



Australian Government

Australian Government response to the
Senate Legal and Constitutional Affairs Legislation Committee
report:

Migration Amendment (Strengthening the Character Test)
Bill 2018 [Provisions]

Migration Amendment (Strengthening the Character Test)
Bill 2019 [Provisions]

December 2019

Introduction

The Australian Government appreciates the time taken by the Senate Legal and Constitutional Affairs Legislation Committee to undertake the inquiry into the Migration Amendment (Strengthening the Character Test) Bill 2018 and Migration Amendment (Strengthening the Character Test) Bill 2019. The Government notes the Committee's report and dissenting reports provided by the Labor Party senators and the Australian Greens.

The Australian Government thanks all who were involved in the work of the inquiry and delivery of the final report, in particular the members of the Committee and those organisations and individuals that contributed submissions.

Migration Amendment (Strengthening the Character Test) Bill 2018 [Provisions]

Recommendation 1

The committee recommends that the bill be passed.

Response:

The Government agrees with this recommendation. The Migration Amendment (Strengthening the Character Test) Bill 2018 was before the House of Representatives and lapsed when Parliament was prorogued on 11 April 2019.

An identical Bill, the Migration Amendment (Strengthening the Character Test) Bill 2019, was passed by the House of Representatives on 19 September 2019 and is before the Senate.

Migration Amendment (Strengthening the Character Test) Bill 2018 [Provisions] – Labor Party senators' dissenting report

Recommendation 1

Labor Party senators recommend that the bill not be passed in its current form.

Response:

The Government does not support the recommendation.

The Migration Amendment (Strengthening the Character Test) Bill 2019 will ensure that non-citizens who are convicted of certain serious offences—and pose a risk to the safety of the Australian community—do not pass the character test and are appropriately considered for visa refusal or cancellation.

The Bill achieves this by amending section 501, and making consequential amendments to section 5C of the *Migration Act 1958*, to introduce a designated offence ground to the character test. In effect, these amendments will provide the Minister and their delegates discretionary power to consider refusing or cancelling a visa if the non-citizen is convicted of an offence that carries a maximum sentence of at least two years (irrespective of whether the sentence was imposed), and includes:

- violence against a person;
- non-consensual conduct of a sexual nature;
- breaching an order made by a court or tribunal for the personal protection of
- another person — such as an apprehended violence order;
- using or possessing a weapon; or
- involvement in any of the above.

The Bill has been developed in response to recommendations 15 and 16 to the Joint Standing Committee on Migration's report on migrant settlement outcomes, *No one teaches you to become an Australian*, which recommended those convicted of a serious offence have their visas cancelled under character provisions.

Recommendation 2

Labor Party senators recommend that amendments to the bill be considered once the Joint Standing Committee on Migration's final report into review processes associated with visa cancellations made on criminal grounds is handed down.

Response:

The Government notes that the Joint Standing Committee on Migration's report into review processes associated with visa cancellations made on criminal grounds was tabled on 21 February 2019. The report urged the Australian Government to pass and enact the Bill.

Recommendation 3

Labor Party senators are particularly concerned about the negative impact the legislation as currently drafted would have on our critical relationship with New Zealand and recommend further consultation and communication with the New Zealand Government.

Response:

The Government does not accept the recommendation. Australia maintains a very close and important relationship with New Zealand.

The Australian Government's position is that it will continue to protect the Australian community from the risk of harm posed by non-citizens who engage in criminal conduct or behaviour of concern. Non-citizens who commit serious crimes or engage in serious misconduct need to consider the consequences that this might have on their visa status and their ability to remain in Australia.

The Bill provides for discretionary cancellation power only. The Department of Home Affairs approaches possible visa refusal and cancellations with a high degree of caution and consultation to ensure holistic consideration of all relevant factors and consistency with community and Australian Government expectations.

Australia's character and cancellation policy does not target one country over others. The number of New Zealand citizens whose visas have been cancelled should be viewed in the context of the size of the New Zealand community in Australia.

Recommendation 4

Labor Party senators recommend the Senate committee commence a further inquiry to examine how the bill could be amended to address these serious and significant concerns of relevant stakeholders and how the Migration Act 1958 could be amended to appropriately complement existing visa cancellation powers.

Response:

This recommendation has been overtaken by events. On 13 September 2019, the Committee recommended that the Bill be passed. *The Migration Amendment (Strengthening the Character Test) Bill 2019*, was passed by the House of Representatives on 19 September 2019 and is before the Senate.

Migration Amendment (Strengthening the Character Test) Bill 2018 [Provisions] – Australian Greens dissenting report

Recommendation 1

The Australian Greens recommend that the Senate does not pass this bill.

Response:

The Government does not support the recommendation.

The Migration Amendment (Strengthening the Character Test) Bill 2019 will ensure that non-citizens who are convicted of certain serious offences—and pose a risk to the safety of the Australian community—do not pass the character test and are appropriately considered for visa refusal or cancellation.

The Bill achieves this by amending section 501, and making consequential amendments to section 5C of the *Migration Act 1958*, to introduce a designated offence ground to the character test. In effect, these amendments will allow the Minister and their delegates the discretion to consider refusing or cancelling a visa if the non-citizen is conviction of an offence that carries a maximum sentence of at least two years (irrespective of whether the sentence was imposed), and includes:

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- another person — such as an apprehended violence order;
- using or possessing a weapon; or
- involvement in any of the above.

The Bill has been developed in response to recommendations 15 and 16 to the Joint Standing Committee on Migration's report on migrant settlement outcomes, *No one teaches you to become an Australian*, which recommended those convicted of a serious offence have their visas cancelled under character provisions.

Migration Amendment (Strengthening the Character Test) Bill 2019 [Provisions]

Recommendation 1

The committee recommends that the Senate pass the bill.

Response:

The Government agrees with this recommendation. The Migration Amendment (Strengthening the Character Test) Bill 2019 was introduced into the House of Representatives by the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, the Hon David Coleman MP on 4 July 2019.

The Bill was passed by the House of Representatives on 19 September 2019 and is before the Senate.

Migration Amendment (Strengthening the Character Test) Bill 2019 [Provisions] – Labor Senators' dissenting report

Recommendation 1

Labor Senators recommend that the bill not be passed.

Response:

The Government does not support the recommendation.

The Migration Amendment (Strengthening the Character Test) Bill 2019 will ensure that non-citizens who are convicted of certain serious offences—and pose a risk to the safety of the Australian community—do not pass the character test and are appropriately considered for visa refusal or cancellation.

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The Bill has been developed in response to recommendations 15 and 16 to the Joint Standing Committee on Migration's report on migrant settlement outcomes, *No one teaches you to become an Australian*, which recommended those convicted of a serious offence have their visas cancelled under character provisions.

Recommendation 2

Labor party Senators are particularly concerned about the impact this legislation could have on our critical relationship with New Zealand and recommend further consultation and communication with the New Zealand government.

Response:

The Government does not accept the recommendation. Australia maintains a very close and important relationship with New Zealand.

The Australian Government's position is that it will continue to protect the Australian community from the risk of harm posed by non-citizens who engage in criminal conduct or behaviour of concern. Non-citizens who commit serious crimes or engage in serious misconduct need to consider the consequences that this might have on their visa status and their ability to remain in Australia.

The Bill provides for discretionary power only. The Department of Home Affairs approaches possible visa refusal and cancellations with a high degree of caution and consultation, to ensure holistic consideration of relevant factors and consistency with community and Australian Government expectations.

Australia's character and cancellation policy does not target one country over others. The number of New Zealand citizens whose visas have been cancelled should be viewed in the context of the size of the New Zealand community in Australia.

Migration Amendment (Strengthening the Character Test) Bill 2019 [Provisions] – Australian Greens dissenting report

Recommendation 1

The Australian Greens recommend that the Senate does not pass this bill.

Response:

The Government does not support the recommendation.

The Migration Amendment (Strengthening the Character Test) Bill 2019 will ensure that non-citizens who are convicted of certain serious offences—and pose a risk to the safety of the Australian community—do not pass the character test and are appropriately considered for visa refusal or cancellation.

The Bill achieves this by amending section 501, and making consequential amendments to section 5C of the *Migration Act 1958*, to introduce a designated offence ground to the character test. In effect, these amendments will allow the Minister and their delegates to consider refusing or cancelling a visa if the non-citizen is convicted of an offence that carries a maximum sentence of at least two years (irrespective of whether the sentence was imposed), and includes:

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