



## Settlement Council of Australia

# Submission to the Senate Standing Committee on Legal and Constitutional Affairs: Inquiry into the *Migration Amendment (Strengthening the Character Test) Bill 2019*

The Settlement Council of Australia (SCoA) would like to thank the Committee for the opportunity to make a submission on its Inquiry into the *Migration Amendment (Strengthening the Character Test) Bill 2019*.

SCoA is the peak body represents services that support recently arrived refugees and other migrants settle into the Australian community. SCoA has over 100 member organisations that work to support refuge and migrant settlement, including by promoting multiculturalism and developing social cohesion.

In 2014, migration legislation was amended to widen the grounds for cancelling permanent residency visas on the basis of character, resulting in dramatic increases in cancellations. SCoA is concerned that this Bill, which introduces the category of “designated offences” to the character test will enable officials to cancel a permanent visa and deport the affected person who has committed a crime, even when it is a minor offence, and even in cases where a judge has determined that there are circumstances that do not warrant a prison sentence.

This means that passage of the Bill would be likely to result in deporting many long term residents who are not given prison sentences, whose only family ties are in Australia, including young people convicted of minor offences, such as shoplifting, and people with caring responsibilities in Australia.

### Departmental discretion

The Bill will give the Minister greater discretion to cancel a visa on the basis of character. A wide range of factors will be considered, including:

- the protection of the Australian community from criminal or other serious conduct
- the best interests of minors in Australia
- expectations of the Australian community
- Australia's international obligations
- the impact on victims
- the nature and extent of the person's ties to Australia.<sup>1</sup>

---

<sup>1</sup> Second Reading Speech, *Migration Amendment (Strengthening the Character Test) Bill 2019*, Minister for Immigration

Departmental advice to the Minister that are based on these factors will be discretionary, requiring internal guidance on their application to avoid inconsistent decision making. This means that, once the legislation is in place, the Department of Home Affairs would set the policy framework and the criteria that would be used to recommend deportation. The policy could be changed at any time, without changing the legislation. Further, there it would not require a legislative instrument, so that the Parliament would not have the opportunity to review new criteria and disallow changes that it considered to be unreasonable, unfair and overly harsh.

## **Effect on visa holders**

The proposed provisions will have a particularly detrimental effect on people from a refugee background. People need to feel safe and that they are treated equally by the law to be able to settle well in Australia.

The threat of deportation of a family member who has committed a minor offence, even when it is unlikely that they will receive a custodial sentence, will hang over the entire family from the time a charge is laid until after the hearing, to the period when officials assess the case. If a decision is made to deport the person, there may be no safe country to send the offender or they may be sent back to a country from where other family members have fled and are unable to return, so that the family may never be reunited. At least some of these cases will separate families where the person deported has financial and/or caring responsibilities for other family members.

More broadly, passage of the legislation in itself could create a sense of alienation by refugees and other migrants who feel insecure and that they are treated differently from other Australians, threatening social cohesion.

SCoA urges the Committee to recommend that this Bill be rejected.

**7 August 2019**