

# Australian Greens Dissenting Report

1.1 The Australian Greens draw attention to the committee report's statement that 'the majority of the submitters supported the bill in its current form'. There were four submissions made to this inquiry. One submission supporting the bill was from the sponsoring Minister's own department, the Department of Home Affairs (Submission 4). Two submissions supporting the bill were written in less than half a page (Submissions 1 and 2). One submission raised several and significant concerns with the bill (Submission 3).

1.2 Regarding justification of the bill, the Law Council of Australia (Submission 3) argued that the collection of additional personal identifiers as a prerequisite to making valid visa applications (in certain instances) has no clear link to the bill's stated objectives of preventing terrorism. As such, the Law Council called on the Government for greater clarity on:

...how personal identifiers are to be used in the visa processing framework and the extent to which applicants will be informed of these processes and have an adequate opportunity to respond.<sup>1</sup>

1.3 As noted in the committee's report, the Parliamentary Joint Committee on Human Rights (PJCHR) has also previously raised concerns regarding the collection of additional personal identifiers under the *Migration Act 1958*, particularly regarding privacy safeguards and 'how the proposed measure would apply to persons "who may be incapable of understanding and consenting to the collection of personal identifiers", such as children'.<sup>2</sup>

1.4 This latter concern, regarding consent, is shared by the Australian Greens, who question whether consent for all people subjected to this legislation could be considered fully informed—where socio-economic determinants such as language, education, age, culture, and/or location could be compromising factors—and whether consent could in certain circumstances be considered to be given under duress, for example, for persons fleeing persecution.

1.5 Furthermore, reported by the PJCHR, the proposed collection of additional personal identifiers 'could lead to distinctions based on protected attributes (such as, race, sex, religion or national origin) which could amount to direct discrimination'.<sup>3</sup>

1.6 On these concerns regarding consent and discrimination, as noted in the committee's report, but bearing reiteration in this dissenting report: 'At the time of this committee's adoption of this report, the Minister had not yet provided a response'.

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1 Law Council of Australia, *Submission 3*, p. 2.

2 See paragraph 1.9 of committee report; Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: Report 1 of 2019*, 12 February 2019, p. 41.

3 Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: Report 1 of 2019*, 12 February 2019, p. 43.

1.7 As submitted by the Law Council of Australia, further discrimination against vulnerable peoples that could result from additional personal identifiers being required at the time of visa application, as opposed to post-lodgement (for which there is already capacity within current legislation), could include 'legitimate and worthy visa applicants being denied the opportunity to lodge a valid visa application due to no fault of their own'.<sup>4</sup>

1.8 In May 2018, the Senate passed a Greens motion calling on the Government to strengthen protections in Australia's 'woefully inadequate' *Privacy Act 1988*, to provide protections comparable with the European Union's General Data Protection Regulation (GDPR). However, this bill, if considered within the GDPR, would likely fail the following tests:

- processing is permitted if it is necessary for the purposes of legitimate interests pursued by the controller (or by a third party), except where the controller's interests are overridden by the interests, fundamental rights or freedoms of the affected data subjects which require protection, particularly where the data subject is a child (Article 6); and
- if informed consent is used as the lawful basis for processing, consent must have been explicit for data collected and each purpose data is used for (Article 7).

1.9 Another significant concern for the Australian Greens regarding this bill is its use of a non-disallowable legislative instrument to determine specified collection of specified personal identifiers for specified classes of visa applicants.

1.10 This concern was also held by the Senate Scrutiny of Bills Committee and the Law Council of Australia, with the latter submitting:

...without adequate parliamentary oversight and consultation requirements, determinations made under the proposed reforms as to applicant classes, the types of personal identifiers or the manner in which those identifiers are provided, may cast doubt over the non-discriminatory nature of Australia's migration programme.<sup>5</sup>

## **Recommendation 1**

**1.11 The Australian Greens recommend that the bill not be passed.**

**Senator Nick McKim**

**Senator for Tasmania**

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4 Law Council of Australia, *Submission 3*, p. 3.

5 Law Council of Australia, *Submission 3*, p. 4.