

**JOINT SELECT COMMITTEE ON AUSTRALIA'S
IMMIGRATION DETENTION NETWORK**

Q295

Question:

I understand DIAC conducts initial identity, health and character checks.

- a) What would cause a person to fail a character test?
- b) What effect would this have on their refugee status determination?
- c) If a person fails the character test due to history of violence, such as rape or murder or assault, what safeguards are in place to protect the rest of the detention population around them—for instance placement or accommodation?

Answer:

a) Subsection 501(6) of the Migration Act 1958 (the Act) defines the circumstances in which a person will not pass the character test.

(a) the person has a substantial criminal record (as defined by subsection 501(7) of the Act); or

(aa) the person has been convicted of an offence that was committed:

- (i) while the person was in immigration detention; or
- (ii) during an escape by the person from immigration detention; or
- (iii) after the person escaped from immigration detention but before the person was taken into immigration detention again;

or

(ab) the person has been convicted of an offence against section 197A; or

(b) the person has or has had an association with someone else, or with a group or organisation, whom the Minister reasonably suspects has been or is involved in criminal conduct; or

(c) having regard to either or both of the following:

- (i) the person's past and present criminal conduct;
- (ii) the person's past and present general conduct;

the person is not of good character; or

(d) in the event the person were allowed to enter or remain in Australia, there is a significant risk that the person would:

- (i) engage in criminal conduct in Australia; or
- (ii) harass, molest, intimidate or stalk another person in Australia; or
- (iii) vilify a segment of the Australian community; or
- (iv) incite discord in the Australian community or in a segment of that

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community; or

- (v) represent a danger to the Australian community or to a segment of that community, whether by way of being liable to become involved in activities that are disruptive to, or in violence threatening harm to, that community or segment, or in any other way.

Otherwise, the person passes the character test.

Subsection 501(7) of the Act defines what constitutes a substantial criminal record and is provided below:

- (7) For the purposes of the character test, a person has a substantial criminal record if:
 - (a) the person has been sentenced to death; or
 - (b) the person has been sentenced to imprisonment for life; or
 - (c) the person has been sentenced to a term of imprisonment of 12 months or more; or
 - (d) the person has been sentenced to 2 or more terms of imprisonment (whether on one or more occasions), where the total of those terms is 2 years or more; or
 - (e) the person has been acquitted of an offence on the grounds of unsoundness of mind or insanity, and as a result the person has been detained in a facility or institution.

A person does not fail the character test as defined in section 501 of the Act if they have only been charged with a criminal offence. Where a visa applicant has an outstanding criminal charge, a decision on their visa application would not be made until the charge has been resolved in the Courts.

b) A refugee status determination is done independently of character checks. Being found to be a refugee in line with the definition in the 1951 Convention Relating to the Status of Refugees (the Refugees Convention) is a criteria for the grant of a protection visa in Australia. However, a visa applicant is also required to satisfy Public Interest Criteria, including character requirements, before they can be granted a visa. Character considerations may also give rise to the application of either Article 1F or 33(2) of the Refugees Convention under which, a person could be excluded from the provisions of this Convention and thus not owed Australia's protection.

c) The department has a variety of accommodation options from higher security Immigration Detention Centres such as North West Point on Christmas Island, to low security Residential Housing facilities such as the Residential Housing Project in the suburbs of Perth. Upon induction, Serco is required to give each person an Individual

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Management Plan and Security Risk Rating which informs their placement in the network, including placement impact on existing detainee cohorts in the facility. The Risk Rating is reviewed regularly based on the person's behaviour. Issues that may cause a person to fail the Character Test are taken into account in this process, however, it should be noted that immigration detention is administrative not correctional as persons have already served any sentence imposed by the courts.