



Multicultural Youth Advocacy Network (MYAN Australia)

Submission to the Joint Standing Committee on Migration for Inquiry on Review processes associated with visa cancellations made on criminal grounds

April 2018

About MYAN

The Multicultural Youth Advocacy Network (MYAN) is the national peak body representing multicultural youth issues.

MYAN works in partnership with young people, government and non-government agencies at the state and territory and national levels to ensure that the particular needs of young people from refugee and migrant backgrounds are recognised, and to support a coherent and consistent approach to addressing these needs in policy and service delivery. The MYAN undertakes a range of policy and sector development activities, and supports young people to develop leadership skills and networks.

Young people from refugee and migrant backgrounds demonstrate high levels of resilience and resourcefulness and have the potential to be active participants in and contributors to Australian society. However, they can face particular barriers to accessing services and opportunities, including language, culture, limited social capital and unfamiliarity with Australian systems and processes (including the service system), racism and discrimination. These factors can place them at a social and economic disadvantage within Australian society, which can mean they are at higher risk of social and economic isolation. The MYAN believes that a targeted approach to policy and service delivery is essential to addressing these barriers.

The MYAN has developed the *National Youth Settlement Framework* to support a targeted and consistent approach to addressing the needs of newly arrived young people settling in Australia.

About this submission

MYAN welcomes the opportunity to contribute to the Joint Standing Committee on Migration's Inquiry into the review processes associated with visa cancellations made on criminal grounds. This submission does not respond to individual terms of reference of the Inquiry, but rather focuses on the current gaps and quality issues in the decision-making system leading to visa cancellations under Section 501 of the Migration Act 1958 which justifies the existence of merits review processes, as well as the youth justice approach which needs to be adopted to respond to the particular challenges and barriers faced by young people from refugee and migrant backgrounds leading to anti-social behaviour.

This submission provides a national perspective, drawing on the MYAN's breadth of experience working with young people from refugee and migrant backgrounds, their communities and the youth and settlement sectors across Australia.

This submission focuses on the demonstrated gaps and issues in the current visa cancellation processes, as well as the adverse consequences of visa cancellation decisions which justifies the current review processes for the decisions taken under Section 501. It includes a focus on youth justice approaches for responding to anti-social behaviour amongst a small number of young people from refugee and migrant backgrounds.

1. General statements about the visa cancellations based on character provisions under Section 501 of the Migration Act 1958

MYAN believes current powers under the Migration Act 1958 regarding the use of the character test to cancel or revoke visas are already broad and far-reaching. MYAN does not support any changes which diminishes and/or limits existing review processes associated with visa cancellations made on criminal grounds.

MYAN recognises that research into character testing has found that, outside of its benefit for scrutinising individuals for various public interest reasons¹, they may serve to do more harm than good by undermining social cohesion and broad community faith in the fairness and impartiality of our migration system. MYAN believes that current tools for managing non-citizens with criminal records are strong enough, and in some cases may over-reach.²

Changes introduced in 2014, and most recently in February 2017, have sought to further broaden the character grounds upon which visas may be revoked and cancelled. These changes, particularly lowering of the threshold, had swift consequences with the number of visas cancelled rising sharply from 2013/14 to 2015/16. After Section 501 of the Migration Act 1958 was amended in December 2014, the number of visas cancelled under Section 501 has increased from 76 in 2013-14 to 983 in 2015-16³ and to 1284 in 2016-17.⁴

The changes in broadening grounds for visa cancellations under Section 501 raised concerns that young people, who may pose no threat to the community, are being implicated in this system with scant regard for their particular circumstances as young people. Of particular concern is the introduction of mandatory cancellations, the removal of aspects of judicial oversight and increased Ministerial powers. These developments meant consideration of the merits of individual cases is less likely in the first instance and, where cancellation may be later revoked, a young person will have already spent time unnecessarily detained. MYAN is concerned that there is little space in the existing legislation and guidance that calls on the Minister to consider the circumstances of an individual young person.⁵

MYAN reaffirms its belief that checks and balances are required to support a commitment to a fair and impartial migration system that is fair for Australia and all Australians. Given this background, MYAN considers the existing review processes associated with visa cancellations are needed and should be in place.

While Australia's national interest must be upheld, these powers have the potential to not only harm individual young people caught within their remit, but also undermine Australia's national interest. They also undermine Australia's global standing as a successful immigrant

¹Character was intended to be a last-resort safeguard, not to constitute the system itself... The development of character tests with the purpose of aligning people as 'like us' or 'not like us', should be rejected... It might be necessary for Australia to continue to conduct inquiries into the character of individuals for various public interest reasons. However, research into character testing concludes that it is safest to judge people according to what they do rather than any prejudicial view of whom they might become or associate with." Rimmer (2008). *The Dangers of Character Tests: Dr Haneef and other cautionary tales, Discussion Paper (Discussion Paper Number 101)*. Canberra: The Australia Institute, pp. vii & 45.

² MYAN Australia (2017) *MYAN Submission to the Joint Standing Committee on Migration: Inquiry into Settlement Outcomes*. Melbourne: MYAN. p. 42.

³ Commonwealth Ombudsman (2016) *The Department of Immigration and Border Protection the Administration of Section 501 of the Migration Act 1958*. Available at http://www.ombudsman.gov.au/__data/assets/pdf_file/0027/42597/Own-motion-report-into-the-Administration-of-Section-of-the-Migration-Act-1958-final.pdf, p. 3.

⁴ Department of Home Affairs (2018) *Key visa cancellation statistics*. Available at <https://www.homeaffairs.gov.au/about/reports-publications/research-statistics/statistics/key-cancellation-statistics>.

⁵ MYAN Australia (2017) *MYAN Submission to the Joint Standing Committee on Migration: Inquiry into Settlement Outcomes*. Melbourne: MYAN. p. 42.

and multicultural nation.

2. Key Recommendations

- Keep current review processes in place at a minimum for visa cancellation decisions, and further strengthen merits review processes for visa cancellation decisions under Section 501 of the Migration Act 1958
- Avoid using Section 501 “as a means to address ‘anti-social behaviour’ amongst young people from migrant and refugee backgrounds”⁶ as cancelling visas under s501 is not a valid criminal justice response.
- Adopt a youth justice approach for responding to anti-social behaviour amongst a small number of young people from refugee and migrant backgrounds
- Ensure more detailed and nationally consistent data is collected on young people engaged in criminal activity (including data on age and visa status of offenders at the national level), as well as program outcomes, to inform program delivery and to build an evidence base on ‘what works’

Below sections elaborate on the recommendations of MYAN in response to the Inquiry;

3. Keep current review processes in place at a minimum for visa cancellation decisions and further strengthen merits review processes for visa cancellation decisions under Section 501 of the Migration Act 1958

a) Commonwealth’s system of Administrative Review

According to the Attorney-General’s Department, administrative review has a dual purpose:

- to improve the quality, efficiency and effectiveness of government decision making generally; and
- to enable people to test the legality and the merits of decisions that affect them.⁷

In common with other democracies, Australia has a legal system built on a clear separation of powers between the government and the judiciary. Decisions made by an elected Member of Parliament and Government Minister should be able to be independently and impartially reviewed by administrative tribunals, as there is no clear definition on what constitutes community standards and the ‘public interest’.

A mandatory decision to cancel a visa is not reviewable by the Administrative Appeals Tribunal (AAT), but a person is able to seek revocation of the decision, and only a decision of a delegate of the Minister not to revoke the visa cancellation is reviewable by the AAT. The Minister, acting personally, is empowered to set aside a decision of the AAT to revoke the cancellation of a visa under s 501(3A), and the rules of natural justice do not apply to the Minister’s decision. While these changes were made in Section 501 of the Migration Act 1958

⁶ Australian Human Rights Commission (2017) *Inquiry into Migrant Settlement Outcomes*, Australian Human Rights Commission Submission to the Joint Standing Committee on Migration. Available at https://www.humanrights.gov.au/sites/default/files/AHRC%2020170131%20Final_AHRC%20Submission_Migrant%20Settlement%20Outcomes.pdf, p. 5.

⁷ Attorney-General’s Department (2018) *Overview of the Commonwealth System of Administrative Review*. Available at <https://www.arc.ag.gov.au/Aboutus/Pages/OverviewoftheCommonwealthSystemofAdminReview.aspx>.

as part of the Migration Amendment (Character and General Visa Cancellation) Bill 2014, its Explanatory Memorandum had mentioned that natural justice would generally be afforded to persons as the decision maker will be required to take any information provided by the client and several other considerations such as Australia's human rights obligations into consideration as part of forming their decision⁸. As demonstrated below, this has not been the case since the changes under Section 501.

The current Inquiry looking into the merits review processes, i.e. AAT's jurisdiction to review, as the only merits review tribunal for reviews for visa cancellation decisions⁹ should consider these factors. It should recognize that the current merits review powers of AAT are quite limited, and despite this, such a review process is essential to provide natural justice and redress to persons who are being negatively affected by the visa cancellations regime - especially the young people from migrant and refugee backgrounds.

b) Flawed processes in visa cancellation decisions

The introduction of mandatory visa cancellations has seen a significant rise in the number of visas cancelled on character grounds, and the vast majority of Section 501 cancellations are currently taking place under the mandatory cancellation provisions.¹⁰

The administration of Section 501 is coordinated and managed by the National Compliance and Cancellation Centre (NCCC), which had 92 staff in April 2016¹¹, and doubled in size in 2017.¹² The NCCC staff identifies people subject to visa cancellations and prepare the notices and relevant documentation for discretionary cancellations for the minister or delegate, as well as for mandatory cancellations, and also refer people for detention and removal. Three people make the decisions regarding cancellations and revocations; the minister, the assistant minister and an Executive Level 2 delegate. In 2016 approximately 75% of cases were assigned to the Minister.¹³

In this system of decision making and following the increased workload the changes to Section 501 have caused in recent years¹⁴, inconsistencies and incorrect decisions have been increasingly identified in various reports, audits and evaluations that investigated the systems of the then Department of Immigration and Border Protection (DIBP), now the Department of Home Affairs (from here on referred as 'the Department') on visa cancellations.

⁸ Parliament of Australia (2014) *Migration Amendment (Character and General Visa Cancellation) Bill 2014 Explanatory Memorandum, Attachment A: Statement of Compatibility with Human Rights*. Available at http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5345_ems_afd76f6e-75a7-427b-81ac-d4adb963a996/upload_pdf/79436.pdf;fileType=application%2Fpdf, p. 5.

⁹ Department of Home Affairs (2018) *What if my visa application is refused or my visa is cancelled?* Available at <https://www.homeaffairs.gov.au/lega/lega/form/immi-faqs/what-if-my-visa-application-is-refused-or-my-visa-is-cancelled>

¹⁰ Thom, V (2017) *Independent review for the Department of Immigration and Border Protection into the circumstances of the detention of two Australian citizens Final report 9 June 2017*. Available at <https://www.homeaffairs.gov.au/AccessandAccountability/Documents/FOI/fa171000267-document-released.pdf>, p. 15

¹¹ Commonwealth Ombudsman (2016) *The Department of Immigration and Border Protection the Administration of Section 501 of the Migration Act 1958*. Available at http://www.ombudsman.gov.au/__data/assets/pdf_file/0027/42597/Own-motion-report-into-the-Administration-of-Section-of-the-Migration-Act-1958-final.pdf, p. 9.

¹² Thom, V (2017) *Independent review for the Department of Immigration and Border Protection into the circumstances of the detention of two Australian citizens Final report 9 June 2017*. Available at <https://www.homeaffairs.gov.au/AccessandAccountability/Documents/FOI/fa171000267-document-released.pdf>, p. 15

¹³ Commonwealth Ombudsman (2016) *The Department of Immigration and Border Protection the Administration of Section 501 of the Migration Act 1958*. Available at http://www.ombudsman.gov.au/__data/assets/pdf_file/0027/42597/Own-motion-report-into-the-Administration-of-Section-of-the-Migration-Act-1958-final.pdf, p. 11.

¹⁴ Commonwealth Ombudsman (2016) *The Department of Immigration and Border Protection the Administration of Section 501 of the Migration Act 1958*. Available at http://www.ombudsman.gov.au/__data/assets/pdf_file/0027/42597/Own-motion-report-into-the-Administration-of-Section-of-the-Migration-Act-1958-final.pdf, p. 9.

A December 2016 report by the Commonwealth Ombudsman noted that there have been several instances of the incorrect visa being cancelled for Section 501 cases, and there has been at least once instance of a visa being reinstated due to the international protection obligation of non-refoulement not being fully considered in the visa cancellation decision of a former refugee by the delegate.¹⁵

Following his mission to Australia, the Special Rapporteur on the human rights of migrants, François Crépeau, stated in his report in April 2017 that he met with detainees who had had their visa cancelled, revoked or not renewed because of minor offences, committed sometimes many years ago, such as traffic violations or misdemeanors, adding that these changes in legislation has resulted in detainees being treated as if they had committed serious crimes. The Special Rapporteur also referred to the situation of those people who found themselves in detention because they are alleged to have committed an offence, despite the fact they have been granted bail or parole by an Australian court, or have been acquitted, or have seen the charges dropped.¹⁶

Similar concerns raised by the Special Rapporteur were also underlined in the report of the Australian Human Rights Commission following its inspection of various immigration detention centers in Australia in 2017. During its inspections, the Commission had spoken to a number of people who had been detained after they had served their term of imprisonment; who had had their visa cancelled as a result of crimes committed some years earlier and had long since been released from prison; or who had been charged with a crime and granted bail but were nonetheless administratively detained.¹⁷

The major issues and gaps in the Department's system of visa cancellations were reiterated following an independent review undertaken for the Department in June 2017, which pointed to the need for strong checks in the mechanism.¹⁸ This review was undertaken by Dr. Vivienne Thom following visa cancellation and detention of two persons who were Australian citizens. The review found that current quality assurance processes and reporting are not effective, and that the Department's executive cannot have any reasonable level of assurance that visa cancellation and detention decisions are compliant with the policy and legislative framework. It also found that the lack of quality assurance in data management means that the Department officers concerned and Department's executive can have no assurance that the best available current data is used when officers make visa cancellation and detention decisions. The evidence found as part of this review pointed to resourcing issues in the Department and a focus by the Department management on increasing throughput to address timeliness and delays, rather than ensuring the quality and lawfulness of visa cancellation and detention decisions.¹⁹

¹⁵ Commonwealth Ombudsman (2016) *The Department of Immigration and Border Protection the Administration of Section 501 of the Migration Act 1958*. Available at http://www.ombudsman.gov.au/__data/assets/pdf_file/0027/42597/Own-motion-report-into-the-Administration-of-Section-of-the-Migration-Act-1958-final.pdf, p. 16.

¹⁶ United Nations General Assembly (2017) *Report of the Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru*. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/098/91/PDF/G1709891.pdf?OpenElement>, p. 10.

¹⁷ Australian Human Rights Commission (2017) *Inspection of Maribyrnong Immigration Detention Centre: Report — 7–8 March 2017*. Available at <https://www.humanrights.gov.au/sites/default/files/document/publication/17.10.11%20MIDC%20inspection%20report.pdf>, p. 28.

¹⁸ Thom, V (2017) *Independent review for the Department of Immigration and Border Protection into the circumstances of the detention of two Australian citizens Final report 9 June 2017*. Available at <https://www.homeaffairs.gov.au/AccessandAccountability/Documents/FOI/fa171000267-document-released.pdf>.

¹⁹ Thom, V (2017) *Independent review for the Department of Immigration and Border Protection into the circumstances of the detention of two Australian citizens Final report 9 June 2017*. Available at <https://www.homeaffairs.gov.au/AccessandAccountability/Documents/FOI/fa171000267-document-released.pdf>, p. 3.

MYAN in this sense agrees with the finding of the independent review of Dr. Thom that “Strong checks and controls are always required in the exercise of coercive powers.”²⁰ MYAN also highlights that the independent review undertaken by Dr. Thom was the latest review in a line of reviews from the past which have raised similar concerns. MYAN would like to take the attention of the Committee to Dr. Thom’s finding that “The Department has been in a state of constant review and reform in the last twelve years. This review has found that the Department’s control mechanisms are still not functioning effectively.”²¹

The 2017 independent review underlined the lack of effective quality assurance in visa cancellation processes and found that while the Department took actions to respond to incidents as they arose, the actions taken do not address the fundamental causes for the systematic problems in visa cancellations processes.²²

MYAN strongly believes that in the light of such reviews and reports highlighting the institutional issues in visa cancellation processes which lead to serious questions about the quality of the decisions taken by the Department, there is a strong and continued need for existing review mechanisms to continue at a minimum, and need to restore full merits review to the Administrative Appeals Tribunal, in accordance with general principles of administrative law.

MYAN would like to echo the finding mentioned in the “Lessons for public administration: Ombudsman investigation of referred immigration cases” report from 2007 that

“At the end of every administrative process is a person who can be affected, beneficially or adversely. It is therefore important in all areas of government administration that the exercise of significant powers is underpinned by high quality internal systems, rigorous decision making, clear policy guidance, effective training, active oversight and quality assurance, and efficient internal and external information exchange.”²³

MYAN believes that review processes associated with visa cancellations made on criminal grounds, and merits review processes, including by the Administrative Appeal Tribunal are vital to prevent wrong decisions from being taken by the Department, as has been the case for more than a decade. The review processes are especially vital given the seriousness of the results of such visa cancellation decisions, i.e. lengthy or indefinite detention for young people from migrant and refugee backgrounds at best, or deportation to their country of origin at worst, as a breach of international protection obligations of Australia.

²⁰ Thom, V (2017) *Independent review for the Department of Immigration and Border Protection into the circumstances of the detention of two Australian citizens Final report 9 June 2017*. Available at <https://www.homeaffairs.gov.au/AccessandAccountability/Documents/FOI/fa171000267-document-released.pdf>, p. 16.

²¹ Thom, V (2017) *Independent review for the Department of Immigration and Border Protection into the circumstances of the detention of two Australian citizens Final report 9 June 2017*. Available at <https://www.homeaffairs.gov.au/AccessandAccountability/Documents/FOI/fa171000267-document-released.pdf>, p. 28.

Before this review, Comrie Report was published following investigation by Mr. Neil Comrie in September 2005 which related to an Australian citizen who was detained by the then DIMIA officers as a suspected unlawful non-citizen and removed from Australia in 2001. ²¹ The Palmer Report was also published in 2005 following investigation into the wrongful detention of an Australian permanent resident.

²² Thom, V (2017) *Independent review for the Department of Immigration and Border Protection into the circumstances of the detention of two Australian citizens Final report 9 June 2017*. Available at <https://www.homeaffairs.gov.au/AccessandAccountability/Documents/FOI/fa171000267-document-released.pdf>, p. 31.

²³ Commonwealth Ombudsman (2007) *Lessons for public administration ombudsman investigation of referred immigration cases*. Available at https://www.ombudsman.gov.au/_data/assets/pdf_file/0018/26244/investigation_2007_11.pdf, p.3.

c) Lengthy or indefinite detention periods following visa cancellation decisions

As noted in the recent reports of the Australian Human Rights Commissioner, the number of people in detention following having their visas cancelled has increased in recent years, due to legislative amendments that broadened the scope of Section 501 of the Migration Act 1958. As at May 2017, people who had had their visas cancelled under section 501 were the largest group in immigration detention in Australia, comprising around a third of the detention population.²⁴

The increase in visa cancellations had direct impact on physical and mental health of people concerned in detention, who had already served their imprisonment sentence. MYAN shares the concerns of the Australian Human Rights Commission on whether ongoing immigration detention is necessary in all of these cases, given that the criminal justice system has determined that the people in question should be permitted to live freely in the community²⁵, which ironically is a duplication with the criminal justice system.

Below case study illustrates these issues;

Case Study: Jumma²⁶

Jumma was born in Sudan in 1994 (in a region which is now forming a part of South Sudan). He is currently 24 years old.

As a child he lived in Sudan during the Sudanese Civil War and he has vivid memories of entire neighbouring families disappearing in the night and recalls local streets with dead bodies lying in the open.

His family life was severely impacted by the civil war. He had three brothers. One of his brothers reside in Australia, and his remaining two brothers died because of the civil war. Jumma suffered from Post-Traumatic Stress Disorder (PTSD) as a child and young person in during the civil war in Sudan.

He left Sudan for Egypt at the age of 12 along with one of his brothers in the care of an uncle and was recognised as a refugee there. At 14, he came to Australia with his brother and uncle with a humanitarian visa. The uncle cared for him and his brother for a short time but then the care ceased, and both siblings became wards of the State.

Jumma has suffered from five significant head injuries during his childhood (some arising during the civil war), which had given rise to an Acquired Brain Injury (ABI).

²⁴ Australian Human Rights Commission (2017) *Inspection of Yongah Hill Immigration Detention Centre: Report — 16–18 May 2017*. Available at <https://www.humanrights.gov.au/sites/default/files/document/publication/17.12.XX%20YHIDC%20inspection%20report.pdf>, p. 10.

²⁵ Australian Human Rights Commission (2017) *Inspection of Maribyrnong Immigration Detention Centre: Report — 7–8 March 2017*. Available at <https://www.humanrights.gov.au/sites/default/files/document/publication/17.10.11%20MIDC%20inspection%20report.pdf>, p. 28. It was reported by the immigration detention facility staff to the Australian Human Rights Commission that there has been an increase in the rate of serious mental illnesses, such as schizophrenia, bipolar disorder and acquired brain injuries. The change was in part due to the increase in the number of people in detention due to visa cancellations, including people with pre-existing mental health issues (as opposed to mental health issues resulting from experiences of detention itself).

²⁶ This case study has been deidentified and does not contain any identifiable information belonging to the person subject to this case study.

He had some verbal difficulties at school in Australia and was subject to teasing and racist bullying. His poor cognitive functions made vocational activities difficult and lead to his isolation.

He was sentenced to three years in prison due to intentionally causing serious injury and attempted armed robbery. At the time of offending and sentencing Jumma was 20 years old, had been diagnosed and treated for major depressive illness; and had been assessed as having a very low intelligence quotient and had a previously undiagnosed and therefore untreated Acquired Brain Injury (ABI). The sentence imposed by the court reflected his youth, mental health issues and his impaired cognitive function at the time of offending and sentencing. At the end of his three-year sentence, he was detained in immigration detention due to cancellation of his visa based on character grounds under Section 501.

As he cannot be returned to South Sudan due to his protection needs as a refugee, he is at risk of being indefinitely detained in immigration detention.

The Australian Human Rights Commission also found in its inspection to the immigration detention facilities that people with significant mental health issues or with substance abuse problems were not provided with supports upon their release from detention and this have led to revolving door scenarios. People who had originally been detained due to visa cancellations on character grounds, and who were then released, ended up coming into contact with the criminal justice system again after their release due to untreated mental health or substance abuse problems they have.²⁷

Given the above mentioned review of the current quality systems in place within the Department and highly adverse (i.e. lengthy detention at best, indefinite detention at worst) and possibly irreversible nature (i.e. possible harm and threat to life brought upon refugees whose visa have been cancelled followed by deportation to country of origin) of the visa cancellation decisions under Section 501 of the Migration Act 1958, MYAN recommends that current review processes are kept in place at a minimum for visa cancellation decisions. We also recommend that the merits review processes are further strengthened for visa cancellation decisions under Section 501 of the Migration Act 1958.

4. Adopt a youth justice approach for responding to anti-social behaviour amongst a small number of young people from refugee and migrant backgrounds

MYAN is concerned that any changes aiming to further restrict the merits review processes related to visa cancellation decisions would disproportionately affect young people from refugee and migrant backgrounds.

MYAN is especially concerned about this issue given the recommendation of the recent Inquiry into Migrant Settlement Outcomes by the Committee to introduce a mandatory visa cancellation provision under the Migration Act 1958 for offenders aged between 16 and 18 years who have been convicted of a serious violent offence.²⁸ This recommendation is

²⁷ Australian Human Rights Commission (2017) *Inspection of Yongah Hill Immigration Detention Centre: Report — 16–18 May 2017*. Available at <https://www.humanrights.gov.au/sites/default/files/document/publication/17.12.XX%20YHIDC%20inspection%20report.pdf>, p. 22.

²⁸ Joint Standing Committee on Migration (2017), *No one teaches you to become an Australian: Report of the inquiry into migrant settlement outcomes*. Canberra: Commonwealth of Australia, p. 175.

worrying especially given the evidence on the transitional nature of youth offending. The broad literature on youth offending recognize that factors deriving from socio economic disadvantage and exclusion may leave youth at increased risk of offending behaviour.²⁹

Consistent with the Convention on the Rights of the Child (to which Australia is a signatory), all young people should be treated as young people first under the law, which in Australia includes consideration of diversion and rehabilitation options. A young person's visa or residency status should not negate or minimise consideration of these options first.³⁰

It is well documented that adolescents are more susceptible to peer influence and risk-taking behaviour than are adults, as a result of their stage of physical, mental and emotional development.³¹ For most young people, offending is episodic, transitory and unlikely to continue into adulthood.³² As a result, approaches to addressing offending among young people focus on diversion and rehabilitation – recognising that young people are likely, with appropriate intervention, to be successfully diverted from this behaviour, especially if underlying factors placing them at risk are addressed.

MYAN therefore echoes the Australian Human Rights Commission's recommendation that Section 501 should "not be used as a means to address 'anti-social behaviour' amongst young people from migrant and refugee backgrounds"³³ as cancelling visas under s501 is not a valid criminal justice response.

Youth justice issues require a youth justice response. The broad youth justice literature has driven the development of a very specific and targeted approach to responding to youth offending in Australia that focuses on early intervention, diversion, rehabilitation and age-appropriateness. These approaches are built on evidence that shows punitive measures are likely to worsen the likelihood of reoffending among young people by further isolating them from the community, rather than addressing the underlying factors impacting offending behaviour.³⁴ Such approaches are also consistent with the principles of the Convention on the Rights of the Child and other associated human rights covenants to which Australia is a party, and thus apply equally to young people from refugee and migrant backgrounds.

Shifts in youth offending over time, including downward trends in overall youth crime in Victoria and across Australia, demonstrate that while youth justice systems may experience challenges and crises, these are not new and in the main current approaches have demonstrated that they are flexible and capable of responding.³⁵

²⁹ MYAN (2017), *Submission to the Joint Standing Committee on Migration: Inquiry into Settlement Outcomes*. Melbourne: Multicultural Youth Advocacy Network (MYAN), p. 44-45.

³⁰ Additionally, the *Racial Discrimination Act 1975 (Cth.)* Part II, Section 5, adds to the broad prohibition of racial discrimination the term 'immigrant status'. This provision makes it possible for persons who experience unfair treatment due to their immigrant status, a relatives or an associates, to obtain protections under the Act.

³¹ Hemphill, S. A. & Smith, R. (2010). *Preventing youth violence: What does and doesn't work and why? An overview of the evidence on approaches and programs*. Report prepared for the Australian Research Alliance for Children and Youth, Canberra.

³² JSS (2015). *An escalating problem: Responding to the increased remand of children in Victoria*. Melbourne: JSS.

³³ Australian Human Rights Commission (2017) *Inquiry into Migrant Settlement Outcomes, Australian Human Rights Commission Submission to the Joint Standing Committee on Migration*. Available at https://www.humanrights.gov.au/sites/default/files/AHRC%2020170131%20Final_AHRC%20Submission_Migrant%20Settlement%20Outcomes.pdf, p. 5.

³⁴ Sentencing Council of Victoria (2016); Williams et al. (2009).

³⁵ Victorian youth offending rates have fallen significantly among some groups previously singled out as 'problematic', such as those born in Somalia. See MYAN (2017) *Submission to the Joint Standing Committee on Migration: Inquiry into Settlement Outcomes*. Melbourne: Multicultural Youth Advocacy Network (MYAN), p. 69-70. For overview, see Sutherland & Millsteed (2016).

5. Ensure more detailed and nationally consistent data is collected on young people engaged in criminal activity (including data on age and visa status of offenders at the national level), as well as program outcomes, to inform program delivery and to build an evidence base on 'what works'

MYAN believes that an appropriate response to current concerns and 'issues arising' from involvement of youth migrants in anti-social behaviour is to be found in the current youth justice system. MYAN strongly supports greater collaboration between those working with young people from refugee and migrant backgrounds across all sectors and service systems to support targeted approaches with a focus on rehabilitation. MYAN also encourages targeted investment in early intervention and prevention approaches that are tailored to young people from refugee and migrant backgrounds who are disengaged or at risk of disengagement.³⁶ To support these approaches and programming, MYAN reiterates the importance of collection and sharing of further data on the ages and visa status of offenders at the national level, as recommended following the Inquiry into migrant settlement outcomes.³⁷

Key Recommendations

- Keep current review processes in place at a minimum for visa cancellation decisions, and further strengthen merits review processes for visa cancellation decisions under Section 501 of the Migration Act 1958
- Avoid using Section 501 "as a means to address 'anti-social behaviour' amongst young people from migrant and refugee backgrounds"³⁸ as cancelling visas under s501 is not a valid criminal justice response
- Adopt a youth justice approach for responding to anti-social behaviour amongst a small number of young people from refugee and migrant backgrounds
- Ensure more detailed and nationally consistent data is collected on young people engaged in criminal activity (including data on age and visa status of offenders at the national level), as well as program outcomes, to inform program delivery and to build an evidence base on 'what works'

³⁶ MYAN (2017) *Submission to the Joint Standing Committee on Migration: Inquiry into Settlement Outcomes*. Melbourne: Multicultural Youth Advocacy Network (MYAN), p. 46-47.

³⁷ Joint Standing Committee on Migration (2017), *No one teaches you to become an Australian: Report of the inquiry into migrant settlement outcomes*. Canberra: Commonwealth of Australia, p. 146.

³⁸ Australian Human Rights Commission (2017) *Inquiry into Migrant Settlement Outcomes, Australian Human Rights Commission Submission to the Joint Standing Committee on Migration*. Available at https://www.humanrights.gov.au/sites/default/files/AHRC%2020170131%20Final_AHRC%20Submission_Migrant%20Settlement%20Outcomes.pdf, p. 5.