



Our reference: GZC

Your reference: Migration Bill/Character Test
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Ms Sophie Dunstone
Committee Secretary
Legal and Constitutional Affairs Legislation Committee
The Senate
Parliament of Australia

legcon.senate@aph.gov.au

Dear Ms Dunstone,

Inquiry into the Migration Amendment (Strengthening the Character Test) Bill 2021

I refer to your email of 7 December 2021.

The Legal Services Commission of South Australia (Legal Services) provides legal advice and assistance in on-shore migration matters, including provisional partner visas where there is domestic violence, permanent protection visas and refugee humanitarian visas.

Legal Services also provides legal information and advice to the victims of domestic violence through its Women's Domestic Violence Court Assistance Service (WDVCAS) in the Magistrates Courts and through its Family Advocacy and Support Service (FASS) in the Family Court. Many of the clients we deal with have intervention orders in place and in other cases, we advise clients on how to apply for such orders. In South Australia, intervention orders are the equivalent of apprehended violence orders.

While Legal Services understands the importance of keeping the public safe from criminal acts, we have concerns about these proposed changes.

I note that the Second Reading Speech for *Migration Amendment (Strengthening the Character Test) Bill 2021* (the Bill) refers first to the offences of murder, kidnapping and aggravated burglary. These are very serious offences however the Speech further explains that additional "designated" offences will invoke the application of the character test and may involve visa cancellation or refusal as well. It is these designated offences that concern us.

Although a designated offence may involve violence, the circumstances under which the charges are laid may not be of so serious a nature as to warrant such a severe penalty. A number of the new designated offences can incur penalties at the lowest possible end of the punishment spectrum as they pass through the court system, depending on the circumstances. However, the 2 year maximum sentence that the Bill seeks to incorporate

into the character test is not the sentence handed down by the court, but the maximum sentence as provided for by the legislation. This provision will capture almost any offending, no matter how minor.

The new addition to this Bill, (as opposed to the 2019 Bill), is an emphasis on family violence offences. Whilst concerns about family violence are warranted, a likely impact in some cases will be that victims will not report family violence incidents given the significant impact of doing so on the family and community.

Under the proposed changes, a breach of an intervention order has the potential to have far reaching consequences. Some victims in new communities may find themselves under even greater pressure not to report domestic violence or not to proceed with applications for protection orders. Most victims of domestic violence wish for the violence to stop but do not want their partner or ex-partner deported from Australia.

If this proposed Bill proceeds, more accused persons will require intensive legal representation services when charged with the newly designated offences as the impact of possible deportation will justify the granting of legal aid.

The rate for breaches of domestic violence intervention orders is high around Australia. In South Australia for 2014/2015 financial year, 8,862 orders were granted and of those 1,733 were prosecuted for breach.¹ In Victoria in the same period there 9,000 prosecuted breaches from 46,000 orders made and in New South Wales there were 11,000 breaches from 26,000 orders.²

Considering the number of breaches of intervention and protection orders each year as well as contraventions of the other designated offences, there would be a substantial financial impact on legal aid agencies.

Thank you for the opportunity to comment on this Bill.

Yours sincerely

Gabrielle Z Canny
Director

¹ <https://www.courts.sa.gov.au/publications/statistics/>

² [Court documents show thousands of domestic violence intervention orders being violated - ABC News](#)