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Submission: *Inquiry into the Migration Amendment (Character Cancellation Consequential Provisions) Bill 2016*

Liberty Victoria is grateful for the opportunity to make this submission on the *Migration Amendment (Character Cancellation Consequential Provisions) Bill 2016* ("the Bill") to the Senate Legal and Constitutional Affairs Committee.

Liberty Victoria is one of Australia's leading human rights and civil liberties organisations. It is concerned with the protection and promotion of civil liberties throughout Australia. As such, Liberty is actively involved in the development and revision of Australia's laws and systems of government. Further information on our activities may be found at www.libertyvictoria.org.au.

Liberty Victoria would have preferred the opportunity to provide a more detailed submission but the time frame allowed for their provision was impossibly short. We hope that in future more time is allowed to make submissions on such important issues.

In general terms, Liberty Victoria opposes aspects of the Bill.

At present, the *Migration Act* provides, in s 336E, that a person's 'identifying information' can be disclosed if it is for the purposes of 'data-matching' (s 336E(2)(a)(iii)) or generally identifying (s 336E(2)(ec)) a person in order to 'identify non-citizens who... are of character concern'.

This Bill seeks to expand significantly the definition of 'character concern'. As the Explanatory Memorandum itself notes (at paragraph 12) 'the amendments proposed...

have the potential to increase the overall number of non-citizens who meet the definition of 'character concern'. The expanded definition will cover, for example, persons where the Minister 'reasonably suspects that the non-citizen has ... had an association with a group... involved in criminal conduct'; see proposed s 5C(i)(bb). This expansion unacceptably denies such a person – who is not convicted and is entitled to the presumption of innocence – basic privacy in that it renders information about that person that would have been an offence to release, no longer a crime. Liberty Victoria has a long and proud history of seeking to protect privacy, especially where persons have not been convicted by any court of a criminal offence. As such, Liberty Victoria recommends that proposed subsections 5C(1)(bb) and (bc) be deleted, on account that both rely on the 'reasonable suspicion' of the Minister, and not a conviction by a Court. Section 5C(1)(b) and (d) should be repealed for the same reason.

The amendment – seemingly small as it is – to s 5C(1)(d) is even more troubling. Any risk that a non-citizen would engage in the specified conduct would mean their identifying information could be disclosed without repercussion under s 336E. The previous threshold – 'significant risk' – at least put a degree of severity of risk as a barrier to disclosure. This amendment means that any risk at all would be sufficient. In operation, this is likely to make the release of personal information significantly easier in that such release would no longer be the subject of criminal sanction under s 336E. Liberty Victoria opposes the proposed amendment to s 5C(1)(d).

Liberty Victoria is opposed to the power given to the Court under s 503B to withhold from the applicant and their own lawyer certain information. It is anathema to the rule of law that a person should appear before a court to meet a case about which he or she is not fully informed. The expansion of that power under this amending Act in respect of cancellation under s 501BA and 501CA is, therefore, also opposed.

Thank you for the opportunity to make this brief submission. Please contact Gillian Garner through the Liberty Victoria office if we can provide any further information or assistance. This is a public submission and is not confidential.

Yours sincerely

George Georgiou SC
President, Liberty Victoria