

Legislative brief

**Migration Amendment
(Strengthening the Character Test)
Bill 2019**



actual sentence imposed. This will not lead to automatic visa cancellation, but will enliven

Sections 501(2), 501(3) and 501(6)(c) in their current form already provide the Minister with the discretion to cancel a non-
re they have been convicted of any of the

that the person is not of good character. In fact, these provisions extend far further in that they also allow for visa cancellation where a person has not been convicted of any crime, but their general conduct supports a conclusion that they are not of good character. Section 116(e) provides an additional avenue for visa cancellation where a non-citizen poses a risk to the Australian community or individuals within it.

In its submission to the Senate Legal and Constitutional Affairs Legislation Committee inquiry into the Bill, and in oral evidence to the Committee, the Department of Home Affairs detailed a number of de-identified case studies, said to highlight individuals who would be candidates for visa cancellation under the changes proposed in the Bill but not under the existing law. In each of these case studies, ss 501(2), 501(3) and 116 already allow for discretionary visa cancellation, on character or community protection grounds.

The only circumstance in which a person would be vulnerable to discretionary visa cancellation under the measures proposed in the Bill, but not under the existing law, is where they have been
conviction was so trivial that it could not reasonably support a suspicion that the person is not of good character. This could include, for example a conviction for assault for making a verbal threat to slap a person, or for grasping a person by the sleeve.

Finally, the effect of the measures proposed in the Bill would be to deem a non-citizen to fail

the past. This will impose mandatory failure of the character test, and the prospect of discretionary visa cancellation, on a large class of individuals. Some of these individuals will have lived in Australia for many decades, with no recent criminal history. A number will have previously been considered by the Minister or Department, and have been determined via that process to pass the character test. In addition to the rule of law concerns raised by this retrospective element of the Bill, the process of identifying all historical convictions that give rise to failure of the character test under the new standard, and considering whether discretionary visa cancellation would be appropriate in each case is likely to add significantly to the workload of the Department.

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