

Refugee Legal:

Submission to the Senate Legal and Constitutional Affairs Committee: *Migration Amendment (Character Cancellation Consequential Provisions) Bill 2016*

1 Introduction – Refugee and Immigration Legal Centre

- 1.1 Refugee Legal, formerly The Refugee and Immigration Legal Centre (RILC), is a specialist community legal centre providing free legal assistance to asylum-seekers and disadvantaged migrants in Australia.¹ Since its inception over 27 years ago, Refugee Legal and its predecessors have assisted many thousands of asylum seekers and migrants in the community and in detention.
- 1.2 Refugee Legal specialises in all aspects of refugee and immigration law, policy and practice. We also play an active role in professional training, community education and policy development. We are a contractor under the Department of Immigration's and Border Protection's Immigration Advice and Application Assistance Scheme (IAAAS). Refugee Legal has substantial casework experience and is a regular contributor to the public policy debate on refugee and general migration matters.
- 1.3 We welcome the opportunity to make a submission to the Senate Legal and Constitutional Affairs Committee (**the Committee**) inquiry into the *Migration Amendment (Character Cancellation Consequential Provisions) Bill 2016 (the Bill)*. The focus of our submissions and recommendations reflect our experience and expertise as briefly outlined above.

2 Outline of submission

- 2.1 Refugee Legal has significant concerns with the amendments proposed by the Bill to the *Migration Act 1958 (the Act)*, and for the following reasons we submit the Bill should not be passed:
 - The amendments reinforce the existing statutory framework imposed by the *Migration Amendment (Character and General Visa Cancellation) Act 2014 (the Character Act)* by further imposing **significant penalties that are entirely disproportionate** to the particular character concerns that a person may have, or are merely suspected of having;
 - in combination with Australia's system of mandatory detention, further contribute to the already significant number of vulnerable persons being held in **immigration detention for extended periods**, and for those found to be owed protection obligations, **indefinite detention**; and
 - further deny many persons affected by the character cancellation framework from **accessing a fair hearing of their case**, a fundamental right owed to all persons in Australian, and further expediting the removal of such persons from Australia by restricting their fundamental legal rights to challenge that process.

¹ Refugee Legal, formerly the Refugee and Immigration Legal Centre (RILC), is the amalgam of the Victorian office of the Refugee Advice and Casework Service (RACS) and the Victorian Immigration Advice and Rights Centre (VIARC) which merged on 1 July 1998. RILC brings with it the combined experience of both organisations. RACS was established in 1988 and VIARC commenced operations in 1989.

- 2.2 In this regard we wish to reiterate our previous submissions provided to the Committee's inquiry into the Migration Amendment (Character and General Visa Cancellation) Bill 2014. A copy of our submission is enclosed at Attachment A for your reference.²
- 2.3 Refugee Legal is has significant concerns that these further amendments to the Act proposed by Schedule 2 to the Bill will, among other things:
- extend the discretionary power to detain a person to circumstances where an officer reasonably suspects that the person *may* be liable to having his or her visa cancelled personally by the Minister under section 501BA of the Migration Act³;
 - deprive those persons in immigration detention who have had their visas cancelled by the Minister personally under s501BA, from receiving basic information about their legal rights, and critically, that they are liable to being removed from Australia as soon as reasonably practicable⁴;
 - purportedly authorise the prolonged detention, and for those found to be owed protection, indefinite detention, of people who have had his or her visa cancelled or refused by the Minister personally⁵; and
 - require the expeditious removal from Australia of specified people who have had their visas cancelled on character grounds, and critically, those who failed to lodge the necessary paperwork with the Department in the time provided (irrespective of whether they have compelling and compassionate grounds for needing to remain in Australia).⁶

3 Recommendation

- 3.1 For the reasons detailed above, Refugee Legal strongly recommends that the Bill not be passed Parliament.

² This document can also be accessed from the parliamentary website here (Submission 13):
http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Character_and_Visa_Cancellation_Bill_2014/Submissions

³ Item 7, Schedule 1 to the Bill

⁴ Item 8, Schedule 1 to the Bill

⁵ Items 9, 18 and 19, Schedule 1 to the Bill

⁶ Items 10 and 11, Schedule 1 to the Bill