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HOUSE OF REPRESENTATIVES

PROOF

BILLS

**Migration Amendment (Strengthening
the Character Test) Bill 2019**

Second Reading

SPEECH

Wednesday, 18 September 2019

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

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Speaker O'Brien, Ted, MP	Question No.

Mr TED O'BRIEN (Fairfax) (16:52): I'd like to say from the outset that I reject the drivel we heard from the member for Scullin. To come into this chamber and say that the Australian people don't want to see conflict here in this chamber but they want to see us unite and then to actually oppose a bill, and do so so ferociously, with inflammatory language—

Dr Aly interjecting—

Mr TED O'BRIEN: I'm sorry, that just doesn't cut the mustard whatsoever! And as for the suggestion that this bill represents an offence to New Zealand, let me be very clear: I, like probably every single member of this House, including those opposite, love New Zealand. We don't have a closer friend in the world than New Zealand. Maybe the member for Scullin just forgets that what people do want to see in this place is what's in the best interests of Australia and Australians. What people want to see in this place is their legislators ensuring that the Australian people are kept safe and secure. That is our obligation, and that is an obligation that I believe this bill delivers on.

There are many people who come to Australia and love and respect our country. And there are many who don't. It is the aim of this bill to better identify those who seemingly don't and to remove them before it's too late. While the purpose of this bill, the Migration Amendment (Strengthening the Character Test) Bill 2019, is not specific to terrorism, it will, however, embolden our efforts to mitigate the risks of terrorist attacks on our soil, here in Australia.

Dr Aly: How?

Mr TED O'BRIEN: This bill will do so, to answer the calling out from those opposite—I don't blame those in the Labor Party asking such questions on issues of security, because it's not something in their DNA. It's not something they really understand. This bill will significantly improve the current legislative framework in relation to discretionary visa refusals and cancellations on character grounds, with the key reform ensuring that noncitizens who have been convicted of a serious, designated offence and pose a risk to the Australian community are considered for visa refusal or cancellation. The Labor Party is still opposed to that. Let me confirm here that those in this chamber from Labor are opposed to the idea that people who are convicted of a serious offence and pose a risk to the Australian community should be considered for visa refusal. The Labor Party does not like that idea—unbelievable!

While terrorism is a violent crime that would certainly meet the definition of a designated offence under the provisions of the bill, it is the comprehensive list of violent and related offences, committed either in Australia or elsewhere, that makes the strengthening of current provisions so effective as an early-warning mechanism, a mechanism that will not only help to ensure that foreign nationals convicted of such crimes are weeded out but also that future violent non-citizen extremists can be removed from the Australian community, hopefully before they are radicalised to the point where they plan or participate in an attack.

This is not to imply that all violent crimes, or even the greatest risk of such crimes, come from noncitizens residing in Australia. That is certainly not the case. However, just because Australians must endure home-grown violent offenders—born or naturalised—who prey upon our community, that does not mean that our government, our society and our security agencies shouldn't use every means to identify and remove criminal noncitizens who pose a risk and fail to meet community expectations. To me, that is fair and reasonable. The reality is that Australians have very little tolerance for criminal behaviour by foreign nationals who abuse our trust.

The right to enter, to stay and to work in Australia is a privilege that should only ever be granted to those of good character. An Australian visa is not a licence to wilfully inflict harm upon Australians. Our generous visa regime should not be an opportunity for any foreign fox to simply enter the hen house. Those who by their actions feel

that it is such an opportunity will be identified and, thanks to the stronger provisions in this bill, will quickly find that their visa may be either cancelled or refused, at the minister's discretion.

In this context, the point should be made that existing processes for the refusal and cancellation of visas are already very robust under section 501 of the Migration Act, where, under the character provisions, the Australian government can and does regularly cancel the visas of convicted criminal noncitizens, with some 4,000 visas cancelled since 2015. That's a lot of criminal activity removed from our community.

However, while the existing provisions are effective, the current threshold, where an offending noncitizen must be sentenced to a minimum of 12 months in order to trigger the mandatory cancellation or refusal of their visa, is not capturing all those found guilty of serious criminality and who may continue to pose a risk to the Australian community. It is important to note that the strengthening of the character test provisions outlined in this bill in no way alters the overall framework within which these provisions operate. There is, for example, no escalation of the aforementioned mandatory cancellation powers that already apply—that is, where a noncitizen would need to be sentenced to a minimum of 12 months or convicted of a sexual offence involving a child in order to trigger mandatory cancellation or refusal of their visa.

The amendments to strengthen the character test proposed by this bill significantly provide for discretionary powers only. It was actually a key recommendation of the 2017 Joint Standing Committee on Migration in their report entitled *No one teaches you to become an Australian: report of the inquiry into migrant settlement outcomes* that the character test provisions in section 501 of the Migration Act be strengthened. There is currently a character provision that can be applied to convicted noncitizens who receive lighter sentences and allows additional discretionary consideration based on past and present criminal or general conduct. However, the joint standing committee felt this was inadequate to objectively consider the refusal or cancellation of a visa for a noncitizen where their offending did not incur a sentence of 12 months or more and who, in all probability, would continue to pose an unacceptable safety risk to the Australian community.

This bill is a response to the committee's recommendation and provides clear and objective grounds for the minister to consider the refusal or cancellation of a visa for any noncitizen convicted of a designated offence. This amendment will effectively expand the character test beyond a predominantly sentence based approach by allowing the minister to consider the individual circumstances of the offending and the severity of the conduct in each case. The strengthened character test will set a new objective standard to clearly and consistently determine exactly what constitutes a designated offence and, in doing so, will rely on existing criminal law in each state or territory, or even the law of a foreign country, to determine a uniform measure of seriousness for each offence.

A 'designated offence' is determined by the bill to be the offences that involve acts of violence against a person, including: murder; manslaughter; kidnapping; assault; aggravated burglary and threat of violence; possession or use of a weapon; non-consensual sexual conduct, including sexual assault and sharing an intimate image; breaching a court or tribunal order for the protection of another person; and abiding, abetting, counselling or procuring the commission of such a designated offence, including through threats or promises. And, where the offence is against Australian law, it must be punishable by imprisonment for a maximum term of not less than two years.

This bill should serve as a warning to non-citizen sex offenders, violent thugs, wife-beaters, child abusers and anyone who participates in a violent criminal enterprise—because, a commuted sentence or not, a sympathetic magistrate or not, if you are convicted of any of these or equivalent crimes in Australia or overseas then the minister will look very closely at your visa and adopt a very firm and consistent approach. It should be noted that, where a person's visa is cancelled or refused in Australia, they will be liable for immediate detention under section 189 of the Migration Act 1958 and be removed from Australia. The Australian community simply will not tolerate violent criminals and sex offenders from other lands who seek to enter and stay in our country.

I could go on with examples, but I shall save the House from some pretty awful stories and case studies except to say that the Liberal-National government is firmly resolute when it comes to protecting the Australian community. It is resolute in protecting them from violent criminals who enter our country and, provided our laws and actions are compatible with recognised human rights and freedoms, which they are, our law enforcement and security agencies will find these individuals, no matter where they choose to hide—and once they're convicted they'll be locked up and kicked out.

While the focus of this bill is clearly on addressing the criminal behaviour of noncitizens, it should be remembered that the minister does have the power under the Citizenship Act to denationalise dual citizens for terror-related activity. The dual citizens who may be seduced by violent extremist ideology would do well to consider that fact before they indulge their delusions any further.

We should also give thanks to the fact that Australia, despite some events of recent years, remains such a safe country in which to live and such a safe country in which to raise a family. We continue to be, in many ways, isolated from the conflict and tragedy that define and scar so much of this world. However, whether it be our splendid isolation or other reasons, some of that safety can be eroded, and that is the challenge we face. The events of recent years show that the easy-going attitude of Australians, the professionalism of our police and security agencies and, indeed, the vast sea that surrounds us can no longer be relied upon to guarantee our safety as they once did.

Australia's migration program must always serve the best interests of Australia. Those interests include the labour that's needed to work on farms, the service of our communities and the strength of our economy. However, as important as all these sorts of interests might be, they should never override or distort the integrity of our migration program or threaten the security of 25 million Australians. By strengthening the character test, this bill will help to deliver on that obligation. It's for that reason that I'm happy to commend this bill to the House.