

2016-2017-2018

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Migration Amendment (Strengthening
the Character Test) Bill 2018**

No. , 2018

(Immigration, Citizenship and Multicultural Affairs)

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

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedules.....	2
Schedule 1—Amendments		3
	<i>Migration Act 1958</i>	3

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 2018*.

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		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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 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).
- (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.