**QUESTION TAKEN ON NOTICE**

**SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE INQUIRY INTO THE MIGRATION AMENDMENT (CHARACTER AND GENERAL VISA CANCELLATION) BILL 2014 – 10 NOVEMBER 2014**

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

The Committee asked:

**QUESTION**

1. **A number of submissions have stated that the strengthening of the subjective elements of the character test could result in any visa application being refused or any visa being cancelled (see for example proposed changes to paragraphs 116(1)(e) and 501(6)(d) of the *Migration Act 1958* (Cth) (Act)).[1] As a result, visa holders and applicants may be subject to a high degree of uncertainty as to their continued migration status. What is the department's response to these claims?**

*Answer:* The existing cancellation grounds already contain a degree of subjectivity, both in terms of the making of a determination of whether a non-citizen is subject to a particular cancellation ground, and then in terms of determining whether or not to exercise the discretion to cancel a non-citizen's visa. It should be noted that the vast majority of both temporary and permanent visa holders abide by the law and follow immigration rules. These amendments are designed to more effectively capture for consideration of visa cancellation (or refusal under section 501 of the Act) the small number of those non-citizens not currently covered by the existing legislation. The Australian community expects that the Australian government can and should refuse entry to non-citizens, or cancel their visas, if they commit serious crimes in Australia or elsewhere.

**QUESTION**

2. **The EM notes that the intention behind changes to paragraph 501(1)(d) of the Act is to make the threshold a more than minimal or trivial likelihood of risk. The current Ministerial guidelines (in Direction No 55) specify that the current test of 'significant risk' is enlivened if there is evidence suggesting that there is 'more than a minimal or remote chance' that the person would engage in the relevant conduct. Why is there a need for change? If it is changed, will the wording in the EM be incorporated into revised Directions?**

*Answer:* The purpose of this amendment is to clarify the threshold of risk that the Minister or a delegate can accept before making a finding that a non-citizen does not pass the character test because they may engage in specified conduct. The intention is that the level of risk required is more than a minimal or remote risk that the non-citizen would engage in any of

[1] See RACS, *Submission 2*, pp 3-4; Refugee Council of Australia, *Submission 5*, pp 2-4; ANU College of Law: Migration Law Program, *Submission 6*, pp 10-11; Australian Human Rights Commission, Submission 8, pp 8-9, 13-14; New South Wales Council for Civil Liberties, *Submission 9*, pp 15, 17; Law Institute Victoria, *Submission 12*, pp 4, 8-9; Refugee & Immigration Legal Centre, *Submission 13*, p. 9.

the conduct specified in paragraph 501(6)(d) of the Act, without requiring the Minister or delegate to prove that it amounts to a significant risk.
This amendment gives primacy to the protection of the Australian community and is particularly important in the offshore visa context. In considering whether a non-citizen should be granted a visa to come to Australia, there is an expectation that the non-citizen will not cause or threaten harm to either individuals or the Australian community. Where there is information that suggests that a visa applicant presents more than a minimal or remote risk of causing harm to an individual or the broader Australian community, it is entirely appropriate that the non-citizen's visa application be considered for refusal under subsection 501(1) of the Act.

**QUESTION**

3. **The Law Institute of Victoria has argued that the proposed changes to paragraph 116(1)(e) of the Act could result in the cancellation of a person's visa on the ground that they have a communicable disease and therefore pose a risk to the health of the Australian community.[2] What is the department's response to these claims?**

*Answer:* The department is of the view that current paragraph 116(1)(e) of the Act already allows for the cancellation of a person's visa on the ground that they have a communicable disease, where that disease poses a risk to the health of the Australian community. Issues such as the communicability of the disease, treatment options and mortality rates are now, and would continue to be, important considerations in determining whether a person should have their visa cancelled on the basis of their posing a risk to the health of the Australian community. This is consistent with the discretionary nature of the power in paragraph 116(1)(e) of the Act.

**QUESTION**

4. **Given the relatively low numbers of visa cancellations over the past few years (see table below[3]), it appears that the proposed amendments are targeting a small cohort. Why are such changes necessary?**

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|---|---|---|---|---|---|---|---|
| **Warnings** | **334** | **617** | **149** | **864** | **1146** | **1240** | **888** |
| **Cancellations** | **116** | **103** | **86** | **58** | **132** | **157** | **139** |

*Answer:* The character provisions in section 501 of the Act apply to both visa holders and visa applicants. The Minister has voiced a clear commitment to ensuring that non-citizens do not pose a risk to the Australian community, and has expressed a low tolerance for people who are seeking to come to Australia, and have engaged in criminal activity or may engage in activities that are inconsistent with a tolerant and peaceful society. The proposed amendments are not designed to necessarily result in large increases in the number of people

2 Law Institute Victoria, *Submission 12*, pp 4, 8-9

3 ANU College of Law: Migration Law Program, *Submission 6*, p. 8.

whose visa applications are refused and/or whose visas are cancelled. While it is expected the cohort of non-citizens who will be affected by this amendment are relatively small the criminality and risk posed by this cohort to the Australian community is significant. This amendment will ensure that those non-citizens who may pose a risk to the Australian community are more effectively captured for consideration of visa cancellation or refusal.

**QUESTION**

5. **The New South Wales Council for Civil Liberties has questioned the need for the addition of proposed subsection 116(1AA) as the same result could be achieved through the existing provisions (sections 101-105 and 109) of the Act.[4] What is the department's response to these claims?**

*Answer:* It is necessary to put it beyond doubt that the Minister may cancel a visa if the Minister cannot be satisfied as to a person's true identity. Sections 101-105 and 109 of the Act operate within a regime of non-compliance. That is, it is only possible for the Minister to cancel a visa under section 109 of the Act in circumstances where the visa holder has not complied with one or more of sections 101 – 105 of the Act. Those provisions capture only some situations in which the Minister may not be satisfied of a visa holder's identity, but do not capture all situations.

For example, those provisions do not capture a situation in which a visa holder has provided two or more contradictory pieces of information about their identity. In such cases, it may not be possible for the Minister or delegate to form a conclusion regarding which document or piece of information is genuine, and in relation to which document non-compliance occurred. However, this situation would be caught by proposed new subsection 116(1AA) of the Act, in the sense that it would be open to the Minister or delegate to find that they are not satisfied of the person's identity as a result of the inconsistent information about the person's identity having been provided.

**QUESTION**

6. **The main justification for the amendments appears to be that little has been changed in the relevant frameworks since the 1990s, but the environment in relation to entry and stay of non-citizens in Australia has changed dramatically. Can the department provide examples that demonstrate why the current provisions of the Act are insufficient?**

*Answer:* The amendments address a number of deficiencies in the current character and general visa cancellation framework which have emerged since the late 1990s. These deficiencies are described in both the department's submission to the Committee, and the Explanatory Memorandum that accompanied the Migration Amendment (Character and General Visa Cancellation) Bill 2014. They include cases where:

- non-citizens found guilty of or convicted of child-sex offences and placed on a child sex offenders register were found to pass the character test;

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4 New South Wales Council for Civil Liberties, *Submission 9*, p. 17.

- non-citizens engaging in identity fraud were found to not be liable for visa cancellation;
- visa applicants with long histories of violent and criminal behavior passing the character test because they had not been sentenced to the requisite 24 months aggregate imprisonment;
- the use of paragraph 116(1)(e) of the Act being affected by judicial interpretation to the extent that it could only be used to cancel a visa in limited circumstances; and
- non-citizens who had been convicted of serious crimes offshore, and who were 'pardoned' and released from prison early, being found to pass the character test despite the pardon only relieving the person of having to serve the rest of their sentence.

**QUESTION**

7. **A few submissions have alluded to the case of Dr Haneef.[5] Can the department explain what safeguards would be put in place to avoid punitive treatment for innocent association?**

*Answer:* Proposed paragraph 501(6)(b) of the Act does not alleviate the need for there to be an objective basis for a determination to be made that a non-citizen is reasonably suspected of being a member of a group or organisation that is involved in criminal conduct, or that the non-citizen has an association with a person, group or organisation reasonably suspected of being involved in criminal conduct.

The proposed amendment does not alter the Minister's obligations arising from *Haneef v Minister for Immigration and Citizenship [2007] FCA 1273.* In order for a suspicion to be reasonable it must be rational and open to be made on the basis of available evidence. In assessing such evidence the Minister or delegate would still be required to consider the nature, degree, frequency and duration of the membership or association. Whilst familial or social connections may, to a degree, go to the formation of a reasonable suspicion, those connections would have to be of requisite relevance to these considerations and be linked to involvement in criminal conduct. That is, familial or social connections will not, of themselves, be sufficient to enliven the test in proposed new paragraph 116(1)(b) of the Act.

**QUESTION**

8. **What is the department's response to the argument that the proposed subsection 501(3A) would result in double punishment and may therefore fall foul of the rule of autrefois convict?**

*Answer:* A person whose visa has been cancelled under proposed new subsection 501(3A) of the Act is able to seek revocation of this decision. Merits review of a decision of a delegate not to revoke the decision to cancel the visa will also be available under proposed new

[5] Refugee Council of Australia, *Submission 5*, p. 3; ANU College of Law: Migration Law Program, *Submission 6*, p. 5; Scales Community Legal Centre, *Submission 7*, pp 5-8; New South Wales Council for Civil Liberties, *Submission 9*, pp 6-7; Asylum Seeker Resource Centre, *Submission 11*, pp 3-4; Law Institute Victoria, *Submission 12*, p. 3.

section 501CA of the Act. In seeking revocation of the cancellation decision, the person whose visa has been cancelled may provide any supporting information that they wish to have taken into account. In deciding whether or not to revoke the cancellation of the visa under proposed subsection 501CA of the Act, the Minister or delegate would take into account all relevant factors including, for example, the seriousness of the criminal activity, and Australia's obligations under international law.

The cancellation of a visa under proposed subsection 501(3A) of the Act is not concerned with convicting or punishing the visa holder for the crime for which they have been convicted. Rather, the cancellation of a visa under that provision is concerned with ensuring that the person is kept in immigration detention until such time as the cancellation decision is revoked or otherwise set aside, or the immigration status of the person is otherwise resolved.

**QUESTION**

9. **Can the department explain why mandatory cancellation would be preferred to the minister's current discretionary powers under subsection 501(3)?**

*Answer:* Mandatory cancellation of a visa under proposed subsection 501(3A) of the Act seeks to ensure that non-citizens who potentially pose a risk to the safety of the Australian community remain in immigration detention until that risk has been assessed and their immigration status has been finally determined.

The current processing requirements for considering whether to cancel a visa under section 501 of the Act necessitate the provision of natural justice to a non-citizen at the front end of the process. This can be a time consuming and lengthy process and where a non-citizen comes to the attention of the immigration department toward the end of their sentence, means that a risk exists that a decision about whether or not to cancel their visa will not be made before the non-citizen is released into the community at the completion of their sentence. This is unacceptable where such a person poses a risk to the safety of the Australian community because they have a substantial criminal record on the basis of having been sentenced to death, sentenced to imprisonment for life or sentenced to a term of imprisonment of 12 months or more, or been convicted of one or more sexually-based offences involving a child, been found guilty of such an offence or had a charge proved against them for such an offence.

**QUESTION**

10. **Can the department give examples of why the proposed subsection 501(3A) is needed?**

*Answer:* There are a variety of circumstances in which a prisoner with a serious criminal history may be released from prison before their visa is cancelled under section 501 of the Act. One such case is where a non-citizen spends a significant time in remand prior to sentencing, which is subsequently taken as time served by the sentencing judge. In this situation a non-citizen may only spend a short time in prison, resulting in the department only becoming aware of the case shortly before the person is released upon completion of their sentence. Proposed subsection 501(3A) ensures that primacy is given to ensuring that the Australian community is protected from the risk of harm posed by such a non-citizen, and places the onus on the non-citizen to provide reasons as to why the cancellation of their visa should be revoked.

**QUESTION**

**11. It has been submitted by the ANU College of Law Migration Law Program that the proposed mandatory cancellation provision effectively denies a prisoner a right to parole.[6] What is the department's response to this claim?**

*Answer:* Whether a prisoner has a right to parole is a matter for the relevant parole board. Parole relates to the suitability of a non-citizen serving out the remainder of their sentence in the community, whereas visa cancellation involves a decision about the suitability of a non-citizen continuing to hold a visa. If a non-citizen's visa is cancelled under proposed subsection 501(3A) of the Act, they become an unlawful non-citizen and are kept in immigration detention. Therefore, the cancellation of the non-citizen's visa under proposed subsection 501(3A) has no relevance, in a legal sense, to whether a person is entitled to parole.

**QUESTION**

**12. Submissions have noted that as there is no definition of what amounts to 'sexually based offences involving a child'[7] as such there is a possibility that subsection 501(3A) may apply to youths who committed relatively minor offences such as shoplifting or graffiti and who are also sexually active and/or have participated in the activity of sending, receiving or sharing naked photos of themselves. Is this the intention of the legislation and if not, what safeguards would be in place to avoid this situation?**

*Answer:* The Explanatory Memorandum for the Bill advises that sexually based offences involving a child would include, but would not be limited to, offences such as child sexual abuse, indecent dealings with a child, possession or distribution of child pornography, internet grooming, and other non-contact carriage services offences, such as a person who manages a child pornography website. Liability for mandatory cancellation is restricted to non-citizens who have either committed offences serious enough to attract a sentence of imprisonment of 12 months or more, or been convicted of, found guilty of, or had a charge proven against them for a sexually based offence involving a child, and they are currently in prison. In the unlikely event that a youth involved in relatively minor offences has their visa mandatorily cancelled, that non-citizen would be able to seek revocation of the mandatory cancellation. A decision to revoke is discretionary, and would take into account, for example, the seriousness of the offending involved.

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6 ANU College of Law: Migration Law Program, *Submission 6*, p. 10.

7 ANU College of Law: Migration Law Program, *Submission 6*, p. 11; Scales Community Legal Centre, *Submission 7*, pp 7-8; New South Wales Council for Civil Liberties, *Submission 9*, p. 11.

**QUESTION**

**13. How is the minister currently required to exercise his personal powers under the Act? Would these requirements apply to the new personal powers?**

*Answer:* The Minister is required to exercise his personal powers in accordance with the provisions of the Act. These requirements will continue to apply to the new personal powers being proposed in the Bill.

Where the Minister intends to make a personal decision to refuse to grant or to cancel a visa under subsection 501(1) or (2) of the Act, natural justice requirements apply. Natural justice requirements would also apply if the Minister intended to personally consider the revocation of a mandatory cancellation decision that was made under proposed new subsection 501(3A) under proposed new section 501CA.

Decisions by the Minister to refuse to grant or to cancel a visa under subsection 501(3) of the Act, or to set-aside and substitute a non-adverse decision of a delegate or the AAT under proposed new section 501BA are not subject to the rules of natural justice. However, under these parts of the Act, the Minister may only refuse to grant or cancel a visa where he or she is satisfied that it is in the national interest to do so.

Where the Minister intends to make a personal decision to cancel a visa under section 109 or section 116 of the Act, natural justice requirements as prescribed in the Act would apply. The proposed new powers in sections 133A and 133C of the Act give the Minister new powers to set-aside and substitute a non-adverse decision made under section 109 or section 116 of the Act by either a delegate or merits review tribunal. Where the Minister is satisfied that a ground for cancelling the visa under either section 109 or section 116 of the Act exists and is satisfied that it is in the public interest to do so, the Minister may cancel a non-citizen's visa under proposed new subsection 133A(3) or 133C(3) of the Act without the provision of natural justice.

**QUESTION**

**14. Submissions argue that, in relation to the proposed expansion of personal powers of the minister, the notification and representation provisions do not provide an adequate substitute for a merits review.[8] How does the department respond to this claim?**

*Answer:* Merits review tribunals are required to determine what is the correct or preferable decision based on the merits of the case before them. The personal powers of the Minister in the Act (both the existing powers and the new powers) recognise that the Australian community ultimately holds the Minister responsible for decisions within his or her portfolio, even where those decisions have resulted from merits review. Therefore, it is appropriate that merits review not be available in respect of decisions that are made by the Minister personally. These amendments do not affect a non-citizen's capacity to seek judicial review of a decision to cancel their visa.

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[8] Refugee Council of Australia, *Submission 5*, pp 2, 4-5; ANU College of Law: Migration Law Program, *Submission 6*, pp 12-13; Australian Human Rights Commission, Submission 8, p. 15; Liberty Victoria, *Submission 10*, p. 1; Refugee & Immigration Legal Centre, *Submission 13*, pp 2, 6.

**QUESTION**

**15. What checks and balances are there on the use of proposed personal ministerial powers under the Act?**

*Answer:* The Minister is required to act lawfully and in accordance with the legislation in relation to the exercise of his current and proposed personal powers. The Minister's personal decisions are judicially reviewable.

**QUESTION**

**16. A suggestion has been made that the minister should be required to advise parliament of any intention to personally cancel a visa, in the same way as he currently has to advise Parliament before using personal discretion under sections 351 and 417 of the Act.[9] How does the department respond?**

*Answer:* There are a number of provisions in the Act, including under section 351 and 417, that require the Minister to advise Parliament after he has made certain decisions, and the outcomes of those decisions. There is no requirement for the Minister to advise Parliament where he or she is minded to personally cancel a visa under any subsection of section 501. Section 501 decisions are discretionary in nature and a consideration under section 501 does not necessarily result in a cancellation or refusal decision. It is impractical to create an additional requirement for the Minister to report on an intention to make a consideration under section 501, particularly where a cancellation or refusal decision may not result from that consideration. Section 501C of the Act requires the Minister to advise Parliament within 15 sitting days of a subsequent decision to revoke or not to revoke an original decision to refuse to grant or cancel a visa without notice under subsection 501(3) or 501A(3). Given that decisions to refuse to grant or cancel a visa without notice can be made quickly and in the national interest, it would not be possible to advise Parliament of an intention to consider the making of a decision in these circumstances.

**QUESTION**

**17. The proposed increase in the personal powers of the minister is intended to allow for the expeditious cancellation of a visa to better protect the Australian community. What safeguards would be put in place to avoid errors that could result from decisions based on limited evidence?**

*Answer:* The Minister is required to act lawfully and in accordance with the legislation in exercising his personal powers. Where the Minister makes a personal decision to refuse to grant or cancel a visa without notice, the non-citizen may seek revocation of that decision. In addition, Minister's decisions are judicially reviewable.

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9 ANU College of Law: Migration Law Program, *Submission 6*, p. 13.

**QUESTION**

**18. There are a number of concerns about whether the Bill would contravene Australia's international obligations, especially in relation to the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of the Child (CRC).[10] How does the department respond to these claims?**

*Answer:* A comprehensive Statement of Compatibility with Human Rights (SOC) accompanied the Bill to address Australia's obligations under the ICCPR, the CAT, and the CRC. This SOC concluded that the Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

**QUESTION**

**19. Where the visa of an asylum seeker is cancelled, he or she must be placed into immigration detention under s 189 of the Act until such time as he or she can be removed from Australia (under s 198 of the Act). Given Australia's non-refoulement obligations and the stateless status of some non-citizens some people could be held in immigration detention indefinitely. What safeguards are in place to prevent this?**

*Answer:* As discussed, a comprehensive SOC accompanied the Bill. The SOC noted that the Government has processes in place to mitigate any risk of a person's detention becoming indefinite or arbitrary through: internal administrative review processes, Commonwealth Ombudsman Own Motion enquiry processes, reporting and Parliamentary tabling; and ultimately the use of the Minister's personal intervention powers to grant a visa or residence determination where it is considered in the public interest to do so.

**QUESTION**

**20. How will the privacy of visa holders be protected in relation to the use of proposed s 501L powers?**

*Answer:* The department has an established and comprehensive Privacy Policy in place to address the department's obligations with regard to the collection, use and disclosure of personal information, which can be found on the department's website at http://www.immi.gov.au/pub-res/Pages/policy/privacy-policy.aspx.

This Privacy Policy sets out how the department complies with its obligations under the *Privacy Act 1988*, including the Australian Privacy Principles. Proposed new section 501L of the Act allows the Minister to require the head of an agency of a State or a Territory to disclose to the Minister personal information of a kind referred to in that provision, and will not allow for the subsequent disclosure of that personal information unless such action is

[10] ANU College of Law: Migration Law Program, *Submission 6*, pp 16-23; Australian Human Rights Commission, Submission 8, pp 3-7.

consistent with the provisions of the *Privacy Act 1988*. Any personal information relating to a visa holder obtained by the Minister under proposed new section 501L of the Act will be treated in accordance with the department's Privacy Policy.

**QUESTION**

**21. How will shared information be stored?**

*Answer:* Personal information will be stored in compliance with Australian Government security requirements. All access is audited and monitored by the department and departmental employees are provided with training on security rules and privacy issues.

**QUESTION**

**22. What oversight will be in place to protect confidential information?**

*Answer:* Information obtained by the department, whether it is information for official use only, information with a dissemination limitation marking, or information that has a security classification, will be stored in compliance with Australian Government security requirements. All access is audited and monitored by the department and departmental employees are provided with training on security rules and privacy issues.

**QUESTION**

**23. What will the reporting requirements be and what safeguards will be put in place to protect against the misuse of information?**

*Answer:* The department is already the subject of mandatory reporting processes and protocols in accordance with the guidelines issued by the Privacy Commissioner. Any personal information obtained under proposed new section 501L of the Act will also be subject to these reporting process and protocols.

**QUESTION**

**24. Can the department explain why the refusal process is the same as the cancellation process in relation to the application of the character test?**

*Answer:* The character test is set out in subsection 501(6) of the Act and the same threshold for whether a non-citizen does not pass the character test applies regardless of whether the person is being considered for visa refusal or visa cancellation. Where the discretion to refuse to grant or to cancel a visa is enlivened, the decision-maker must consider whether to exercise the discretion to refuse to grant or cancel the visa given the specific circumstances of the case.

Ministerial Direction 55 (MD55) provides binding guidance to decision-makers considering whether to exercise the discretion to refuse to grant or to cancel a non-citizen's visa under section 501 of the Act. MD55 contains different considerations to which delegates must have regard in deciding whether to refuse to grant or cancel a visa for visa holders and visa applicants. This is in recognition of the fact that a non-citizen holding a substantive visa will generally have greater ties to the community, and an expectation that they will be permitted

to remain in Australia for as long as their visa remains in effect. In comparison, a visa applicant should have no expectation that a visa for which they have applied will be granted, and Australia generally has a lower tolerance level of any criminal or other serious conduct by visa applicants, or those holding a temporary visa.

**QUESTION**

**25. Submissions have argued that proposed paragraph 501(6)(g) does not allow a visa holder to properly contest an adverse assessment by ASIO as the visa holder is not entitled to a hearing on the merits of the assessment and often he or she will not be given a full explanation of the grounds on which the assessment is made.[11] What recourse does a visa holder have in relation to a negative ASIO assessment?**

*Answer:* The existence of an adverse assessment by ASIO that the person is directly or indirectly a risk to security within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979* simply provides an objective basis on which to find that a person does not pass the character test. In terms of considering whether to exercise the discretion to refuse to grant or to cancel a visa under section 501 of the Act, a delegate would need to consider the existence of the adverse ASIO assessment against the other relevant considerations.

The department understands that merits review is available to permanent residents who are the subject to an adverse ASIO assessment. However, ASIO's capacity to issue adverse assessments, requirements for procedural fairness in relation to issuing such assessments, and access to merits review after the making of such assessments is governed by the legislation administered by ASIO and is outside the responsibility of this department.

**QUESTION**

**26. It has been suggested that notices issued by Interpol are not a sound basis upon which to make findings regarding the character test.[12] How does the department respond to this claim?**

*Answer:* If there is information in an Interpol notice from which it is reasonable to infer that the person would present a risk to the Australian community or a segment of that community, the person will not pass the character test by virtue of proposed paragraph 501(6)(h) of the Act. The existence of an Interpol notice in respect of a person will not, of itself, mean that the person does not pass the character test. The veracity and reliability of the Interpol notice would be a relevant consideration in terms of determining whether it was reasonable to infer that the person would present a risk to the Australian community or a segment of that community.

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[11] New South Wales Council for Civil Liberties, *Submission 9*, p. 16; Law Institute Victoria, *Submission 12*, pp 5-6.

[12] Liberty Victoria, *Submission 10*, p. 2; Asylum Seeker Resource Centre, *Submission 11*, p. 9; Law Institute Victoria, *Submission 12*, pp 6-7.