



Police Federation
of Australia

The National Voice of Policing

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28 October 2014

Committee Secretary
Senate Legal and Constitutional Affairs Committee
Parliament House
CANBERRA ACT 2600

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Dear Committee Members

**INQUIRY INTO THE MIGRATION AMENDMENT (CHARACTER AND GENERAL VISA
CANCELLATION) BILL 2014**

Thank you for the invitation to make a submission on this Bill. The Police Federation of Australia, representing the nation's 58,000 police officers has a direct interest in key measures in the Bill and strongly supports the strengthening of visa cancellation provisions to better safeguard the Australian community.

The PFA submission is attached. We have no objection to our submission being published by the Committee and we would be pleased to give evidence to the Committee if you should wish.

Yours sincerely

Mark Burgess
Chief Executive Officer

ATTACHMENT

POLICE FEDERATION OF AUSTRALIA SUBMISSION TO THE INQUIRY INTO THE MIGRATION AMENDMENT (CHARACTER AND GENERAL VISA CANCELLATION) BILL 2014

INTRODUCTION

In the period 2009 to 2012 the Police Federation of Australia (PFA) was directly involved in a particular case of an individual with a record of serious criminal offences in Australia who was due to be released from prison, in an endeavor to ensure that his visa was cancelled for the safety and protection of the Australian community. In that instance it took the intervention of the Minister for Immigration, following AAT and Federal Court appeals by the individual, to secure his visa cancellation and deportation.

The PFA considers that a series of measures in the current Bill which strengthen the visa cancellation powers and processes will overcome the various shortcomings which were apparent in the existing law.

THE MOTEKIAI TAUFHEMA CASE

The role of, and weight given to, the character provisions of the *Migration Act 1958* came in for close scrutiny in the period 2009 to 2012 including by the PFA. That scrutiny gave rise to serious frustration with the terms and processes of the Migration Act and the hurdles in the way of protecting the Australian community from harm.

Prisoner, Motekiai Taufahema, who is a Tongan national, was the subject of a move by the Immigration Department to cancel his visa on character grounds. He appealed to the Administrative Appeals Tribunal, where he was successful. The Federal Court dismissed an appeal against that AAT decision, so the then Minister for Immigration and Citizenship, Senator Chris Evans had little option but to use the power vested in him under section 501A(2) to set aside the decision of the AAT and consider whether to cancel his visa under the character test provisions. New guidelines introduced by the Minister in 2009 strengthened the emphasis that section 501 decision-makers must place on violent crimes and the protection of the community.

Mr Taufahema, (with his brother and accomplice) was convicted of the manslaughter of highway patrol officer Senior Constable Glen McEnallay in suburban Sydney in the execution of his duty in March 2002. He was on parole at the time of this offence.

The AAT appears not to have had before it critical evidence relating to his lengthy convictions, matters that transpired at his criminal trial, and pertinent sentencing remarks which may well have altered its decision. It also became apparent that the NSW Police could have assisted in giving evidence of Mr Taufahema's criminal record and challenged various claims he made had they been alerted to the fact that cancellation of his visa was under consideration and before the AAT. NSW Police had no information from the Immigration Department or the AAT that the matter was being considered.

Since arriving in Australia in 1988 from Tonga, Mr Taufahema has been convicted of stealing, assault with intent to rob, trespass with intent, malicious damage, break and enter with intent, goods in custody, robbery, possess shortened firearm, larceny of a motor vehicle, being armed with intent, assault, assault occasioning actual bodily harm, resisting arrest, taking and driving a conveyance, assaulting an officer in the execution of his/her duty, affray and manslaughter. It is therefore little surprise that he has spent 12 of his 21 years in Australia behind bars. His sentence for the manslaughter of Senior Constable McEnallay expires on 26 March 2016. His non-parole period expired on 26 March 2012.

The manslaughter offence for which he was convicted is a very serious one – the killing of a police officer in the execution of his duty. He was originally charged and convicted of murder, however several convictions were quashed on appeal in the High Court and he ultimately pleaded guilty to manslaughter. It should be noted that he was on parole at the time of the killing of Senior Constable McEnallay.

In 2010 the then Minister asked his department to investigate the potential to enhance liaison with various State and Territory police and other authorities and to explore with the Attorney-General's Department processes that could be put in place to enhance the transparency of the review process so that this sort of gap in vital information relating to the character test could be overcome.

It is apparent that the AAT and the Federal Court in their consideration of whether his visa should be cancelled gave greater weight to the fact that Mr Taufahema had a young daughter than to the character grounds in the Migration Act even in spite of his long and serious criminal history and 12 years in prison in Australia and the risks he posed to the Australian community.

NSW Police Commissioner Andrew Scipione, the NSW Police Association and the PFA called on the then Minister for Immigration to cancel Mr Taufahema's visa under his special powers after the failed AAT case and the Federal Court appeal in order to safeguard the Australian community against further violent criminal behavior. The Minister did so in April 2010 and Mr Taufahema is expected to be deported at the end of his sentence in 2016.

This is not the only case of this kind. Another instance involved a New Zealander convicted of more than 70 crimes, including assaulting a police officer, whose deportation was overruled by the AAT. Nevertheless, the Taufahema case is a clear indication of serious shortcomings in the *Migration Act 1958* which need to be addressed.

THE 2014 PROPOSED AMENDMENTS

The PFA is very pleased to support the amendments now proposed to the *Migration Act 1958*.

As the now Minister for Immigration and Border Protection, The Hon Scott Morrison, MP said in his Second Reading Speech "(e)ntry and stay in Australia by noncitizens is a privilege, not a right, and the Australian community expects that the Australian government can and

shouldcancel their visas, if they do not abide by Australian laws.” The PFA agrees with this stance and the need to revise and update the visa cancellation provisions. We believe it is in the national interest that the character test in the migration regime is vigorously enforced in a manner that best protects the Australian community.

In particular, we strongly support:

- The proposal under section 501(3A) for mandatory cancellation power for non-citizens who objectively do not pass the character test and are in prison.
- The proposals in section 501(6)(b), (d), (e)-(h) and associated changes which broaden the existing grounds for not passing the character test, including to persons convicted of a crime or crimes totaling twelve months which will amount to a substantial criminal record, and other persons and cohorts of non-citizens responsible for very serious offences such as sex offenders and war criminals.
- The proposal in section 501L to allow the minister to require the head of an agency of a state or territory to disclose to the minister personal information that is relevant to whether the person passes the character test and the possible refusal or cancellation of their visa under section 501. This will overcome Privacy Act impediments to the sharing of information.
- The stronger personal ministerial decision-making powers in section 501BA in relation to visa cancellation, including the power to set aside and substitute decisions of delegates and tribunals and to cancel a visa personally where it is in the public interest to do so and that such decisions not be subject to merits review processes (but continue to be subject to judicial review).

The PFA looks forward to the passage of these reforms.