2019

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Migration Amendment (Strengthening the Character Test) Bill 2019

No. , 2019

(Immigration, Citizenship, Migrant Services and Multicultural Affairs)

A Bill for an Act to amend the Migration Act 1958, and for related purposes
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Schedule 1—Amendments

Migration Act 1958
A Bill for an Act to amend the Migration Act 1958, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the Migration Amendment (Strengthening the Character Test) Act 2019.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.
# Commencement information

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<td>Date/Details</td>
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<td>1. The whole of this Act</td>
<td>The day after this Act receives the Royal Assent.</td>
<td></td>
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</table>

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act.
Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Amendments

Migration Act 1958

1 Before subsection 5C(1)
   Insert:
   Character concern

2 After paragraph 5C(1)(a)
   Insert:
   (aa) the non-citizen has been convicted of a designated offence
        (as defined by subsection (3)); or

3 Before subsection 5C(2)
   Insert:
   Substantial criminal record

4 At the end of section 5C
   Add:
   Designated offence
   (3) For the purposes of subsection (1), a designated offence is an
       offence against a law in force in Australia, or a foreign country, in
       relation to which the following conditions are satisfied:
       (a) one or more of the physical elements of the offence involves:
           (i) violence against a person, including (without limitation)
               murder, manslaughter, kidnapping, assault, aggravated
               burglary and the threat of violence; or
           (ii) non-consensual conduct of a sexual nature, including
               (without limitation) sexual assault and the
               non-consensual commission of an act of indecency or
               sharing of an intimate image; or
           (iii) breaching an order made by a court or tribunal for the
               personal protection of another person; or
(iv) using or possessing a weapon (as defined by subsection (4)); or
(v) aiding, abetting, counselling or procuring the commission of an offence that is a designated offence because of any of subparagraphs (i) to (iv); or
(vi) inducing the commission of an offence that is a designated offence because of any of subparagraphs (i) to (iv), whether through threats or promises or otherwise; or
(vii) being in any way (directly or indirectly) knowingly concerned in, or a party to, the commission of an offence that is a designated offence because of any of subparagraphs (i) to (iv); or
(viii) conspiring with others to commit an offence that is a designated offence because of any of subparagraphs (i) to (iv);
(b) for an offence against a law in force in Australia—the offence is punishable by:
   (i) imprisonment for life; or
   (ii) imprisonment for a fixed term of not less than 2 years; or
   (iii) imprisonment for a maximum term of not less than 2 years;
(c) for an offence against a law in force in a foreign country—if it were assumed that the act or omission constituting the offence had taken place in the Australian Capital Territory:
   (i) the act or omission would have constituted an offence (the Territory offence) against a law in force in that Territory; and
   (ii) the Territory offence would have been punishable as mentioned in subparagraph (b)(i), (ii) or (iii).

(4) For the purposes of subparagraph (3)(a)(iv), a weapon includes:
   (a) a thing made or adapted for use for inflicting bodily injury; and
   (b) a thing where the person who has the thing intends or threatens to use the thing, or intends that the thing be used, to inflict bodily injury.
5 After paragraph 501(6)(a)

Insert:

(aaa) the person has been convicted of a designated offence (as defined by subsection (7AA)); or

6 After subsection 501(7)

Insert:

Designated offence

(7AA) For the purposes of the character test, a designated offence is an offence against a law in force in Australia, or a foreign country, in relation to which the following conditions are satisfied:

(a) one or more of the physical elements of the offence involves:
   (i) violence against a person, including (without limitation) murder, manslaughter, kidnapping, assault, aggravated burglary and the threat of violence; or
   (ii) non-consensual conduct of a sexual nature, including (without limitation) sexual assault and the non-consensual commission of an act of indecency or sharing of an intimate image; or
   (iii) breaching an order made by a court or tribunal for the personal protection of another person; or
   (iv) using or possessing a weapon (as defined by subsection (7AB)); or
   (v) aiding, abetting, counselling or procuring the commission of an offence that is a designated offence because of any of subparagraphs (i) to (iv); or
   (vi) inducing the commission of an offence that is a designated offence because of any of subparagraphs (i) to (iv), whether through threats or promises or otherwise; or
   (vii) being in any way (directly or indirectly) knowingly concerned in, or a party to, the commission of an offence that is a designated offence because of any of subparagraphs (i) to (iv); or
   (viii) conspiring with others to commit an offence that is a designated offence because of any of subparagraphs (i) to (iv);
(b) for an offence against a law in force in Australia—the
defence is punishable by:
   (i) imprisonment for life; or
   (ii) imprisonment for a fixed term of not less than 2 years;
   or
   (iii) imprisonment for a maximum term of not less than 2
years;
(c) for an offence against a law in force in a foreign country—if
it were assumed that the act or omission constituting the
offence had taken place in the Australian Capital Territory:
   (i) the act or omission would have constituted an offence
   (the Territory offence) against a law in force in that
   Territory; and
   (ii) the Territory offence would have been punishable as
   mentioned in subparagraph (b)(i), (ii) or (iii).

(7AB) For the purposes of subparagraph (7AA)(a)(iv), a weapon includes:
   (a) a thing made or adapted for use for inflicting bodily injury;
   and
   (b) a thing where the person who has the thing intends or
   threatens to use the thing, or intends that the thing be used, to
   inflict bodily injury.

7 Application of amendments

(1) Paragraph 5C(1)(aa) of the Migration Act 1958, as in force on and after
the commencement of this item, applies for the purposes of
subsection 336E(2) of that Act in relation to a disclosure of identifying
information that is made on or after that commencement.

(2) Paragraph 501(6)(aaa) of the Migration Act 1958, as in force on and
after the commencement of this item, applies to:
   (a) a decision to grant or refuse to grant a visa, if:
       (i) the application for the visa was made before that
       commencement and had not been finally determined as
       at that commencement; or
       (ii) the application for the visa is made on or after that
       commencement; and
   (b) a decision made on or after that commencement to cancel a
      visa.
(3) The provisions of the *Migration Act 1958* mentioned in subitems (1) and (2) apply as mentioned in those subitems in relation to a person whether the person committed or was convicted of the relevant designated offence before, on or after the commencement of this item.