

17 Feb 2023

Statement on Aggregate Sentences Act 2023

On 17 February 2023, the *Migration Amendment (Aggregate Sentences) Act 2023* (the Aggregate Sentences Act) which amends the *Migration Act 1958* (the Migration Act) came into effect.

The Aggregate Sentences Act responds to the Full Federal Court judgment in *Pearson v Minister for Home Affairs* [2022] FCAFC 203 (Pearson). The central finding of the judgment was that a single aggregate sentence, being a single sentence imposed for multiple offences, cannot be relied upon when assessing whether a person has a 'substantial criminal record' under s 501(7)(c) of the Migration Act, with consequences for the application of the character test.

The Aggregate Sentences Act amends the relevant provisions of the Migration Act, and makes it clear that an aggregate sentence can be relied upon for the purposes of considering if a person has a substantial criminal record, which is relevant to the application of the character test. The Aggregate Sentences Act also validates, with retrospective operation, past decisions that would otherwise have been invalid because of the Pearson decision.

The effect of the Aggregate Sentences Act is that the original decision to refuse or cancel a visa under section 501 of the Migration Act that relied wholly or in part on an aggregate sentence remains valid and the non-citizen does not hold or no longer holds a valid visa to remain in Australia.

The Aggregate Sentences Act contains provisions to restore a person's right to seek review or revocation of a visa cancellation or refusal decision if they had not done so before the Pearson decision, provided they were still within the relevant timeframes to do so.

Those who have had a visa cancellation or refusal revalidated by operation of the Aggregate Sentences Act are considered unlawful non-citizens and may be detained and removed from Australia.

The Department encourages those impacted to self-report to the Australian Border Force by contacting field.operations.vic.tas@abf.gov.au.

Non-citizens may wish to seek assistance from a registered migration agent, or engage independent legal advice to determine how this legislation may impact them.

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