



**Senate Legal and Constitutional Affairs Legislation Committee's
Inquiry into the Migration Amendment (Strengthening the Character
Test) Bill 2019 [Provisions]- ECCWA Submission**

1 Introduction/background

The Ethnic Communities Council of Western Australia (ECCWA) is the peak body for CaLD communities in WA and was established in 1980 for this purpose. It is pleased to provide this submission on Migration Amendment (Strengthening the Character Test) Bill 2019.

ECCWA agrees that “character considerations” are important to maintain the integrity of our Immigration Act and system. However, this needs to be implemented in a balanced and not arbitrary manner.

It is ironic that these changes are being proposed by a government that takes immense pride in claiming that they have restored integrity to our immigration system by their policy dictum of “we determine who comes to this country and under what circumstances”.

Having implemented such a policy it is extremely harsh to punish those who have committed offences under this bill much more severely than Australian citizens (by birth or through naturalisation) who have committed the same crimes.

Modern Australia is a product of waves of migration from all parts of the world and the government has ample evidence of the immense positive impact of our immigration on our economy, trade, social and cultural development etc. It is also pertinent to note that in recent years, NES countries have been a significant source of our skilled migration. Arguably Australia has benefitted enormously from skilled and business migration and to a lesser extent other categories as well, at the expense of other countries that have paid for the health, education, training etc. of those who migrated to Australia under those categories. From an ethical perspective, it is questionable for Australia to cancel visas of those from whom it has benefitted and return them to countries when they have committed crimes.

Taking all of the above into account, ECCWA is of the view that education, skills training and awareness raising are better options than harsh punitive measures to minimise/eliminate the occurrence of crimes covered by this Bill. We also urge the federal government as well as state and territory governments to ensure that a reasonable share of funding that they provide for mental health, parenting, family and domestic violence etc. are distributed to multicultural services providers to enable them to effectively reach out to minimise/eliminate the committal of crimes covered by this Bill.

It is ECCWA's understanding that only a miniscule minority of those who have been provided permanent residence in Australia are likely to commit offences that fall within the purview of this Bill. Many of the offences that are covered by this Bill are committed mostly by citizens and not non-citizens. The rule of the law applies to citizens and non-citizens alike when they commit such offences and so the latter are already punished for such offences by our legal system.

2 Proposed Insertion after paragraph 5C (1)(a) Definition of non-citizen

ECCWA's major concern about this bill relates to the time it now takes for a non-citizen to gain Australian Citizenship. What previously used to be just two years has become four and in practice it is much more, for a myriad of reasons including lack of identity papers from their countries of origin when they arrived in Australia under the Refugee or Humanitarian program, the lengthy waiting periods for processing applications because of inadequate resources being assigned for this by the government etc.

As a consequence of the above, people are left in an eternal state of non-citizenship. ECCWA would strongly argue that anyone who has been a permanent resident of Australia for four years and say six months should not be considered as a non-citizen for the purpose of the Bill. Many of these people are extremely vulnerable, not necessarily proficient in English and the offence they are convicted for may have resulted in a different outcome had they had access to legal services, professional interpreting etc.

So we strongly recommend that there be a definition of non-citizen that takes into account the above. Ideally it should be tied to the period that needs to be served to qualify for Australian citizenship and not to an arbitrary finite period.

3 Proposed Insertion at the end of section 5C Designated offence

ECCWA is concerned about the definition of certain offences namely in the case of 4 (3) (a) (i) the threat of violence. ECCWA does not condone violence in any shape or form, but the mere threat of it should not constitute any offence that can lead to cancellation of a permanent resident visa and placing people in a stateless situation in some instances or at risk of serious harm due to deportation. These are people already subjected to Australian Law and they now face the consequence of their offence just like those who are citizens by birth or naturalisation. What makes people in such situations vulnerable is its link to 4 (3) (b) (iii) as imprisonment for a maximum term of not less than 2 years. So if a non-citizen commits an offence of threatening violence and the offence is punishable for a maximum term of not less than 2 years imprisonment, but the punishment handed down is much less than 2 years, his/her visa can be cancelled under this Bill. This is not fair or reasonable and undermines our judicial system which has clearly viewed the "crime".

We also have some concerns about 4 (3) (a) (iii) breaching an order made by a court or tribunal for the personal protection of another person. ECCWA does not condone the breaching of court or tribunal orders, but wishes to draw the attention of the parliament that sometimes this could happen because the person does not understand the order let alone its consequences, because of lack of English proficiency, intellectual impairment, brain injury etc. Courts can take one or more of these factors in to account by way of mitigating circumstances in determining the punishment of for the same. So it is possible that as per 4 (3) (b) (iii) such an offence could attract

imprisonment for a maximum term of not less than 2 years, the punishment handed out could be much less.

So we strongly recommend that there be a definition of non-citizen that takes into account the above. Ideally it should be tied to the period that needs to be served to qualify for Australian citizenship and not to an arbitrary finite period.

4 Proposed Insertion after subsection 501(7)

ECCWA is extremely pleased that that a definition of punishment for an offence committed outside Australia has been included as follows. This will ensure that offences in non-democratic countries which persecute their citizens with harsh and punitive laws are not taken into account in determining an offence warranting cancellation of an Australian visa.

(7AA) (c) for an offence against a law in force in a foreign country—if it were assumed that the act or omission constituting the offence had taken place in the Australian Capital Territory:

- (i) the act or omission would have constituted an offence (the Territory offence) against a law in force in that Territory; and
- (ii) the Territory offence would have been punishable as mentioned in subparagraph (b)(i), (ii) or (iii).

However, we are concerned about (7AA) (a) (i) “the threat of violence” and (7AA) (b) (iii) for the reasons mentioned under paragraph 3.

5 Conclusions

Only four countries in the region (Australia, Fiji, Philippines and South Korea) have ratified the 1954 Convention relating to the Status of Stateless Persons and Australia and New Zealand are the only two countries in the region that have ratified the 1961 Convention on the Reduction of Statelessness. These conventions are complemented by other international human rights treaties and provisions relevant to the right to a nationality.

As an immigrant nation and one that has taken a leadership role as mentioned above to ensure the reduction of Statelessness it would very regrettable if Australia proceeds with a Bill which will in fact make people that it accepted on its terms in the first place, stateless for crimes that should be handled no differently if it were committed by Australian Citizens.

ECCWA does not condone violence or crime in any shape or form but strongly urges the government to positively consider the recommendations in this submission, if it still intends to pursue with this Bill.