

Dissenting Report from the Australian Greens

1.1 The Senate inquiry into the Migration Amendment (Character Cancellation Consequential Provisions) Bill 2016 (Bill) received eight submissions in total, seven of which were from lawyers and experts in migration and the protection of civil liberties. All submissions raised serious concerns regarding this Bill, with the exception of the submission made on behalf of the government by the Department of Immigration and Border Protection.

1.2 Despite the evidence provided and concerns raised by these experts, the chair's report has recommended that this Bill be passed, subject to the recommendation that the government consider amending the Explanatory Memorandum to further clarify the operation of the retrospective provisions of the Bill.

1.3 The Australian Greens are concerned that the Bill seeks to significantly expand the scope upon which the minister may cancel a visa on character grounds.

1.4 In particular, the Australian Greens are concerned that:

- the proposed amended definition of 'character concern' is too broad and affords too much discretion on the part of the minister;
- the proposed omission of the word 'significant' from the existing term 'significant risk' in paragraph 5C(1)(d) unreasonably lowers the threshold that the minister must be satisfied of in relation to whether a person is allowed to enter or remain in Australia; and
- the proposed amendment would allow consideration of the fact that a non-citizen has simply been charged with an offence without the need for them to have been actually convicted by a court.

1.5 The Australian Greens note the committee's comment that it has previously considered the provisions of the Bill during its inquiry into the Migration and Maritime Powers Bill (No. 1) 2015 (Migration and Maritime Bill). In stating that the committee's views on the Bill remain consistent with its previous findings in relation to the Migration and Maritime Bill, the chair refers to its earlier statement that:

Throughout the inquiry, the committee heard concerns that the [Migration and Maritime] Bill potentially breaches Australia's international law obligations. The department assured the committee—most vehemently in respect of Schedule 4—that the Bill does not breach, and is consistent with, those obligations. The committee accepts this advice...

1.6 The Australian Greens note that this current Bill is a direct replicate of Schedule 2 of the Migration and Maritime Bill, whereas the above comment, in particular the concerns regarding breaches of international law, pertains to Schedule 4 of the Migration and Maritime Bill. Assurances made by the department that Schedule 4 of the Migration and Maritime Bill does not breach international law are therefore not relevant to this current Bill. The Australian Greens are therefore unconvinced as to

how previous assurances by the department of this nature relate to this current Bill or address the serious concerns raised by the submissions received.

Conclusion

1.7 The Australian Greens are concerned that the chair does not appear to have appropriately responded to and addressed the concerns raised by the vast majority of experts regarding this Bill. The Australian Greens recommend that the Bill be rejected by the Senate.

Recommendation 1

1.8 The Australian Greens recommend that the Bill be rejected by the Senate.

Senator Sarah Hanson-Young
Senator for South Australia