

6th August, 2019

Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Dear Committee Secretary

Re: Inquiry into the Migration Amendment (Strengthening the Character Test) Bill 2019.

Thank you for inviting the Multicultural Youth Advocacy Network (MYAN) to make a submission to the Senate Legal and Constitutional Affairs Legislation Committee's inquiry into the Migration Amendment (Strengthening the Character Test) Bill 2019 ('the Bill'). MYAN prepared a submission to the previous Committee Inquiry and we have prepared this letter as we have concerns about the current Bill and additional proposed amendments. MYAN also endorses the submission prepared by the Victorian Visa Cancellation Working Group.

Multicultural Youth Advocacy Network Australia (MYAN) is the national peak body representing the rights and interests of young people aged 12-24 from refugee and migrant backgrounds. MYAN works in partnership with young people, government and non-government agencies at the state and territory and national levels to ensure that the particular needs of young people from refugee and migrant backgrounds are recognised in policy and practice. MYAN provides expert policy advice to government, undertakes a range of sector development activities, and supports young people to develop leadership and advocacy skills.

MYAN recognises the need to address community safety concerns with appropriate, targeted responses however, we remain deeply concerned by the additional proposed amendments to existing visa cancellation powers and the impact this will have on vulnerable young people and their families. MYAN provided a submission to the Migration Amendment (Strengthening the Character Test) Bill 2018 (attached) outlining our concerns about those changes.

MYAN is opposed to the Government's proposed changes and we reiterate our belief that a young person's visa or residency status should not negate or minimise consideration of youth justice approaches (including diversion and rehabilitation options) first. We recommend that the Bill be rejected in its current form for reasons outlined in our previous submission and summarised here - specifically:

- The Bill fails to protect vulnerable young people individuals, from migrant, refugee or asylum seeker backgrounds;
- That any reference to visa cancellations in legislation should explicitly exclude children/young people under the age of 18 from such processes;
- The 'double penalisation' of young people under the current visa cancellations regime and its undermining of positive initiatives in the Australian youth justice system, and
- The lack of data on young people and transparency of best interest determination process.

These concerns remain. Further, MYAN strongly opposes additional proposals to expand the circumstances under which a person can have their visa cancelled and would like to express additional concerns at the:

1. Lack of differentiation between young people under the age of 18 and adults

MYAN previously raised significant concerns to this Committee about the lack of differential treatment between young people under the age of 18 and adults outlined in this bill and we regret that this has not been remedied in this Bill proposal. The Australian legal system recognises that juveniles should be subject to a system of criminal justice that is separate to the adult system and MYAN believes this should be reflected in this Bill proposal. MYAN remains opposed to any proposal that risks the detention or deportation of young people under 18.

2. Focus on a punitive rather than a restorative justice approach for young people from migrant, refugee and asylum seeker backgrounds

MYAN believes that the application of the Character Test is not consistent with Australian approaches to juvenile justice, and we are deeply concerned at a parallel system which allows one child as a citizen the support to assist in their rehabilitation and reintegration after engagement with the criminal justice system, while depriving another child of the same approach to justice.

3. Contravention of Australia's international obligations

MYAN reiterates concerns reported by the Parliamentary Joint Committee on Human Rights that the measures proposed in the Bill are likely to be incompatible with Australia's non-refoulement obligations, the right to liberty and the protection of the family and the obligation to consider the best interests of the child as a primary consideration.

The Explanatory Memorandum outlines that the proposed Bill considers that some children will be subject to indefinite detention or removal, which is contrary to Australia's international obligations, specifically to Article 37 of *the Convention on the Rights of the Child (CROC)* which requires Australia to ensure that:

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time' and Article 33 of the 1951 Refugee Convention which requires Australia to ensure that:

"(1) No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion..."

Given that these consequences of forced removal and/or detention are so grave, we strongly reiterate that risk reduction approaches to addressing offending among all young people residing in Australia must focus on diversion and rehabilitation rather than removal or detention – in recognition that young people are likely, with appropriate intervention, to be successfully diverted from this behaviour, especially if underlying factors placing them at risk are addressed.

4. Lack of clarity about the circumstances under which a child can have their visa cancelled

While the Explanatory Memorandum states that a child's visa would be cancelled only in exceptional circumstances, it fails to provide any explanation of these circumstances.

5. Additional circumstances under which a person can have their visa cancelled or refused

MYAN is concerned that this Bill proposes adding to an already extensive list of offences which can cause a person's visa to be cancelled. Along with the introduction of measures to cancel a person's visa on the grounds that a crime *could have* a possible penalty of at least two years on character grounds, the proposed changes will significantly lower the threshold in terms of failing the Character Test. As this further expands the scope for visa cancellation, we are concerned that it increases the possibilities for detrimentally impacting on vulnerable young people.

For example, the proposed changes significantly increase the risk that young people could be subject to indefinite detention or deportation for minor offences such as shoplifting, verbal threats or dangerous driving. We do not believe that such extreme measures are consistent with Australian community expectations. We also believe that this undermines a youth justice approach and that such extreme measures are unnecessary for the protection of the community and the maintenance of public order.

6. Individual and community awareness of these laws

Given the grave and life-changing consequences of failing the 'Character Test', we are deeply concerned about the potential lack of awareness of these laws, particularly for young people who arrived in Australia as children, and their families. A clear process is needed for increasing community awareness about the consequences of this Bill. Similarly, a clear process is needed to inform young people from refugee and asylum seeker backgrounds about the impact that minor criminal offences

such as, a teen sharing intimate images with a girlfriend or boyfriend, damaging property, verbal threats, or dangerous driving could have on their visa status.

MYAN **recommends** that:

1. The Bill be rejected in its current form.
2. Young people under the age of 18 should be exempt from the Character Test provisions. At a minimum, any reference to visa cancellations in legislation and guidance explicitly excludes young people under the age of 18 from such processes.
3. The Committee removes the addition of certain offences that even further lowers the bar for visa cancellations of vulnerable young people.
4. The Committee prescribe what 'exceptional circumstances' would result in the visa cancellation of a child.
5. The Committee provide information about how they propose to disseminate this information to individuals and communities at risk of being impacted by these changes.

MYAN would be pleased to provide further information on any part of this submission to assist the Committee.

Yours faithfully,



Nadine Liddy

National Coordinator

Multicultural Youth Advocacy Network (MYAN)