



Australian Government

Australian Government response to the Senate Legal and
Constitutional Affairs Legislation Committee report:

Migration and Other Legislation Amendment (Enhanced Integrity)
Bill 2017 [Provisions]

[January 2018]

Introduction

On 16 August 2017, the Migration and Other Legislation Amendment (Enhanced Integrity) Bill 2017 (the Bill) was introduced into the Parliament.

On 17 August 2017, the Senate referred the Bill to the Senate Legal and Constitutional Affairs Legislation Committee for inquiry and report by 17 October 2017.

On 17 October 2017, the Committee released its report. The report makes two recommendations, which are addressed below.

Recommendations

Recommendation 1

2.35 The Committee recommends that the wording of paragraph 338(2)(d) is reconsidered to ensure that the paragraph is clearly understood while also achieving its policy objective.

Response - Noted

Paragraph 338(2)(d) of the *Migration Act 1958* (the Migration Act) sets out the circumstances in which onshore applicants for prescribed visas can apply for merits review of a decision to refuse to grant a visa. Some of the visas prescribed for the purposes of paragraph 338(2)(d) require the visa applicant to be sponsored and nominated by an approved sponsor; others only require sponsorship.

The intention of proposed new paragraph 338(2)(d) is to clarify the circumstances in which applicants who require both sponsorship and nomination can apply for merits review. This addresses the decision in *Kandel v the Minister for Immigration and Border Protection* [2015] FCCA 2013, which interpreted current paragraph 338(2)(d) of the Migration Act in a way that is inconsistent with the policy intention.

Proposed new paragraph 338(2)(d), as currently drafted, achieves this intention, whilst also ensuring that visa applicants who do not require a nomination are not negatively impacted by this amendment.

Recommendation 2

2.36 The Committee recommends that the bill be passed.

Response - Noted