



QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

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Watching Them While They're Watching You

Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Migration Amendment (Strengthening the Character Test) Bill 2019

Please accept this short submission in relation to the above Bill, despite it being late.

The Bill proposes to amend the Migration Act 1958 to extend the power of the minister to deport non-citizens. It does so by extending the character test to include the fact that the person has committed offences, referred to as designated offences. Broadly speaking, designated offences are offences involving: violence against a person, the use or possession of weapons, breaching an apprehended violence order (or similar), or non-consensual sexual acts. The offence must be punishable by imprisonment for a maximum term of not less than two years.

The law will apply to visa applications submitted prior to its commencement.

The Council rejects this extension of the Minister's power. It is in our view entirely misconceived.

The history of the application of this law involves many people being exiled from this country who both as a matter of morality and international law are Australians

In this regard the decision in *Nystrom v Australia* illustrates the point¹. The central point is to examine the nature and closeness of the connection between a person and a country, to determine whether or not they actually are aliens. Those who have become a part of the Australian community, are Australians whether they have taken out citizenship.

This legislation makes no provision for the consideration of that issue.

It also in our submission violates the fundamental principle that people should not be punished twice.

¹ Human Rights Committee CCPR/C/102/D/1557/2007 – This decision is not referred to in the explanatory memorandum despite its clear relevance

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A significant number of those who have had their visa cancelled, having been punished according to law, have been sentenced to a bleak existence without their loved ones, without income and in many cases because they can't speak the language with no prospect of any meaningful existence in the communities to which they have been sent. This legislation will increase significantly the number of who might in the future suffer this ignominy.

The reality is that Australians who have served their time for similar offences resume their life in the community with their families. For all Australians to be treated equally before the law in these circumstances we would have to reinstate the ancient form of punishment of exile. We should deal with these people as we deal with all other Australians who have been released from prison

It is indeed ironic that our country has in a fashion returned to the practices which led to its founding.

These faults are compounded by the fact of the Act's retrospectivity in so far as it will apply to applications made before it commences.

In the QCCLs view section 501 ought to be amended so that:

1. It only applies to those convicted of crimes which would carry a penalty in Australia of two years or more jail
2. It does not apply to stateless persons.
3. It cannot apply to anyone who has lived in Australia for two years without committing a crime.
4. In no circumstances can a person be deported who has lived in Australia for more than 10 years.
5. No one who will be subject to human rights abuses can be deported

We trust this is of assistance to you in your deliberations

Yours faithfully



Michael Cope
President
For and on behalf of the
Queensland Council for Civil Liberties
12/08/2019