

2019-2020-2021

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

## **Migration Amendment (Strengthening the Character Test) Bill 2021**

**No.     , 2021**

*(Home Affairs)*

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



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

3     The Parliament of Australia enacts:

4     **1 Short title**

5                 This Act is the *Migration Amendment (Strengthening the*  
6                 *Character Test) Act 2021*.

7     **2 Commencement**

8                 (1) Each provision of this Act specified in column 1 of the table  
9                 commences, or is taken to have commenced, in accordance with  
10                column 2 of the table. Any other statement in column 2 has effect  
11                according to its terms.  
12



# 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 (see subsections (3) to (7)); or

### **3 Before subsection 5C(2)**

Insert:

*Substantial criminal record*

### **4 At the end of section 5C**

Add:

*Designated offences—general*

- (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, or a threat of violence, against a person (see subsections (4) and (5)); 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 (6)); or

- 
- 1 (v) aiding, abetting, counselling or procuring the  
2 commission of an offence that is a designated offence  
3 because of any of subparagraphs (i) to (iv); or  
4 (vi) inducing the commission of an offence that is a  
5 designated offence because of any of subparagraphs (i)  
6 to (iv), whether through threats or promises or  
7 otherwise; or  
8 (vii) being in any way (directly or indirectly) knowingly  
9 concerned in, or a party to, the commission of an  
10 offence that is a designated offence because of any of  
11 subparagraphs (i) to (iv); or  
12 (viii) conspiring with others to commit an offence that is a  
13 designated offence because of any of subparagraphs (i)  
14 to (iv);  
15 (b) for an offence against a law in force in Australia—the  
16 offence is punishable by:  
17 (i) imprisonment for life; or  
18 (ii) imprisonment for a fixed term of not less than 2 years;  
19 or  
20 (iii) imprisonment for a maximum term of not less than 2  
21 years;  
22 (c) for an offence against a law in force in a foreign country—if  
23 it were assumed that the act or omission constituting the  
24 offence had taken place in the Australian Capital Territory:  
25 (i) the act or omission would have constituted an offence  
26 (the ***Territory offence***) against a law in force in that  
27 Territory; and  
28 (ii) the Territory offence would have been punishable as  
29 mentioned in subparagraph (b)(i), (ii) or (iii).

30 *Designated offences—violence against a person*

- 31 (4) For the purposes of subparagraph (3)(a)(i), ***violence against a***  
32 ***person*** includes an act constituting an offence of murder,  
33 manslaughter, kidnapping, aggravated burglary, robbery or assault,  
34 or an equivalent offence.  
35 (5) Despite subparagraph (3)(a)(i) and subsection (4), a person's  
36 conviction for an offence of common assault, or an equivalent  
37 offence, is taken not to be a conviction for a designated offence
-



unless the act constituting the offence for which the person was convicted:

- (a) causes or substantially contributes to:
  - (i) bodily harm to another person; or
  - (ii) harm to another person's mental health (within the meaning of the *Criminal Code*);
 whether temporary or permanent; or
- (b) involves family violence (as defined by subsection 4AB(1) of the *Family Law Act 1975*) by the person in relation to another person.

*Designated offences—possessing a weapon*

- (6) 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.

*Designated offences—ancillary offences*

- (7) Despite subparagraphs (3)(a)(v) to (viii), a person's conviction for an offence covered by any of those subparagraphs because of the operation of subparagraph (3)(a)(i) (as affected by subsection (4)), in relation to the commission of an offence (the **primary offence**) by another person, is taken not to be a conviction for a designated offence if, were the other person to be convicted of the primary offence, that conviction would not be a conviction for a designated offence because of the operation of subsection (5).

**5 After paragraph 501(6)(a)**

Insert:

- (aaa) the person has been convicted of a designated offence (see subsections (7AA) to (7AE)); or

**6 After subsection 501(7)**

Insert:

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*Designated offences—general*

- (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, or a threat of violence, against a person (see subsections (7AB) and (7AC)); 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 (7AD)); 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).

*Designated offences—violence against a person*

(7AB) For the purposes of subparagraph (7AA)(a)(i), ***violence against a person*** includes an act constituting an offence of murder, manslaughter, kidnapping, aggravated burglary, robbery or assault, or an equivalent offence.

(7AC) Despite subparagraph (7AA)(a)(i) and subsection (7AB), a person's conviction for an offence of common assault, or an equivalent offence, is taken not to be a conviction for a designated offence unless the act constituting the offence for which the person was convicted:

- (a) causes or substantially contributes to:
  - (i) bodily harm to another person; or
  - (ii) harm to another person's mental health (within the meaning of the *Criminal Code*);
 whether temporary or permanent; or
- (b) involves family violence (as defined by subsection 4AB(1) of the *Family Law Act 1975*) by the person in relation to another person.

*Designated offences—possessing a weapon*

(7AD) 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.

1                                    *Designated offences—ancillary offences*

2            (7AE) Despite subparagraphs (7AA)(a)(v) to (viii), a person's conviction  
3            for an offence covered by any of those subparagraphs because of  
4            the operation of subparagraph (7AA)(a)(i) (as affected by  
5            subsection (7AB)), in relation to the commission of an offence (the  
6            ***primary offence***) by another person, is taken not to be a conviction  
7            for a designated offence if, were the other person to be convicted  
8            of the primary offence, that conviction would not be a conviction  
9            for a designated offence because of the operation of  
10           subsection (7AC).

11           **7 Application of amendments**

- 12           (1) Paragraph 5C(1)(aa) of the *Migration Act 1958*, as in force on and after  
13           the commencement of this item, applies for the purposes of  
14           subsection 336E(2) of that Act in relation to a disclosure of identifying  
15           information that is made on or after that commencement.
- 16           (2) Paragraph 501(6)(aaa) of the *Migration Act 1958*, as in force on and  
17           after the commencement of this item, applies to:
- 18                    (a) a decision to grant or refuse to grant a visa, if:
- 19                                    (i) the application for the visa was made before that  
20                                    commencement and had not been finally determined as  
21                                    at that commencement; or  
22                                    (ii) the application for the visa is made on or after that  
23                                    commencement; and
- 24                    (b) a decision made on or after that commencement to cancel a  
25                    visa.
- 26           (3) The provisions of the *Migration Act 1958* mentioned in subitems (1)  
27           and (2) apply as mentioned in those subitems in relation to a person  
28           whether the person committed or was convicted of the relevant  
29           designated offence before, on or after the commencement of this item.

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