UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

# Migration Amendment (Strengthening the Character Test) Bill 2021

## Senate Legal and Constitutional Affairs Committee

## Submission by the Office of the United Nations High Commissioner for Refugees

## I. INTRODUCTION

1. The Office of the United Nations High Commissioner for Refugees (UNHCR) welcomes the opportunity to provide this submission to the Senate Legal and Constitutional Affairs Committee in respect of its inquiry into the provisions of the Migration Amendment (Strengthening the Character Test) Bill 2021 (the Bill).

2. The Bill would expand the scope of the "character test" in section 501(6) of the *Migration Act 1958* (Cth) (the Act), and thereby broaden the category of non-citizens who are liable to consideration for visa cancellation or refusal, who are therefore at risk of detention and removal from Australia.

3. While this Bill is substantially the same as the Bill of the same name introduced in 2019 (which already failed to secure passage in 2021),[1] UNHCR takes this opportunity to reiterate its concerns expressed in the context of the 2019 Bill. UNHCR also wishes to highlight that the number of people detained in immigration detention facilities across Australia has not significantly decreased since 2019, remaining largely constant at around 1,500 persons.[2] Moreover, despite growing concern for the long-term detrimental impact of detention on the mental and physical health of asylum-seekers, refugees and stateless persons, since 2019 the average duration of detention has continued to steadily increase to nearly 700 days (close to two years).[3]

4. The gradual expansion of the scope of the character test has resulted in a significant increase in the number of visa cancellations and refusals and thus instances of prolonged and indefinite detention. UNHCR remains deeply concerned by the measures proposed in this Bill and considers that a further expansion of the character test would increase the risk that asylum-seekers,

[1] See: Australian Parliament, *Migration Amendment (Strengthening the Character Test) Bill 2019*, available at: https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bId=r6349
[2] Department of Home Affairs, Immigration Detention and Community Statistics Summary 31 August 2021, available at: https://www homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-august-2021.pdf.
[3] Ibid.

refugees and stateless persons may be subject to detention or removal from Australia in circumstances other than those permitted by international law.

## II. UNHCR's AUTHORITY

5. UNHCR offers these comments as the agency entrusted by the United Nations General Assembly with the responsibility for providing international protection to refugees and other persons within its mandate, and for assisting governments in seeking permanent solutions for refugees.[4] As set forth in the *Statute of the Office of the United Nations High Commissioner for Refugees*, UNHCR fulfils its international protection mandate by, *inter alia*, '[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto'.[5] UNHCR's supervisory responsibility under its Statute is reiterated in Article 35 of the *1951 Convention relating to the Status of Refugees*,[6] according to which State Parties undertake to "co-operate with the Office of the United Nations High Commissioner for Refugees […] in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the Convention." The same commitment is included in Article II of the *1967 Protocol relating to the Status of Refugees* (1967 Protocol).[7]

6. In accordance with UN General Assembly resolutions 3274 XXIX[8] and 31/36,[9] UNHCR has been designated, pursuant to Articles 11 and 20 of the *1961 Convention on the Reduction of Statelessness* (the 1961 Statelessness Convention),[10] as the body to which a person claiming the benefits of this Convention may apply for the examination of his or her claim and for assistance in presenting it to the appropriate authorities. In resolutions adopted in 1994 and 1995, the UN General Assembly entrusted UNHCR with a global mandate for the identification, prevention and reduction of statelessness and for the international protection of stateless persons.[11] UNHCR's statelessness mandate has continued to evolve as the

[4] See *Statute of the Office of the United Nations High Commissioner for Refugees*, UN General Assembly Resolution 428(V), Annex, UN Doc. A/1775, para. 1 (Statute).
[5] Statute, para. 8(a).
[6] UN General Assembly, *Convention relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.
[7] UN General Assembly, *Protocol relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267.
[8] UN General Assembly, *Question of the establishment, in accordance with the Convention on the Reduction of Statelessness, of a body to which persons claiming the benefit of the Convention may apply*, 10 December 1974, A/RES/3274 (XXIX).
[9] UN General Assembly, *Question of the establishment, in accordance with the Convention on the Reduction of Statelessness, of a body to which persons claiming the benefit of the Convention may apply*, 30 November 1976, A/RES/31/36.
[10] UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175.
[11] UN General Assembly resolutions A/RES/49/169 of 23 December 1994 and A/RES50/152 of 21 December 1995. The latter endorses UNHCR's Executive Committee Conclusion No. 78 (XLVI), *Prevention and Reduction of Statelessness and the Protection of Stateless Persons*, 20 October 1995.

UN General Assembly has endorsed the Conclusions of UNHCR's Executive Committee.[12]

7. Australia is a Contracting Party to the *1951 Convention relating to the Status of Refugees* and its 1967 Protocol (together, the Refugee Convention), as well as the *1954 Convention relating to the Status of Stateless Persons* (the 1954 Statelessness Convention), and the 1961 Statelessness Convention. Through accession to these instruments, Australia has assumed international legal obligations in relation to refugees, asylum-seekers and stateless persons in accordance with their provisions.

8. Although the amendments in the Bill are capable of affecting any non-citizen, UNHCR's submission focuses on their effect on refugees, asylum-seekers and stateless persons in Australia, in light of relevant international legal obligations.

## III. THE NATURE OF THE PROPOSED AMENDMENTS

9. The Act establishes a framework under which the Minister or their delegate may refuse to grant a visa to, or cancel the visa of, a non-citizen who does not pass the character test.[13] The Act sets out the circumstances in which a person does not pass the character test, including on the basis of a wide range of conduct.[14] These circumstances are very broad, and were significantly expanded by the *Migration Amendment (Character and General Visa Cancellation) Act 2014*, which also introduced mandatory visa cancellation in certain circumstances. In situations where a person does not pass the character test, the decision as to whether or not their visa is cancelled or refused is generally guided by Direction No. 90, which sets out considerations that should be taken into account by decision-makers.[15]

10. While decisions of a delegate of the Minister to refuse or cancel a person's visa on character grounds may be subject to merits review by the Administrative Appeals Tribunal (AAT), there is no right to merits review of such a decision that is made personally by the Minister[16] UNHCR emphasises that access to an effective remedy

[12] Executive Committee Conclusion No. 90 (LII), Conclusion on International Protection, 5 October 2001, para. (q); Executive Committee Conclusion No. 95 (LIV), General Conclusion on International Protection, 10 October 2003, para. (y); Executive Committee Conclusion No. 99 (LV), General Conclusion on International Protection, 8 October 2004, para. (aa); Executive Committee Conclusion No. 102 (LVI), General Conclusion on International Protection, 7 October 2005, para. (y); Executive Committee Conclusion No. 106 (LVII), Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons, 6 October 2006, paras. (f), (h), (i), (j) and (t); all of which are available in: *Conclusions on International Protection Adopted by the Executive Committee of the UNHCR Programme 1975 – 2017 (Conclusion No. 1 – 114)*, October 2017.

[13] *Migration Act 1958*, subsections 501(1), (2), (3A). Subsection 501(3) also provides that the Minister may personally refuse or cancel a visa if he or she reasonably suspects the person does not pass the character test, and is satisfied the refusal or cancellation is in the national interest.

[14] *Migration Act 1958*, subsection 501(6) specifies the circumstances in which a person does not pass the character test.

[15] Direction No. 90 also applies to the exercise of the discretion to revoke the mandatory cancellation of a cancellation decision.

[16] Merits review is not available for decisions of the Minister personally exercising the visa refusal or cancellation power under section 501, and also decisions of the Minister personally to set aside a decision by a delegate or the AAT not to exercise the power to refuse or cancel a person's visa and to substitute it with

is a core due process standard and a central aspect to protecting the right to seek and enjoy asylum and the principle of *non-refoulement*. To be effective, the remedy must provide for a review of the claim by a court or tribunal, and the review must examine both facts and law based on up-to-date information.[17]

11. The Bill would extend the power to cancel or refuse a non-citizen's visa to circumstances in which the non-citizen has been convicted of an offence that involves certain "physical elements" and which is punishable by a term of imprisonment of two years or more.[18] A person who is convicted of such an offence would fail the character test irrespective of the custodial sentence imposed (if any).

12. The cancellation or refusal of a visa on character grounds has significant consequences. If the person affected is in Australia, they must be detained until they are granted a visa or removed from Australia.[19] Notwithstanding limited avenues for the subsequent grant of a visa, including the broad power available to the Minister to release a person from immigration detention, the ordinary operation of Australian law has the effect that a person whose visa is cancelled or refused on character grounds remains in detention until they are removed from Australia. Where a person is not removed from Australia, Australian law allows them to remain in detention indefinitely. Even in those cases where a person is subsequently granted a visa and is able to enter or return to the Australian community, the period of detention may be in the order of several years.

## IV. INTERNATIONAL LEGAL FRAMEWORK TO CONSIDER CRIMINAL CONDUCT

13. Visa refusal or cancellation due to the operation of Australian law does not negate a person's refugee status at international law. However, it may result in restrictions of their enjoyment of the rights afforded to them by the Refugee Convention (or the equivalent status and rights of stateless persons under the 1954 Statelessness Convention), in addition to rights arising from international human rights law.

14. In UNHCR's view, the Refugee Convention and 1954 Statelessness Convention provide the appropriate legal framework according to which matters relating to the conduct of a refugee or stateless person may be considered, and this framework is already reflected in Australian law.[20] Clearly, refugees, asylum-seekers and stateless persons are required to conform to the ordinary laws and regulations of the country of asylum, as well as measures taken for the

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their own decision to refuse or to cancel the visa: section 501A of the *Migration Act 1958*. Merits review is also not available where the Minister exercises the power to set aside a decision of a delegate to refuse to cancel a person's visa and substitute it with their own refusal or cancellation under section 501B.

[17] UNHCR, *UNHCR Statement on the right to an effective remedy in relation to accelerated asylum procedures*, 21 May 2010, available at: https://www.refworld.org/pdfid/4bf67fa12.pdf.

[18] Amendments introduced by the current Bill clarify the circumstances when a conviction of common assault (or equivalent) will also be captured: See item 6 of the Migration Amendment (Strengthening the Character Test) Bill 2021.

[19] *Migration Act 1958*, sections 189; 196.

[20] See for example *Migration Act 1958*, subsections 5H(2), 36(1C), 501(6)(f).

maintenance of public order. This is articulated in Article 2 of both the Refugee Convention and the 1954 Statelessness Convention. Those who commit punishable offences are, in general, liable to criminal prosecution and the imposition of penalties.

15. In addition, Article 1F of the Refugee Convention sets out the grounds on which a person who satisfies the inclusion criteria of the refugee definition in Article 1A(2) may nonetheless be excluded from international refugee protection due to the commission of certain serious crimes or heinous acts. While a serious non-political crime gives rise to exclusion only where the acts in question were committed outside, and prior to the person's admission to, a country of asylum,[21] the application of exclusion for crimes against peace, war crimes, crimes against humanity,[22] or for acts contrary to the purposes and principles of the United Nations[23] is not subject to geographic or temporal restrictions and may result in the revocation of refugee status if a refugee engages in conduct giving rise to individual responsibility for such acts after his or her recognition.[24] In respect of stateless persons, Article 1F of the Refugee Convention is mirrored in Article 1(2)(iii) of the 1954 Statelessness Convention.

16. The Refugee Convention also foresees that States may, under certain, exhaustively defined circumstances, expel a refugee. Article 32 of the Refugee Convention permits the expulsion of a refugee who is lawfully in the territory on grounds of national security or public order, subject to strict procedural safeguards, and only to a country where he or she would not be at risk of persecution. This is mirrored in Article 31(1) of the 1954 Statelessness Convention. For both refugees and stateless persons, expulsion on such grounds may only occur pursuant to a decision reached in accordance with due process of law, and the refugee or stateless person must be allowed to submit evidence except where compelling reasons of national security otherwise require.[25]

17. Expulsion to a country where a risk of persecution exists is permitted under international refugee law only, and again subject to procedural safeguards, if one of the exceptions to the principle of *non-refoulement* provided for under Article 33(2) of the Refugee Convention applies. This may be the case with regard to a refugee "whom there are reasonable grounds for regarding a danger to the security of the country in which he [or she] is", or "who, having been convicted of a particularly serious crime, constitutes a danger to the community of that country." The application of Article 33(2) is without prejudice to other *non-*

[21] Article 1F(b) of the Refugee Convention.
[22] Article 1F(a) of the Refugee Convention.
[23] Article 1F(c) of the Refugee Convention.
[24] Normally it will be during the process of determining a person's refugee status that the facts leading to exclusion under these clauses will emerge. It may, however, also happen that facts justifying exclusion will become known only after a person has been recognized as a refugee. In cases where it is determined that refugee status recognition should not have been granted in the first place, the cancellation of the decision previously taken would be consistent with the Refugee Convention. UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, p. 28.
[25] Article 31(2) of the 1954 Statelessness Convention.

*refoulement* obligations of Australia under international human rights law, which do not contain any exceptions to the prohibition of *refoulement*.[26]

18. While the above-mentioned articles, which limit eligibility for refugee status and the rights adhering to refugee status, are given effect in Australia by existing provisions in the Migration Act, the character test operates above and beyond these provisions and bears no relation to the provisions of the Refugee Convention or the 1954 Statelessness Convention mentioned above.

## V. CONSIDERATION OF AUSTRALIA'S *NON-REFOULEMENT* OBLIGATIONS

19. Although the decision-making process for character-related cancellation and refusal decisions enables *non-refoulement* obligations to be taken into account, it is of significant concern to UNHCR that this is not a mandatory statutory requirement given the gravity of consequences following exercise of such broad discretionary powers. As recently observed by the Honourable Chief Justice Allsop:

> "It goes without saying that it is a matter for the Executive to determine whether it is in the national interest for a given visa to be cancelled. Within any such decision, if it be relevant, the violation of international law, *qua* law, is intrinsically and inherently a matter of national interest, and therefore within the subject of evaluation. So much has been recognised in other Commonwealth legislative regimes, and so much ought to be recognised in the context of the *Migration Act* in respect of non-refoulement obligations".[27]

20. Rather, decision-makers are precluded under a Ministerial Direction from considering Australia's *non-refoulement* obligations as a primary or paramount consideration. In turn, they are prevented from affording it more weight than other considerations deemed by the Minister to be of greater importance, such as the protection of the Australian community or the expectations of the Australian community.[28] This has the effect that a person's visa may be refused or cancelled on character grounds even where it is recognized that the consequences of doing so may likely include indefinite detention or *refoulement*.

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[26] *Non-refoulement* obligations under international human rights law allow no exception or derogation, and protection against refoulement under the relevant provisions is afforded to every individual, irrespective of their legal status. This means that even if a person could be returned to the country where they face a risk of persecution in accordance with Article 33(2) of the Refugee Convention, IHRL may still prohibit the transfer. For instance, the non-refoulement obligation under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3, which prohibits transferring persons to a place where they would be at risk of torture has an absolute character. Similarly, non-refoulement obligations under Articles 6 and 7 of the International Covenant on Civil and Political Rights prohibit transferring persons to a place where their life would be at risk or where they would be at risk of torture or other forms of cruel, inhuman or degrading treatment or punishment.

[27] *Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v CWY20* [2021] FCAFC 195 at [15], available at: https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/full/2021/2021fcafc0195.

[28] Direction No. 90, *Visa refusal and cancellation under s501 and revocation of a mandatory cancellation of a visa under s501CA*, 15 April 2021 (Direction under s 499 of the *Migration Act 1958*).

21. UNHCR acknowledges the Australian Government's position that a person will be protected from removal in breach of Australia's *non-refoulement* obligations where a protection finding is or has been made in the course of considering a protection visa application.[29] A person with a protection finding is protected from removal unless they request to be removed or if the Minister makes a decision under section 197D that, for example due to improving country conditions, a protection finding would no longer be made in the person's case. [30]

22. However, UNHCR remains concerned that section 197C of the Act, albeit qualified, still provides that Australia's *non-refoulement* obligations are irrelevant for the purposes of exercising removal powers. The protections afforded by recently amended 197C do not extend to all persons who engage Australia's *non-refoulment* obligations and there remains insufficient clarity and procedural safeguards surrounding the circumstances in which the Minister would be satisfied that a person is no longer owed protection obligations under section 197D.[31]

23. The principle of *non-refoulement* is the cornerstone of international refugee protection and enshrined in Article 33 of the Refugee Convention. Article 33(1) provides:

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

24. Section 197C, by expressly permitting the removal of persons from Australia unconstrained by *non-refoulement* obligations, is incompatible with Australia's obligations under Article 33 of the Refugee Convention. UNHCR notes that the Parliamentary Joint Committee on Human Rights has made the same observation in relation to *non-refoulement* obligations under the *International Covenant on Civil and Political Rights* and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.[32]

## VI. PROLONGED AND ARBITRARY DEPRIVATION OF LIBERTY

25. Even where visa cancellation or refusal does not result in a person's removal from Australia, it renders a person subject to prolonged and indefinite immigration detention. Detention ought, in accordance with international human rights

[29] *Migration Act 1958*, subsection 197C (3).
[30] Migration Amendment (Strengthening the Character Test) Bill 2021, Explanatory Memorandum, *Attachment A: Statement of Compatibility with Human Rights*, p. 16.
[31] See also: Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report*, Report No. 15 of 2021, 8 December 2021, pp. 29-30, available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/2021/Report_15_of_2021.
[32] Parliamentary Joint Committee on Human Rights (PJCHR), Fourteenth Report of the 44th Parliament, October 2014, pp. 77-78; Twelfth Report of the 45th Parliament, November 2018, pp. 4-7.

standards, to be an exceptional measure and any decision to detain a refugee, asylum-seeker or stateless person should be strictly limited to the purposes authorized by international law.[33] Among other requirements, detention must be demonstrated to be necessary, proportionate to a legitimate purpose, non-discriminatory, and subject to judicial oversight.[34] Indefinite detention is arbitrary and so impermissible at international law; maximum limits on periods of detention should therefore be established in law.[35] Australia also has not yet established in its national law a statelessness status determination procedure to identify non-refugee stateless persons. For stateless persons, the absence of status determination procedures to verify identity or nationality can also lead to prolonged or indefinite detention because statelessness, by its very nature, severely restricts access to basic identity and travel documents that nationals normally possess.[36]

26. Refugees, asylum-seekers and stateless persons are particularly vulnerable to arbitrary detention as a result of visa cancellation or refusal. In the absence of any ability to challenge detention in substantive terms, UNHCR remains concerned that a considerable number of refugees, asylum-seekers and stateless persons in Australia are currently in situations of protracted and indefinite detention. In the last six financial years to 31 March 2021, there have been 528 protection and humanitarian visas cancelled on character grounds - compared to fewer than ten in 2013-14.[37] Moreover, in the last financial year, close to 50 asylum-seekers, refugees and stateless persons had been refused a visa on character grounds.[38]

27. According to official statistics published by the Australian Government, as at 31 March 2021, there were 736 asylum-seekers, humanitarian entrants and refugees (excluding persons transferred from Nauru and PNG) in immigration detention.[39] When the 2019 Bill was introduced, the Australian Government reported that the average period of detention was 485 days.[40] Now, two years later, the average period of detention has risen to close to 700 days, and for stateless persons the average is 833 days (close to 2.5 years).[41] However, UNHCR regularly engages with many asylum-seekers, refugees and stateless persons in Australia who have been detained for significantly longer than this average, some in excess of 10 years

[33] UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention* (2012). See also UNHCR, *Stateless Persons in Detention: A Tool for their Identification and Enhanced Protection* (2017).
[34] Ibid.
[35] Ibid.
[36] UNHCR, Handbook on Protection of Stateless Persons, 30 June 2014, p.45, available at: https://www refworld.org/docid/53b676aa4.html.
[37] Senate Legal and Constitutional Affairs Committee, Additional Budget Estimates, 26-27 February 2018, Question number AE18/084; Senate Legal and Constitutional Affairs Committee, Budget Estimates, 24-25 May 2021, Question number BE21/393.
[38] Senate Legal and Constitutional Affairs Committee, Budget Estimates, 24-25 May 2021, Question number BE21/384.
[39] Senate Legal and Constitutional Affairs Committee, Budget Estimates, 24-25 May 2021, Question number BE21/377.
[40] Ibid p. 11.
[41] Department of Home Affairs, Immigration Detention and Community Statistics Summary 31 August 2021, p. 12, available at: https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-august-2021.pdf; Senate Legal and Constitutional Affairs Committee, Budget Estimates, 24-25 May 2021, Question number BE21/374.

and close to 250 persons who are not engaged in any type of visa application or appeal process and who are unable to return to their home countries.[42]

28. For those who have had their protection, refugee or humanitarian visas cancelled on character grounds following a period of incarceration, the avenues for release from administrative detention are extremely limited and entirely discretionary.[43] Moreover, Ministerial instructions generally preclude the referral of such cases to the Minister for consideration. UNHCR emphasises that immigration detention should not be punitive in nature.[44] Thus, in accordance with the normal operation of the Australian criminal justice system which appropriately manages any risks to the community, any person who has served their criminal sentence, irrespective of legal status, should be afforded the opportunity to re-enter the community. This is particularly the case for those owed international protection, who by definition are unable to return to their countries of nationality or former habitual residence and thus face the likely prospect of indefinite detention. To keep such persons in prolonged and indefinite detention not only undermines rehabilitation efforts but further diminishes their well-being, making their eventual re-integration into the community far more challenging.

29. During its regular immigration detention visits and regular engagement with asylum-seekers, refugees and stateless persons in detention, UNHCR has observed first-hand the severe and detrimental impact long-term immigration detention can have on the health and psycho-social wellbeing of those affected, many of whom have already suffered from torture or trauma before arriving in Australia. Family separation, inadequate transparency surrounding processes and timeframes for release also contribute greatly to diminished mental health, often leading to insomnia, depression, anxiety and feelings of hopelessness and resignation. It is of significant concern to UNHCR that despite the majority of persons in detention regularly engaging with external torture and trauma counselling services, in the last five years there have been approximately 2,700 instances of self-harm (actual and threatened) in detention facilities.[45]

30. UNHCR continues to urge the Government of Australia to make every effort to resolve cases in a timely manner, including through practical steps to identify and confirm the necessity of continued detention in conformity with international human rights law, and to pursue alternatives to detention wherever possible.

## VII. CONCLUDING REMARKS

31. The proposed amendments will likely have a disproportionately adverse impact on asylum-seekers, refugees and stateless persons. A further expansion of the

[42] Senate Legal and Constitutional Affairs Committee, Budget Estimates, 24-25 May 2021, Question number BE21/396.
[43] *Migration Act 1958*, sections 195A and 197AB.
[44] UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, p.48, available at: https://www refworld.org/docid/503489533b8.html.
[45] Senate Legal and Constitutional Affairs Committee, Budget Estimates, 24-25 May 2021, Question numbers BE21/401; BE21/403.

already extremely broad character test, as proposed in the Bill, would increase the risk that asylum-seekers, refugees and stateless persons may be detained or removed from Australia in circumstances other than those permitted by international law.

32. It is also of concern to UNHCR that the legal framework for visa cancellation and refusal in Australian law contains inadequate safeguards to ensure adherence to Australia's international obligations and permits the unreasonable restriction of the enjoyment of the rights guaranteed to refugees by the Refugee Convention, and to stateless persons by the 1954 Statelessness Convention.

33. Accordingly, UNHCR strongly recommends that the Bill not be passed.

United Nations High Commissioner for Refugees
17 December 2021