



QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

Protecting Queensland's individual rights and liberties since 1966

Watching Them While They're Watching You

The Executive,
Queensland Council for Civil Liberties
PO Box 2281
Brisbane, 4001, Queensland.

Thursday, 1 October 2015

Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs

By Email: LegCon.Sen@aph.gov.au

To whom it may concern,

Migration Amendment (Charging for a Migration Outcome) Bill 2015

I write to you on behalf of the Queensland Council for Civil Liberties ("the QCCL") to make a submission to the Committee in relation to the above Bill.

ABOUT THE QCCL

The QCCL is a voluntary organisation established in 1967 which has as its principle purpose the implementation of the Universal Declaration of Human Rights in Queensland and Australia.

Article 11 of the Universal Declaration provides:

Article 11.

Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

APPROPRIATENESS OF POWERS

It is submitted that subsection (c) as outlined below contravenes article 11 as it states that a person can be found guilty of an offence that has not yet occurred but has only been spoken about.

(1AD) Subsection (1AC) applies:

- (a) Whether or not the visa holder held the current visa or any previous visa at the time the benefit was asked for, received, offered or provided; and
- (b) Whether or not the sponsorship-related event relates to the current visa or any previous visa that the visa holder held; and
- (c) Whether or not the sponsorship-related event occurred.

Therefore it is submitted that subsection (c) be removed as it presumes a person's guilt prior to the commission of any act.

The same applies for Section 2 below.

245AS Prohibition on offering to provide or providing a benefit in return for the occurrence of a sponsorship-related event

- (1) A person (the *first person*) contravenes this subsection if:
 - (a) the first person offers to provide, or provides, a benefit to another person (the *second person*); and
 - (b) the first person offers to provide, or provides, the benefit in return for the occurrence of a sponsorship-related event.

Civil penalty: 240 penalty units.

- (2) To avoid doubt, the first person contravenes subsection (1) even if the sponsorship-related event does not occur.

It is therefore submitted that section 2 above be omitted as well for the same reason.

Finally, in the section below, the note that reverses the onus of proof should also be omitted as it also breaches article 11.

245AR Prohibition on asking for or receiving a benefit in return for the occurrence of a sponsorship-related event

- (1) A person (the *first person*) contravenes this subsection if:
 - (a) the first person asks for, or receives, a benefit from another person; and
 - (b) the first person asks for, or receives, the benefit in return for the occurrence of a sponsorship-related event.
- (2) To avoid doubt, the first person contravenes subsection (1) even if the sponsorship-related event does not occur.
- (3) Subsection (1) does not apply if the benefit is a payment of a reasonable amount for a professional service that has been provided, or is to be provided, by the first person or a third person.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

The note makes the presumption that the person is guilty and has the burden of proving his/her own innocence which violates article 11.

We trust this submission is of assistance in your deliberations.

Yours faithfully

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Andrew Sinclair

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Julie Jansen

For the Queensland Council for Civil Liberties.