Australian Government
Department of Home Affairs

Inquiry into the Migration and Citizenship Legislation Amendment (Strengthening Information Provisions) Bill 2020

Parliamentary Joint Committee on Intelligence and Security

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1. Introduction

The Department of Home Affairs (the Department) welcomes the opportunity to provide a submission to the Parliamentary Joint Committee on Intelligence and Security's (the Committee) inquiry into the Migration and Citizenship Legislation Amendment (Strengthening Information Provisions) Bill 2020 (the Bill), following the introduction of the Bill into the House of Representatives on 10 December 2020.

The Bill was referred to the Committee by the Hon Alex Hawke MP, Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (the Minister). This submission explains the rationale for the Bill and its intended operation.

2. Home Affairs' submission

2.1. Purpose of the Bill

The Bill is intended to strengthen character-related decision-making under both the *Migration Act 1958* (the Migration Act) and the *Australian Citizenship Act 2007* (the Citizenship Act) and enhance the Government's ability to uphold the safety and good order of the Australian community by managing the risk posed by migrants of character concern.

The Bill proposes amendments to the Migration Act and the Citizenship Act to create a framework for the protection and controlled authorised disclosure of information provided in confidence by gazetted law enforcement and intelligence agencies and relied upon in character-related visa and citizenship decision-making (protected information). The framework will enable the Minister to authorise the disclosure of protected information to specified persons or bodies, such as a tribunal or a Commonwealth officer (including, but not limited to, Commonwealth oversight bodies) after consultation with the gazetted agency which provided such information. This discretion allows the Minister to consider on a case-by-case basis whether to disclose the relevant information. This provides flexibility but ensures that the Minister can still protect the information if it is particularly sensitive subject to the provisions of the Bill which empower the Court to order disclosure to it (please see below for detail). Commonwealth oversight bodies may also request the relevant information directly from gazetted agencies. Such a request would not be governed by the provisions of this Bill.

The Bill also enables the High Court, Federal Court of Australia, and the Federal Circuit Court to order the Minister to disclose information to it if satisfied that the information is protected information and it is for the purposes of the proceedings before the Court in relation to a relevant character-related decision.

Information which falls within the protection of the Bill's framework is, by its nature, highly sensitive. This is because it is information communicated to the Department by its intelligence and law enforcement agency partners on the condition that it is treated as confidential. It is the agencies that have designated the information as confidential and therefore requiring protection under the Bill's framework. It is the agencies themselves (and not the Department) who make that judgment because of the sensitive nature of the information and the damage that would result from its disclosure. The concept of confidential is deliberately broad (that is, not defined), given that the nature and content of the information to be communicated is wide and varied and will vary from case to case. As such, a definition would limit and could undermine the Bill's framework. The Department is concerned that this in turn may increase the risk that relevant agencies could be less willing to provide confidential information to the Department for character-related visa and citizenship decisions. The Bill intentionally leaves it to an agency to determine whether information is to be communicated on condition that it be treated as confidential, as it is their information.

If protected information is produced to the Court or given in evidence, a party to the proceedings may make submissions to the Court on the use which the Court should make of the information and the impact disclosure of that information may have, but only where that party is aware of the content of the information and has not obtained the information unlawfully or in circumstances that would constitute an action for

breach of confidence. Protected information may only be further disclosed by the Court, including to the applicant, in circumstances where the Court determines that to do so would not create a real risk of damage to the public interest, having regard to the information itself, any submissions made by the parties, and any of an exhaustive list of factors (and only those matters) that it considers relevant. The framework will provide safeguards for the applicant by allowing the Courts to decide how much weight to give the protected information in judicial review proceedings. This would include the weight the Court may give protected information produced to the Court or given in evidence in situations where the Court has determined that to disclose the protected information would cause a real risk of damage to the public interest, meaning the applicant and their legal representatives have not seen the relevant protected information.

2.2. Summary of changes to the Migration Act

The Bill amends the Migration Act to refine the current protected information framework, with the following features:

- provide that the High Court, the Federal Court or the Federal Circuit Court may order the Minister to produce or give in evidence protected information where the Court is satisfied that the information is protected information and its production is for the purposes of substantive proceedings related to a decision to refuse or cancel a visa on character grounds, or revoke or set aside such a decision;
- if such an order is made, permit any person who is aware of the content of the protected information to make submissions to the Court concerning the use that the Court may make of the protected information, and any impact that its disclosure would entail on the public interest unless the content of the protected information was acquired unlawfully or in circumstances that would constitute an action for breach of confidence (whether or not the party was the person who acquired the content unlawfully or in those circumstances);
- for the purposes of hearing submissions about the use and impact of the protected information, provide that the Court must order that the applicant, or any other party to the proceedings, or their legal representatives, must not attend that hearing unless the applicant or the party is permitted to make submissions on the protected information to the Court. The Court may also order that no report of the part of the proceedings that relates to the protected information is to be published, and no person, without the consent of the Court, has access to a file or a record of the Court that contains the protected information;
- require the High Court, the Federal Court or the Federal Circuit Court to determine whether disclosing protected information would create a real risk of damage to the public interest, having regard to any of an exhaustive list of factors that the court considers relevant;
- if the High Court, the Federal Court or the Federal Circuit Court determines that disclosing the protected information would create a real risk of damage to the public interest, prevent the Court from disclosing the protected information to any person, including the applicant, any other party to the proceedings, their legal representatives and any other person who seeks access to a file or record of the Court that contains the protected information; and
- allow the High Court, the Federal Court or the Federal Circuit Court to give such weight to the protected information as the Court considers appropriate in the circumstances, taking into account any submissions made to the Court.

The Bill also amends the Migration Act to introduce new provisions to:

- amend the definition of non-disclosable information to include protected information where the disclosure of such information would, in the Minister's opinion, be contrary to the national interest;
- provide that an officer performing functions under the Migration Act or Citizenship Act commits an offence if protected information is communicated to them and they disclose it to another person, other than in certain circumstances provided for by the provisions to be inserted by the Bill;

- provide that a Commonwealth officer commits an offence if protected information is disclosed to them pursuant to a declaration by the Minister and subject to conditions, and they engage in conduct, or omit to engage in conduct, and that conduct or omission contravenes a condition attached to the declaration; and
- ensure that the protected information framework has effect despite any provisions of the Migration Act or *Migration Regulations 1994* (the Migration Regulations), any law of the Commonwealth and any law of a State or Territory.

2.3. Summary of changes to the Citizenship Act

The Bill amends the Citizenship Act to introduce provisions (which are substantially similar to the provisions in the Migration Act described above) in order to safeguard from unauthorised disclosure, protected information used for decisions to:

- refuse to approve an application for citizenship;
- cancel an approval of citizenship;
- delay the making of the pledge by a conferral applicant who has had their application approved;
- revoke a person's citizenship;
- cease a person's Australian citizenship if the person has engaged in specified conduct;
- cease a person's Australian citizenship if the person has been convicted of a specified offence (and sentenced to at least 3 years of imprisonment).

The changes will strengthen the framework for the protection and use of confidential information in the Citizenship Act that is substantially the same as that in the Migration Act. This means that confidential information provided by gazetted intelligence and law enforcement agencies, used in certain citizenship decisions, may be provided to a Court by the Minister when ordered by that Court or where the Minister decides to do so. The amendments will ensure that such information may only be disclosed by a Court in circumstances where the Court is satisfied that doing so would not create a real risk of damage to the public interest.

The Bill further amends the Citizenship Act to create a framework for the management of the disclosure to and by the AAT, of information that has been certified by the Minister to be contrary to the public interest for specified reasons, or that was provided in confidence. The Bill will create a power for the Minister to make a non-disclosure certificate on public interest grounds for information relating to a decision made under the Citizenship Act and is reviewable by the AAT. The non-disclosure certificate framework is substantially similar to that provided for in sections 437 and 438 of the Migration Act.

The Secretary of the Department of Home Affairs may give the AAT written advice about the significance of the document or information. The AAT will be able to exercise discretion in disclosing information or documents. This provision is intended to cover a document or information that is of a lower threshold of being contrary to the public interest or having been given in confidence, but may still require a level of sensitive handling in light of advice from the Secretary regarding the significance of the information or document.

The Bill also creates a power for the Secretary of the Department of Home Affairs to delegate any of their functions or powers under the Citizenship Act and the *Australian Citizenship Regulation 2016* (the Citizenship Regulation) in writing to any person. This delegation would apply to the Secretary's powers and functions under the new non-disclosure certificate provisions being inserted by this Bill. The only other powers or functions in the Citizenship Act provided to the Secretary are also conferred on relevant employees of the Department, so the power to delegate would not be relevant to those powers and functions. The ability for the Secretary's powers in relation to non-disclosure certificates to be delegated will align with similar provisions in the Migration Act regarding processes for non-disclosure certificates. The number of cases seeking merits review on the basis of a refusal of citizenship application is envisioned to be on a scale where delegation would be appropriate for the foreseeable future.

2.4. Consequential amendments to other legislation

The Bill makes minor consequential amendments to the *Freedom of Information Act 1982* and *the Inspector of Transport Security Act 2006* as explained in the Explanatory Memorandum.

2.5. Rationale for the proposed amendments

The Department relies on confidential information provided by domestic and foreign law enforcement and intelligence partners when assessing the character of visa applicants and visa holders. Confidential information must be protected in cases where there is a risk of damage to the public interest. Disclosure of confidential information could compromise Australia's national security, cause damage to the public interest, and jeopardise the operations or capabilities of law enforcement and intelligence agencies, including active investigations. These agencies provide confidential information to the Department on the basis that it will be safeguarded from disclosure. The Department is concerned that if such information is not adequately protected that this may prevent gazetted agencies from being able to give information to it in the future.

Section 503A of the Migration Act was first introduced by the *Migration Legislation Amendment (Strengthening of Provisions relating to Character and Conduct) Act 1998* to address requests from law enforcement agencies that confidential information and its sources be adequately safeguarded from disclosure. Section 503A provides that the Minister cannot be required to divulge or communicate such information relied upon in character-related immigration decision-making. Prior to the introduction of section 503A of the Migration Act, it was a matter for the Court to decide, in the particular case, whether a claim by the Minister for public interest immunity should be upheld. It was incumbent on the Minister to satisfy the Court that the claim should be upheld. With the introduction of section 503A, it was no longer open to the Court to weigh the competing public interests in the administration of justice and the free flow of protected information. Departmental decision-makers were able to rely upon protected information provided by gazetted agencies to inform character decisions under section 501 and section 501CA of the Migration Act. This information informed many character-related visa decisions where there would otherwise be insufficient information to underpin a decision, including refusal and cancellation of visas of outlaw motorcycle gang members. Further amendments were made to the framework by the *Migration Legislation Amendment (Protected Information) Act 2003* which replaced public interest immunity as the mechanism for protecting confidential information by extending the scheme of statutory protection to the Federal Court of Australia and the Federal Magistrates Court.

On 6 September 2017, the High Court of Australia found (in *Graham v Minister for Immigration and Border Protection* and *Te Puia v Minister for Immigration and Border Protection* [2017] HCA 33) that section 503A of the Migration Act was partially invalid. The High Court found that the legislation impeded the High Court and the Federal Court of Australia from effectively exercising their jurisdiction to review a character decision. This is because the relevant Minister for Immigration and Citizenship could prevent disclosure of protected information to the Courts, even if this information was used in character-related decision-making.

Since the High Court decision, the Department has limited its reliance on confidential information provided by law enforcement and intelligence agencies in character-related immigration decision-making due to the uncertainty over how such information would be managed, should the Court require the information to be produced in judicial review proceedings and the information was on-disclosed to the applicant, their lawyers or the public. Potential disclosure of such information may pose an unacceptable risk to the intelligence and law enforcement capabilities, operations and sources of law enforcement and intelligence agencies, including active investigations. This risks jeopardising the trusted relationship between the Department and law enforcement and intelligence agencies. Where a decision-maker is not able to rely on information held by these agencies because it cannot be adequately protected, they may be prevented from refusing or cancelling a visa of a non-citizen who presents a serious character concern. For example, one of the listed considerations in relation to the public interest criteria in the Bill addresses concerns where disclosure of information may discourage gazetted agencies and informants from giving information to the Department (please see Subsection 2.6 below for more information on the public interest criteria). The risk of gazetted

agencies being prevented from disclosing information is likely greater in the absence of the protections provided by the Bill.

Additionally, the Citizenship Act does not currently have a framework to protect confidential information provided by law enforcement and intelligence agencies from disclosure during judicial review. Citizenship decision-makers cannot rely on confidential information provided by law enforcement and intelligence agencies when making decisions without the risk of exposing intelligence capabilities, operations and sources of law enforcement and intelligence agencies, unless that information is relevant to national security and is protected under the *National Security Information (Criminal and Civil Proceedings) Act 2005* (NSI Act) or by relying on Public Interest Immunity. The Bill will introduce into the Citizenship Act a protected information framework substantially similar to the amendments to sections 503A – 503D of the Migration Act provided for in the Bill.

The Department considers that the protective framework for non-disclosure of national security related information under the NSI Act would not provide adequate levels of protection from non-disclosure for the type of protected information used in character-related decisions under the Migration Act and the Citizenship Act. This information may not meet the definition of national security information as set out in the NSI Act (meaning it could not be afforded the protections from disclosure under that Act's framework), but nonetheless warrants protection due to potential consequences if the information is divulged. Protected information may include any information related to character. Whilst this may include information relating to a national security threat, it can also - and often does - include information on a non-citizen's criminality more generally. An additional factor is that the NSI Act requires a Court, when considering whether to disclose national security information, to undertake a balancing exercise on competing public interests. This would provide inadequate levels of protection for protected information.

Further, while the Minister retains the ability to claim that information should not be disclosed to the applicant, their legal representatives or other parties on the basis of public interest immunity, there remains a real risk that applying the broad balancing exercise under public interest immunity may not result in protecting relevant information in the present context. Public interest immunity applies to protect confidential information where the public interest in its disclosure is outweighed by a competing public interest in it remaining confidential. The 2003 amendments referred to above were specifically designed to address the inadequacy of public interest immunity in this context. That inadequacy remains. The Bill deliberately creates a different approach in terms of how a Court should assess the public interest in this context.

The Bill provides a clear test for the Court when it is considering whether to disclose protected information – that is, it must determine only whether disclosure of the information would create a real risk of damage to the public interest. The Court also has a clear list of matters which it may regard when considering its determination. These matters are all broadly related to the public interest, and reflect and emphasise the highly sensitive nature of the protected information.

Another matter the Court must have regard to are any submissions made by the parties as to the use the Court should make of the protected information and the impact disclosure of that information may have. The Bill ensures that parties who are aware of the content of the information (unless obtained unlawfully or in breach of confidence) may make submissions to the Court. This is important as it allows a party, including the Minister, to be heard about the use of the protected information, and the impact disclosure of that information may have. This may include the applicant, for example, in circumstances where they are aware of their own criminal records and therefore could make submissions on this basis.

If the Court determines that disclosure of the protected information would create a real risk of damage to the public interest, then the Bill provides a clear obligation on the Court not to disclose it, including to the applicant or their legal representatives. The tests for public interest immunity and provided for in the NSI Act, in the alternative, require the Court to undertake a balancing exercise between competing public interests. Also, the Court has a range of orders it can make in relation to public interest immunity claims and the information which is the subject of such claims. This may include, for example, partial disclosure of information or full disclosure to an applicant's legal representatives but not the applicant. As noted above, this would provide inadequate protection for protected information, which has been provided by intelligence and law enforcement agencies on a confidential basis. Disclosure of such information could cause damage to the public interest, and jeopardise the capabilities of law enforcement and intelligence agencies, including active investigations. This may in turn undermine the safety and security of the Australian community. Given

the highly sensitive nature of confidential information and the identities of the gazetted agencies in relation to specific pieces of information provided in confidence, partial disclosure of the information or giving the gist of the information to the applicant or their legal representative could damage the public interest, for example by potentially revealing the identity or existence of a human source. Further, it is open to gazetted agencies to communicate information which they may indicate is not communicated in confidence. Where this occurs, the information would not be subject to the protected information framework and so may (subject to other relevant laws) be subject to full or partial disclosure, or disclosure of a summary, as appropriate.

Amendments proposed by the Bill ensure the ability of decision-makers to rely on protected information relating to character where there may otherwise be insufficient information to underpin a decision to prevent individuals who pose a risk to the safety and good order of the community from entering or remaining in Australia, or gaining Australian citizenship and the privileges that come with it. Although the Bill creates a framework to safeguard protected information from unauthorised disclosure, it does not limit a Court's ability to access all of the relevant information that the Minister or delegate considered to arrive at their decision. The Court may order the disclosure of protected information to it. The Court must determine, after considering the protected information and any submissions made, whether on-disclosure would create a real risk of damage to the public interest, having regard to an exhaustive list of factors, which are all broadly related to considerations of the public interest (thus reflecting and emphasising the sensitive nature of the information). If the Court determines there is such a risk, it must not disclose the information any further.

The Bill will provide safeguards for the applicant by allowing the courts to decide how much weight to give to the confidential information that has been submitted in evidence (s52C(7) of the Citizenship Act and s503C(7) of the Migration Act). This allows the courts to weigh up a number of factors, including fairness to the applicant when assessing what weight to attribute to the evidence. Practically, this may involve a situation where the court has determined not to disclose the protected information, which would include not disclosing the information to the applicant. Even so, the court is to weigh up a number of factors when assessing what weight to give to evidence, including unfair prejudice to an applicant by not having access to the confidential information as well as the public interest. Information available for the courts to consider in this regard would include any information that the applicant, their authorised representative or any third party has raised in support of their case, irrespective of whether the protected information has been disclosed to the applicant or their authorised representative.

Additionally, the Bill will make it an offence for Commonwealth officers to make unauthorised disclosures of protected information provided by gazetted law enforcement and intelligence agencies and used in character-related visa and citizenship decisions. The Bill will also make it an offence for Commonwealth officers to contravene any condition specified in a declaration which discloses protected information to that officer. The creation of these offences highlights the seriousness with which the Government regards the unauthorised disclosure of such information or the contravention of conditions attached to any disclosure of that information to a Commonwealth officer, due to the potential for severe damage to the public interest. Both offences may be punishable by a maximum sentence of two years' imprisonment. These measures are designed to protect protected information communicated by gazetted agencies from being disclosed. It is important for the Department to maintain robust information and intelligence-sharing relationships with gazetted agencies in order to uphold Government policy to maintain the integrity of Australia's border protection framework, to protect the Australian community, and to uphold the integrity of Australia's migration and citizenship framework. The penalty of up to two years' imprisonment is consistent with the penalties for making unauthorised disclosures of certain information under the secrecy provisions of the *Australian Border Force Act 2015* and the *Australian Federal Police Act 1979*. The offence is proportionate to the seriousness with which the Government regards unauthorised disclosures of confidential information. The seriousness is owing to the potential for severe damage to the public interest.

The Bill also amends the definition of non-disclosable information in the Migration Act to include protected information where the disclosure of such information would, in the Minister's opinion, be contrary to the national interest. These amendments are necessary as, without them, it would undermine the intent of the Bill which is to prevent disclosure of information that could undermine ongoing law enforcement operations or intelligence activities or other matters relating to the public interest (including, for example, the safety of confidential informants). If removed, delegates may be obliged, depending on a case to case basis, to disclose the confidential information when considering one of the decisions specified in the Bill.

Lastly, there is currently no power under the Citizenship Act to enable the Minister to prevent the disclosure of information used in the context of refusing conferral of citizenship or revoking citizenship, where that decision is under merits review by the Administrative Appeals Tribunal (AAT) on the basis that it would be contrary to the public interest, including for reasons relating to the defence, security or international relations of Australia, or because it would involve the disclosure of deliberations or decisions of the Cabinet or a committee of the Cabinet. Neither is there a power for the Minister to certify that the disclosure of information would be contrary to the public interest (for any reason other than those set out above), or information given to the Minister in confidence within the context of merits review before the AAT. As such, the Bill will also introduce provisions into the Citizenship Act to create a non-disclosure certificate framework. As noted above, these measures will strengthen the framework for the protection and use of confidential information in merits review in the Citizenship Act that is substantially the same as that in the Migration Act and ensure that relevant information may be protected throughout the entire review process, including where the matter is before the AAT.

Given the rapidly evolving and complex security challenges, the amendments are necessary to ensure protection of confidential information shared between the Department, law enforcement and intelligence agencies, and to uphold public and national security interests. Protection of protected information also supports broader strategies relating to counter-terrorism, transnational crime and related activities, and allows the Department to rely on this information in visa and citizenship decision making as it relates to non-citizens of character concern, thus enabling delegates to make decisions to refuse or cancel visas, or refuse citizenship to persons, and so better protect the Australian community.

2.6. Public interest considerations

As noted above, the Court may order the disclosure to it of protected information if it is for the purposes of the proceedings before it. After the Court has considered the information and any submissions made to it about the information by those parties permitted to do so, the Court must determine whether disclosure of the information would create a real risk of damage to the public interest having regard to the following matters that they consider relevant (and only those matters):

- the fact that the information was communicated, or originally communicated, to an authorised Commonwealth officer by a gazetted agency on condition that it be treated as confidential information;
- the risk that the disclosure of information may discourage gazetted agencies and informants from giving information in the future;
- Australia's relations with other countries;
- the need to avoid disruption to national and international efforts relating to law enforcement, criminal intelligence, criminal investigation and security intelligence;
- in a case where the information was derived from an informant - the protection and safety of informants and of persons associated with informants;
- the protection of the technologies and methods used (whether in or out of Australia) to collect, analyse, secure or otherwise deal with, criminal intelligence or security intelligence;
- Australia's national security; and
- such other matters (if any) as are specified in the regulations.

The matters listed above have been included as matters that the court should have regard to as they are relevant to determining whether disclosure of the information would create a real risk of damage to the public interest. In practice, this may include disclosure which would pose an unacceptable risk to the intelligence capabilities, operations and sources of law enforcement and intelligence agencies – including active investigations. This in turn may compromise Australia's national security and the public interest. The matters listed above are relevant to the court's determination because, as noted above, the disclosure of the information may therefore risk jeopardising the trusted relationship between the Department and law enforcement and intelligence agencies, and may result in information that is relevant to character decisions not being made available to the decision-maker for consideration.

Additionally, while the listed matters include 'Australia's national security' explicitly, and will often involve national security issues directly or indirectly, they are broader than this provision alone. This is because the protection of sensitive and confidential information is intended to support the operational activities of law enforcement agencies as well as broader strategies to counter terrorism, transnational crime and related activities, including protection of informants and protection of technologies and methods.

It is appropriate that the list of matters to which the court can have regard is exhaustive, as it provides clarity and certainty for the court in exercising its functions. The scope and content of the matters listed reflects and emphasises the sensitive nature of the information, and the need for the court to give careful consideration to those matters in order to decide whether there would be a real risk of damage to the public interest if the information was disclosed more widely, including to the applicant in judicial review proceedings. It should be noted that it is the relevant intelligence and law enforcement agency which designates the information as confidential because of the sensitive nature and the list of matters acknowledges and reflects this characterisation.

Additionally, and as listed above, other matters (if any) may be specified in the regulations. If Parliament passes the Bill, the Department will monitor the operation of the protected information framework provided for in the Bill and, if deemed desirable or necessary to assist the Court in determining whether to disclose the confidential information, to specify further matters for the Court to have regard under subsections 52C(5) of the Citizenship Act and 503C(5) of the Migration Act. This can be effected through amendments to the *Australian Citizenship Regulation 2016* (the Citizenship Regulation) or *Migration Regulations 1994* (the Migration Regulations), as appropriate. As amendments to these Regulations are disallowable, they will be accompanied by a Statement of Compatibility with Human Rights and subject to parliamentary scrutiny.

3. Conclusion

Criminal intelligence and related information are vital to assessing the criminal background or associations of non-citizen visa applicants and visa holders, and applicants for citizenship, or persons whose citizenship may be considered for revocation. If the person fails the character test, they may be refused a visa, or if they hold a visa, it can be cancelled. Individuals whose visas are cancelled while in Australia are liable for removal from Australia as soon as reasonably practicable. Similarly, a migrant who is seeking to apply for, or who has been granted, citizenship, may have their citizenship application refused, or their citizenship revoked, where information is available that shows they are not of good character. This ensures that the Australian community can be protected from migrants who pose a risk of harm to the interests and good order of the Australian community.

Protected information must be safeguarded in cases where there is a risk of damage to the public interest. Disclosure of protected information could compromise Australia's national security and the operations or capabilities of law enforcement and intelligence agencies.

The changes will ensure that appropriate protection is afforded to sensitive information provided in confidence by law enforcement and intelligence agencies for consideration in character-related visa and citizenship decision-making. This is essential to the Government's core business of regulating, in the national interest, who should enter and remain in Australia, and who should be granted Australian citizenship and the privileges which attach to it.