



Australian Government
Department of Home Affairs



Inquiry into the Migration Amendment (Overseas Organ Transplant Disclosure and Other Measures) Bill 2023

Foreign Affairs, Defence and Trade Committee

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Introduction

1. The Department of Home Affairs (the Department) welcomes the opportunity to provide a submission to the Senate Foreign Affairs, Defence and Trade Committee's Inquiry into the Migration Amendment (Overseas Organ Transplant Disclosure and Other Measures) Bill 2023 (the Bill).
2. This submission provides an overview of existing integrity measures and cancellation powers and grounds employed by the Department to maintain the integrity of Australia's migration system.

Background of the Bill

3. The Bill is a private member's Bill introduced to the Senate by Senator the Hon Dean Smith on 22 June 2023.
4. The Bill amends the Migration Act 1958 (the Act) to:
 - add a requirement that persons entering Australia must disclose on their incoming passenger card if they have received an organ transplant in a location outside Australia within the last five years and, if yes, the name and location of the medical facility where the transplant occurred; and
 - require the Government to table an annual report in the Parliament providing a suitably anonymised summary of the above data; and
 - amend section 501 of the Act to provide that a person does not pass the character test if they are reasonably suspected of being, or having been, involved in an offence involving the trafficking of human organs (an 'organ trafficking offence').
5. Specifically the Bill proposes amendments to the definition of character concern at section 5C of the Migration Act, and the character test at section 501 of the Migration Act to introduce a new ground for discretionary visa cancellation.
6. The Bill also proposes amendments to the Incoming Passenger Card (IPC), which is the mechanism used to collect important immigration, customs and biosecurity data from travellers for border clearance purposes.

The Role of the Australian Border Force

7. The Australian Border Force (ABF) is Australia's frontline border law enforcement and international customs agency. As stewards of one of Australia's greatest strategic assets "the border", the ABF is committed to implementing Government policy and ensuring a safe, prosperous and united Australia. The ABF supports national security by protecting our border and national prosperity by facilitating legitimate trade and travel through its functions across the border continuum – pre-border, at the border and post-border. The ABF also plays a crucial role in maintaining the integrity of Australia's migration system.
8. The ABF facilitates the arrival of millions of international air and sea travellers each year, through immigration and customs clearance. Pre-Covid, volumes were in excess of 20 million movements each year, and that volume is quickly returning, with 17,060,955 inbound travellers processed in the 2022-23 financial year. We collect important data from passengers on arrival that supports the management of border risks and clearance of passengers and their goods. The information collected at the border also supports Australia's biosecurity officers to undertake their legislative functions at the border.

Incoming Passenger Card

9. Passengers arriving in Australia are required under Australian law to identify themselves and provide certain information. The IPC is the mechanism used to collect important data from travellers for border clearance purposes - immigration, customs and biosecurity. The IPC is a border management tool used by the ABF and Department of Agriculture, Fisheries and Forestry to undertake their respective border security and biosecurity functions.

10. The requirements for the completion of a passenger card are set out in the Migration Act and the *Migration Regulations 1994* (the Migration Regulations).
11. The IPC is a document providing passenger identification and an effective record of a person's entry to Australia. Passengers entering Australia are provided an IPC for completion on board their flight or ship before arrival or by the Australian Border Force on arrival. The card contains a series of declaration questions relating to migration, customs and biosecurity matters.
12. Passenger cards also serve as:
 - a declaration in relation to health and character requirements for non-Australian citizens
 - a visa application form for Special Category Visa applicants (New Zealand citizens) and for Norfolk Island Permanent Residents.
13. IPC questions relate to the key information required for border clearance purposes. The information currently collected through the IPC is also shared with other Commonwealth Agencies to support critical functions, for example the calculation of the Net Overseas Migration by the Australian Bureau of Statistics.
14. Most passengers are required to complete and present a passenger card when entering Australia. However, particular people are exempt from completing a passenger card (as prescribed in regulation 3.06 and schedule 9 of the Migration Regulations). An example of an exempt cohort is airline crew, who complete a separate crew declaration. Passengers who refuse to complete an IPC or provide false information may be penalised, and Non-Australian citizens may be refused immigration clearance.

Management of the IPC

15. The IPC is a border management tool used by the ABF and Department of Agriculture, Fisheries and Forestry to undertake their respective border security and biosecurity functions. IPC questions relate to the key information required for border clearance purposes. The information currently collected through the IPC is also shared with other Commonwealth Agencies to support critical functions, for example the calculation of the Net Overseas Migration by the Australian Bureau of Statistics.
16. Important data is ideally gathered at the earliest possible stage of the travel continuum. For non-Australians, this is at the point of visa application and decision. Collecting the information and context at this point enables greater administrative consideration and provides opportunity to collect more detail.
17. The primary purpose of the IPC is to collect information critical to border clearance processes. The Department notes the information proposed for inclusion in the IPC relates to data considered sensitive personal health information that is not necessary for border processing.
18. The IPC is infrequently amended, with the last adjustment to the card occurring in 2017 – to amend the customs declaration relating to the duty free quantity for cigarettes and tobacco. If additional questions were to be added to the IPC, consideration would need to be given to whether current critical border clearance questions could be adjusted, noting they cannot be removed.
19. Utilising the IPC for purposes other than critical border clearance processes would see the declaration used in a way not currently intended and broaden the scope beyond the requirements under the Migration Act. Any increase in scope for information gathered in the IPC may have an impact on border resources and clearance timeframes.
20. Important data is ideally gathered at the earliest possible stage of the travel continuum. For non-Australians, this is at the point of visa application and decision. Collecting the information and context at this point enables greater administrative consideration and provides opportunity to collect more detail.

Ensuring immigration integrity and community protection

21. Between 2015-16 and 2021-22, the refusal rate across the temporary and permanent visa programs increased from 2.5 per cent to 4.6 per cent (see Table 1).
22. Between 1 July 2015 and 31 March 2023, the Department and ABF:
 - refused more than 1.69 million visa applications
 - refused the entry of 19,863 travellers at an Australian airport
 - prevented more than 4,765 people from boarding flights to Australia through the ABF's network of airline liaison officers.

Table 1 Visa applications decided by program year (non-humanitarian visas)

Decision Type	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23 to 31 March 2023
Granted or Refused	8,339,513	9,052,095	9,386,838	9,607,025	7,169,298	1,338,656	2,775,376	6,070,101
Refused only	209,657	237,153	308,150	377,469	325,637	50,956	127,210	469,269
Refusal Rate	2.5%	2.6%	3.3%	3.9%	4.5%	3.8%	4.6%	7.7%

Source: **Department of Home Affairs, 2023**

Cancellations

23. All non-citizens who apply for, and are granted a visa, are expected to obey Australian laws and to meet, and continue to meet, character, health, identity, security and other eligibility requirements set out in the Migration Act. These requirements are intended to ensure the safety and security of the Australian community.
24. In addition to the capacity to refuse visa applications or entry to Australia, the visa cancellation framework supports the Department's core objectives of ensuring the protection of the Australian community and the integrity of Australia's borders and visa programs.
25. Section 501 of the Migration Act and associated general cancellation powers allow for the refusal or cancellation of a visa where the visa holder may present a risk to the Australian community. A person may fail the character test under section 501 of the Migration Act for a number of reasons, including if they have a substantial criminal record.

Table 2 Adverse section 501 (character) cancellations, 2020-21 to 2022-23 (to 31 March 2023)

Character cancellation	2020-21	2021-22	2022-23
Mandatory Cancellation (s501(3A))	914	616	405
Natural Justice — (s501(2))	7	32	<5
Cancellation without Natural Justice — National Interest (s501(3)(b))	13	<5	6
Minister's personal power — without notice (s501A(3)(b))	<5	<5	<5
Minister's personal power — with notice (s501B(2))	<5	<5	0
Character refusal	798	209	111
Character revocations (not revoked)*	438	434	269
Total	2,175	1,298	795

Source: **Department of Home Affairs, 2023**

* This refers to where a non-citizen's request for reinstatement of a visa (revocation of the character cancellation) is not successful

Table 3 Top five citizenships with adverse section 501 (character) outcomes, 2020-21 to 2022-23 (to 31 March 2023)

Character cancellation	2020-21	2021-22	2022-23	Total
New Zealand	402	249	171	822
United Kingdom	99	71	25	195
Vietnam	60	43	25	128
China	37	17	10	64
Malaysia	15	17	19	51
Other	326	258	165	749
Total	939	655	415	2,009
Character refusal	2020-21	2021-22	2022-23	Total
United Kingdom	353	44	19	416
United States Of America	115	20	5	140
New Zealand	85	17	18	120
China	15	<15	<5	32
Ireland, Republic Of	19	<10	<5	30
Other	211	106	63	380
Total	798	209	111	1,118
Character revocations (not revoked)	2020-21	2021-22	2022-23	Total
New Zealand	196	180	98	474
United Kingdom	38	36	16	90
Vietnam	29	22	8	59
Sudan	22	15	15	52
Fiji	11	11	5	97
Other	142	170	127	439
Total	438	434	269	1,141

Source: **Department of Home Affairs, 2023**

26. Non-character related cancellation powers under the Migration Act are broad ranging and provide the power to consider visa cancellation in a number of circumstances to both protect the Australian community and ensure the integrity of the migration program. Cancellation grounds include non-compliance with visa conditions, provision of incorrect information, or where the person may present a risk to the health, safety or good order of the Australian community.

Table 4 General cancellation decisions, 2020-21 to 2022-23 (to 31 March 2023)³³

General cancellation decisions	2020-21	2021-22	2022-23
Incorrect information (s109)	275	539	119
General power (s116)	1,198	927	1,358
Holder overseas (s128)	19,374	20,082	7,002
Business visa (s134)	83	68	106
All other powers ³⁴	4,846	2,796	1,461
Total	25,776	24,412	10,046

Source: **Department of Home Affairs, 2023**

³³ A visa may be recorded as cancelled more than once. For example when a visa is cancelled, the cancellation is subsequently revoked or set aside, and then the visa is cancelled again. A cancellation may be revoked or set aside for a

number of reasons, including further legal proceedings, and administrative or jurisdictional errors. Duplicates may exist. As data has been drawn from a live systems environment, the figures provided may differ slightly in previous or future reporting.

³⁴ Does not include any s501 character statistics, only s501Fs are included.