

# Dissenting Report of the Australian Greens

1.1 The Australian Greens strongly oppose the amendments proposed in the Migration Amendment (Character and General Visa Cancellation) Bill 2014. The Bill hands unprecedented power to the Minister of the day to cancel and refuse to grant a person a visa. This will have serious consequences for everyday Australians and could result in indefinite detention should the person be unable to return to their country of origin due to fear of persecution or serious harm.

1.2 This Bill, among other things:

- unjustifiably expands the Minister's discretionary powers;
- significantly lowers the character test threshold;
- introduces mandatory visa cancellation without notice to the individual;
- makes innocent association with a group a basis for failing the character test;
- makes 'reasonable suspicion' the threshold for cancellation or refusal;
- bars the access to merits review; and
- could result in the indefinite detention of individuals.

1.3 Submitters to the inquiry have warned the Senate against the amendments proposed in this Bill and have recommended that the Bill not be passed.

1.4 The rationales provided by the government are not adequate for making such drastic changes. Simply stating that the character provisions have remained unchanged since 1999 is not sufficient, particularly when the current legislation is far reaching in its ability to revoke or cancel visas.

1.5 The fact that the character provisions have not been changed for some time does not mean that there is anything inherently wrong with them; rather it suggests that the current laws have been working more than adequately.<sup>1</sup>

1.6 These amendments will give the Minister unprecedented power to determine when to refuse or cancel a visa and will bar merits review. In particular the Minister will have the power to revoke a visa if incorrect information was provided at the time of application, retrospectively apply the new criteria to past visa grant decisions and overrule AAT, MRT and RRT decisions. None of these decisions will be reviewable. Should this Bill pass there will be no checks and balances in place which may result in incorrect decision being made.

1.7 Provisions to significantly lower the risk thresholds are particularly concerning. The practical implications of these amendments will see individuals visas cancelled in circumstances where they may not actually present a risk to the community, as was the case with Dr Mohamed Haneef.<sup>2</sup>

---

1 ANU College of Law: Migration Law Program, *Submission 6*, p. 2.

2 Refugee Council of Australia, *Submission 5*, p. 3.

1.8 The provisions will enable visa cancellation on the grounds of association, will apply a 'risk' threshold rather than a 'significant risk' threshold and will also permit the Minister to cancel a visa if he/she 'reasonably suspects' an individual has been involved in criminal activity. These powers are unnecessary, far too broad and do not offer appropriate safeguards.

1.9 As noted by the Asylum Seeker Resource Centre<sup>3</sup> and the Refugee Council of Australia<sup>4</sup> this Bill will have serious implications for asylum seekers and refugees. A personal decision by the Minister to cancel a visa may result in an individual facing indefinite detention as, unlike other individuals to whom the broadened cancellation powers apply, they cannot be removed from Australia due to fears of persecution or serious harm.

1.10 Similarly, the amendments that will grant the Minister the power to cancel a visa if he/she is not satisfied of the visas holder's identity or when incorrect information has been provided at the time of application will disproportionately affect asylum seekers. These amendments fail to recognise the realities of fleeing persecution and may result in those in genuine need of protection being subjected to indefinite detention or returned to danger.

1.11 The amendments will have significant implications on long term residents. As noted by the ANU College of Law, the decision to expel a 'person should not be reached in the same way as a decision to refuse to grant a visa. To treat both situations similar fails to recognise the significant impact of visa cancellation on a resident, particularly a long term resident<sup>5</sup> with family ties and a livelihood in Australia.

1.12 The Australian Greens submit that the amendments proposed in this Bill are unnecessary and have not been sufficiently justified by the Minister for Immigration and Border Protection. The amendments hand unprecedented and unchecked power to the Minister of the day and unreasonably lower the threshold for visa cancellation or refusal.

### **Recommendation 1**

**The Australian Greens recommend that provisions relating to thresholds for visa refusal or cancellation should require the individual to pose a significant risk.**

### **Recommendation 2**

**The Australian Greens recommend that visa cancellation and refusal decision making processes should be subject to independent merits review.**

---

3 Asylum Seeker Resource Centre, *Submission 11*.

4 Refugee Council of Australia, *Submission 5*.

5 ANU College of Law: Migration Law Program, *Submission 6*, p. 4.

**Recommendation 3**

**The Australian Greens recommend that in light of the amendments existing limitations on review of cases of Ministerial discretion should be reviewed.**

**Recommendation 4**

**The Australia Greens recommend that this Bill be opposed by the Senate.**

**Senator Sarah Hanson-Young**

**Australian Greens**

