



MUSLIMS AUSTRALIA

AUSTRALIAN FEDERATION OF ISLAMIC COUNCILS INC.

The Peak body for Australian Muslims representing State & Territory Islamic Councils and Societies

ABN | 37 002 757 155
www.muslimsaustralia.com.au

3 December 2018

Legal and Constitutional Affairs Legislation Committee

Parliament House

Via email: legcon.sen@aph.gov.au

Dear Chairman,

Re: Inquiry into the Migration Amendment (Strengthening the Character Test) Bill 2018

The Australian Federation of Islamic Councils is the peak representative body for the Muslim community in Australia. Our organisation is comprised of 9 State & Territory Councils with nearly 150-member organisations across the country. While we are a faith-based body our areas of interest are broad ranging and reflect the significant input that members of the Muslim community have to Australian society generally.

We wish to make a brief submission in relation to the above Bill and thank the Committee for the extension of time to do so.

1. The general desire to protect Australian society from individuals that would do harm to others is one that all Australians support. This is particularly more so when that harm involves a level of violence against other people.
2. The expectations placed on non-citizens around their behaviour towards others, citizens or otherwise, should be equal to everyone else i.e. the laws of this country apply to any individual regardless of their citizenship status.
3. Criminal behaviour, particularly violent behaviour, is rightly something that the Australian Government should take into consideration in assessing the right of a non-citizen to remain in, or in fact enter, the country.
4. It is our view that laws and regulations should be put in place that are sufficient to meet the stated objective without adding unnecessarily to the statute books

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or adding complexity to the legal framework that is not commensurate with the outcomes that will be achieved.

5. The stated objective of the Bill, “to provide grounds for non-citizens who commit serious offences, and who pose a risk to the safety of the Australian community, to be appropriately considered for visa refusal or cancellation” is one that we generally support.
6. The Bill seeks to do this by adding a new sub-section to the Act that defines what is a ‘character concern’ in relation to the conviction for a serious crime particularly one related to violence or involving an element of non-consensual sexual conduct – what is referred to as a *designated offence*.
7. Proposed Section 5C(3) sets out the regime for this new classification of a designated offence. Sub-section 5C(3)(a) sets out the criteria for the nature of the conduct itself to be considered a designated offence and s5C(3)(b) then lays out the minimum jail term that is required for such a conviction to be considered a designate offence. In effect the conviction must meet at least 1 of the alternate criteria in 5C(3)(a) AND result in a minimum jail term set out in 5C(3)(b).
8. The minimum jail term for a designated offence is in effect not less than 2 years imprisonment. If a conviction results in a custodial sentence of less than 2 years, then it will not meet the proposed definition of a designated offence under the Bill.
9. While the above is not, in itself, controversial we note that the current Migration Act provisions already allow for a “*serious criminal record*’ to be considered by the government.
10. Section 5C(2) then defines a serious criminal record as:

For the purposes of subsection (1), a non-citizen has a ***substantial criminal record*** if:

- (a) ...
- (b) ...



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- (c) *the non-citizen has been sentenced to a term of imprisonment of 12 months or more; or*
- (d) *the non-citizen has been sentenced to 2 or more terms of imprisonment, where the total of those terms is 12 months or more; or*
- (e) ...
- (f) ...”

11. As such it appears to us that the current legislative regime provides for a lower threshold than what is in fact being proposed in the Bill before Parliament.
12. While there is no equivalent definition of a ‘designated offence’ as proposed we are of the view that any added policy benefit of having such a definition is not sufficient to warrant adding to the already complex legislative regime in this area.
13. It is our respectful submission that the current provisions of the Act have sufficient scope within them to cover the criminal convictions, and definition of *character concern*, in the proposed Amendment. While we support the public policy position being put forward, we are of the view that it is already adequately covered and does not require further legislation.

We thank the Committee for its consideration of the above and look forward to being advised of the recommendations of your inquiry.

Regards

Ghaith Krayem

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