnecessarily broad and give the Minister power to cancel the visa of a non-citizen in a range of possible scenarios that do not pose a risk to the Australian community, for example:

- attending a group viewing of a current television series that has been illegally downloaded (with no convictions); or
- attending a political rally that may have associations with criminal or terrorist organisation or be attended by others with such associations.

We also strongly oppose any recommendation to extend the discretion of the Minister to those under 18 years of age. We reject outright any proposal that allows the deportation of children under 18 who commit crimes. They should remain exempt from the above character test provisions. It is widely acknowledged that children should be subject to a system of criminal justice that is separate from the adult system. This separation recognises their unique capacity to be rehabilitated and accepted science that explains how adolescent brain development makes children think and act differently to adults and necessitates a different justice response than adults. Australia's immigration system must continue to accommodate this differentiated treatment.

Contact for submission:

Tiffany Overall
Advocacy & Human Rights Officer
Youthlaw