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No demonstrated need for Character Test Bill

The Law Council of Australia maintains that the Migration Amendment (Strengthening the Character Test) Bill 2021 is unnecessary and should be opposed by the Senate.

“The Senate is scheduled to consider the Bill today,” Law Council of Australia President, Mr Tass Liveris said. “The Law Council continues to question why this legislation is being pursued, particularly as we believe it may have unintended and harmful consequences.”

The Bill would amend the *Migration Act 1958* (Cth) to provide that a person convicted of a ‘designated offence’ will not pass the character test, regardless of any sentence imposed. Such a person may have their visa cancelled or refused by the Minister (or delegate).

“This Bill is unnecessary,” Mr Liveris said. “Under current law, it is already open to the Minister to determine that a person does not pass the character test based on an assessment of their character – regardless of any conviction or sentence received.

“It is also disproportionate as it could lead to greater cancellations or refusals of visas of convicted persons who have received only a short sentence, a fine or a community corrections order, including young people.

“Of greatest concern is that the Bill may have punitive consequences for victims of family violence. Despite its intention to protect victims of family violence, it may actually deter victims from reporting a violent act and seeking help in order to avoid having a family member deported or put their own visa status at risk.

“The Draft National Plan to End Violence against Women 2022-2032 underlines the need for evidence-based approaches, which are informed by diverse lived experiences. The concerns raised by legal and family violence services who support migrant victims of family violence about the Bill’s potential unintended consequences are troubling.

“The Bill may also have undesirable flow-on effects through the criminal justice system, by potentially deterring non-citizen defendants from entering guilty pleas to avoid conviction for a wide range of designated offences, because they will automatically fail to satisfy the character test if convicted. This will lead to more contested and protracted court proceedings and may adversely affect victims of crime and witnesses alike.

“The Government is yet to offer conclusive evidence that this Bill addresses any gap that prevents deportation of a person who poses a risk to the community. The Law Council would be disappointed to see this Bill passed.

“In fact, we recommend that the Minister’s visa cancellation powers under the Migration Act be reviewed for consistency with rule of law principles. Any amendments proposed to the Act should genuinely support better outcomes for migrants who experience family violence.”

You can read the Law Council’s most recent submission on the Bill [here](#).

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The Law Council of Australia is the national voice of the legal profession, promoting justice and the rule of law.