

Friday, 27 August 2021

## Amendments to Migration and Citizenship Bill places right to a fair hearing at risk

The Law Council of Australia this morning told the Parliamentary Joint Committee on Intelligence and Security (Committee) that the Migration and Citizenship Legislation Amendment (Strengthening Information Provisions) Bill 2020 should not be passed into law.

The Bill would insert a new Protected Information Framework into the *Migration Act 1958* (Cth) and *Australian Citizenship Act 2007* (Cth) under which 'confidential information' provided by gazetted agencies, including foreign law enforcement bodies and multiple Australian agencies, may be used to cancel a visa or revoke a person's citizenship - without the person having an opportunity to challenge the information, or even know it is being used against them.

Speaking before the Committee, President of the Law Council, Dr Jacoba Brasch QC said, "While the Law Council accepts that there is a public interest in law enforcement and criminal intelligence agencies providing probative information to officials responsible for exercising character-related powers, the proposal to establish a Protected Information Framework must balance those interests against principles fundamental to a democratic legal system."

"These principles include the right to a fair hearing, effective judicial review, the proper administration of justice, and parliamentary and independent scrutiny of executive power.

"If passed, the amendments would apply to information provided by agencies determined by the Minister, without any Parliamentary scrutiny; and of a kind which need not meet any statutory test as to its nature, sensitivity, veracity or the risks arising from disclosure.

"Under this Framework, a person will, in practice, likely have no means to address the veracity of the information or any inferences drawn from it – which will hamper their ability to answer the case against them. In deciding whether to order disclosure in any judicial review process, the Court may only consider security and law enforcement interests and may not consider the interests of the parties nor interests in the administration of justice.

"These measures are significant encroachments on the integrity of the court and its processes. The Law Council believes that the Bill does not strike the appropriate balance between the needs of law enforcement and the right to a fair hearing. Grave consequences follow the exercise of these exercise, including losing the right to remain in Australia, and to be a citizen."

"The Law Council considers that the case for the proposed Protected Information Framework has not been made and believe that what is required is a whole-of-government approach to handling sensitive information, including in judicial review matters, to ensure consistency across Commonwealth laws."

ENDS

A copy of the opening statement is available [here](#).

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