

Talking Points

Migration Amendment (Removal and Other Measures) Bill 2024

- A robust legislative framework is important for the management of the migration system.
- There is no more important element of the system than decisions on who may come to Australia, and who has to leave.
- There is an ongoing problem that Australia faces in sending home individuals who will not cooperate with our removal efforts.
- Some of these people are in immigration detention, and some are in the community on temporary bridging visas.
- In addition there is a group of countries that will not accept individuals who are citizens of their country if that person indicated they do not agree to go home.
 - There are other countries who are very reluctant to receive their own citizens returning from Australia.
- This legislation brings forward some new levers to seek to increase removals of persons that do not agree to go home and as a consequence cannot currently be removed from Australia.
- In particular, this legislation provides an express statement of legislative intent that would, if enacted, make clear that the Parliament expects that a non-citizen will leave Australia voluntarily when they have exhausted all avenues to remain, and if they do not leave voluntarily, that they will cooperate with their lawful removal from Australia.
- This legislative statement would also make clear that Australia expects other countries to cooperate with Australia and take back their own nationals when they are lawfully removed from Australia.

- The legislation also provides the Minister with the power to direct a non-citizen to do a specific thing to facilitate their removal.
 - o The direction would go to matters such as applying for a passport or other document to facilitate travel and removal from Australia or attending an interview with the consulate of their home country.
- These amendments are targeted at non-citizens who have come to the end of any visa application processes, and who are on a removal pathway.
- These individuals may be unlawful non-citizens who have exhausted their visa processing options who are being held in immigration detention or they may be in the community on a Bridging Visa that is issued for removal purposes.
- It is imperative that individuals who are on a removal pathway cannot be allowed to frustrate the Government and the Australian people by refusing to cooperate with their removal from Australia.
- If a person has been found to engage Australia's protection obligations relating to a particular country, or has an ongoing protection visa application, then the Minister must not give that person a direction in relation to that country.
- Non-citizens who are on a removal pathway and who are under 18 years of age also cannot be given a removal direction. However, if a parent of the child is also a removal pathway non-citizen, the Minister may give that parent a direction in relation to the child.

- Further, the Minister cannot direct a non-citizen to make or withdraw an Australian visa application; and cannot give a direction in relation to commencing or discontinuing court or tribunal proceedings, or the conduct of such proceedings.
- A direction given to a non-citizen who is on a removal pathway is enforceable. If a non-citizen does not comply with a direction, this would be an offence.
- If prosecuted and convicted, a removal pathway non-citizen would be liable for a mandatory minimum penalty of 12 months' imprisonment. The available maximum penalty is 5 years' imprisonment or 300 penalty units or both.
 - This penalty is in line with those that the Parliament agreed to and enacted last year for breaches of visa conditions by people released from immigration detention after the NZYQ High Court decision
- If a person has been found to engage Australia's protection obligations relating to a particular country, or has an ongoing protection visa application, then the Minister must not give that person a direction in relation to that country.
- The legislation also provides the Minister with a personal power to designate a country as a 'removal concern country' if the Minister thinks it is in the national interest to do so.
 - this designation would have the effect of barring new visa applications by nationals of the designated country who are outside Australia, while the designation remains in force.

- This measure is aimed at countries that are not cooperating with removals, and would complement the proposed power to issue directions to individuals to do things to facilitate their removal.
- The power would be available to be exercised if the Minister considers it is in the national interest to do so. Before the power can be exercised, the legislation requires the Minister to consult with the Prime Minister and the Minister for Foreign Affairs.
- Where a country is designated there are appropriate exemptions in the Bill to continue to allow visa applications from close family relatives of Australian citizens and permanent residents, and applications for a Refugee and Humanitarian (Class XB) visa.
 - The Minister will also have the power to exempt applications from certain classes of people and for some classes of visa to, for example, continue to respect any international obligations that Australia may have under trade or other multilateral arrangements.
 - Applications from dual nationals who hold a valid passport from a country that is not a removal concern country will also be exempt.
- Designating a country would also have the effect of slowing down particular entry pipelines to Australia, and may be useful in encouraging particular countries to accept return of their own nationals.
- The Bill also contains amendments to support the effective administration of the Bridging (Removal Pending) visa scheme established to manage NZZYQ-affected non-citizens.

- This includes amendments to clarify that a new BVR may be granted without application at any time to a current BVR holder – for example, where it may be appropriate to adjust the imposition of certain visa conditions to respond to a change in the level of risk the visa holder presents to the community.
- The Bill also includes amendments to enable the Minister to revisit a protection finding in certain circumstances, where a non-citizen who holds a visa – such as a BVR – is on a removal pathway. At present, it is only possible to revisit a protection finding under the Act for an unlawful non-citizen.
- Following the High Court’s decision in NZYQ, we now face circumstances in which this power needs to be expanded to certain non-citizens who hold a visa – particularly BVR holders.
 - Without this amendment, the Act would not provide a means to revisit a protection finding while a removal pathway non-citizen is in the community on a visa.
- This legislation sends a strong signal about the Australian Government’s expectations of cooperation with removal efforts.
- The new powers together make up a package of reforms that will provide enhanced powers to encourage and where necessary direct non-citizens who are on a removal pathway to cooperate with their lawful removal, where they no longer have an entitlement to remain in Australia.
- It is also reasonable to expect that other countries will and cooperate with the Australian Government in the lawful removal of non-citizens who are on a removal pathway – including by accepting the return of their own nationals.

- This legislation sends a strong signal about the Australian Government's expectations of cooperation with removal efforts – by non-citizens who are on a removal pathway, and by other countries where it is appropriate for them to accept their nationals on removal from Australia.

MIGRATION AMENDMENT (REMOVAL AND OTHER MEASURES) BILL 2024

Questions & Answers

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Q1. How many non-citizens are presently failing to cooperate with your efforts to remove them from Australia? How many of those non-citizens are in immigration detention?

There are currently around 150 unlawful non-citizens in immigration detention in Australia, who have no permission to remain in Australia and who are refusing to cooperate with efforts to remove them from Australia.

There are additionally some bridging visa holders who also have no valid reason for further stay in Australia who are refusing to cooperate with removal efforts.

Q2. Are there particular nationalities where this is a problem?

We would prefer not to name any nationalities or countries at this point. Where a person is failing to cooperate with removal and that country also refuses to cooperate with involuntary removal is where the particular problem arises. We will be working to lessen these specific impediments, and this bill provides more levers to do so.

Q3. Who is a removal pathway non-citizen?

A removal pathway non-citizen is an unlawful non-citizen who is required to be removed from Australia; a holder of a Subclass 070 (Bridging (Removal Pending)) visa (BVR); a holder of a Bridging Visa E (BVE) granted on departure grounds; or a holder of a prescribed visa.

Q4. What kind of things are these non-citizens going to be required to cooperate on?

The goal is to require the non-citizen's cooperation in relation to applications for identity or travel documents. This may involve, for example, completing and signing a passport application form, or attending an interview or appointment with a consular official – and subject to a number of safeguards, including that a non-citizen cannot be directed to engage with officials from a country in respect of which a protection finding has been made for the non-citizen.

Q5. What efforts is Australia making to gain the cooperation of the home government of those countries in assisting in removal efforts?

Australia makes every effort to cooperate with all countries in the context of deportations and removals. Australia accepts the return of all its citizens and rightly expects other countries to do the same. The proper functioning of international migration systems depends upon nation states accepting this responsibility.

Q6. The High Court is going to hear the matter of ASF17 on 17 April. Why can't the Government wait for the outcome of that case before seeking to legislate?

The Government will not comment in relation to specific matters that are before the courts.

This Bill will provide the government with additional levers to increase the removability of a cohort of non-citizens who are on a removal pathway but are not cooperating voluntarily with removal efforts.

If a non-citizen who no longer has a lawful basis to remain in Australia will not leave voluntarily, this Bill will provide additional powers to encourage and where necessary direct them to do things to cooperate with removal efforts.

Q7. Why can't we just put these people on a plane to their home country, without a travel document if necessary? Couldn't we charter an aircraft to travel without stopovers except to refuel?

We can't return non-citizens without the permission of the receiving country. This includes possession of a valid international travel document which provides permission to enter the country concerned. If we were to attempt to do so without such documentation, the receiving country would be likely to refuse entry permission to that person, and we would need to arrange their return to Australia.

Q8. Why have you included mandatory sentences in the offence provisions? Doesn't this unacceptably constrain the exercise of judicial discretion?

This reflects the seriousness of the need to gain the cooperation of relevant non-citizens. We believe that being unable to remove non-citizens who are on a removal pathway but who are uncooperative fundamentally undermines the integrity of the operation and good order of our migration system.

Q9. Won't mandatory sentencing reduce the incentive to plead guilty? Will it displace discretion to other parts of the criminal justice system, like prosecutors?

Mandatory sentencing will provide a stronger incentive to cooperate with requests to obtain travel documents to facilitate removal of non-citizens. The objective here is to gain the cooperation of the non-citizen. If the non-citizen understands full well that they are facing a minimum term of imprisonment for failing to comply with a lawful direction to do things that are necessary to facilitate their removal, then it is more likely they will cooperate with a direction.

Q10. Why does the Bill have a penalty of five years imprisonment or 300 penalty units or both?

This penalty aligns with penalties agreed to by the Parliament last year for breaches of conditions of non-citizens released from immigration detention as a result of the High Court's decision in NZYQ – and who are now in the community on Bridging (Removal Pending) visas.

Those penalties are found in sections 76B, 76C, 76D, 76DAA, 76DAB and 76DAC of the Migration Act and reflect the seriousness with which the Parliament and the Government view these issues.

Q11. Can a parent go to prison for failing to comply with a direction relating to their child?

A removal pathway non-citizen can be charged with an offence if they fail to comply with a removal pathway direction. This is the case regardless of whether the direction relates to them personally or relates to a child of whom they are the parent or guardian – if that child is also a removal pathway non-citizen. A child cannot themselves be the subject of a removal pathway direction.

Q12. Can a child be a removal pathway non-citizen? Can they be removed from Australia?

A child can be a removal pathway non-citizen but cannot be given a removal pathway direction. A direction concerning the child may be given to the child's parent or guardian where the parent or guardian is also a removal pathway non-citizen.

The Bill does not change existing removal powers under the Migration Act.

Q13. Doesn't this power to require cooperation under threat of criminal sanction undermine the 'right to remain silent' that has been a feature of our legal system?

The right to remain silent is a feature of the criminal justice system, where an accused person is innocent until the State proves them guilty. This power is not directed at proving a criminal offence, but rather is requiring cooperation in an administrative process.

The direction powers in the Bill provide for the Minister to direct a removal pathway non-citizen to do certain specific things for the purposes of facilitating their lawful removal from Australia under the Migration Act. This may include directing the non-citizen to do things such as completing, signing and submitting a passport application form; providing specified documents or information to the Department or another specified person; or doing other things that the Minister is satisfied are reasonably necessary to determine the non-citizen's removability.

It is not a power to compel a non-citizen to disclose potentially self-incriminating information in the context of criminal proceedings.

Q14. Will this power to require cooperation be used for other purposes, other than in efforts to remove someone from Australia? How can we be sure it won't be abused?

No. It will only be used for purposes associated with the lawful removal of non-citizens from Australia under the Migration Act. These powers extend to unlawful non-citizens who are liable to be removed from Australia under the Act, as well as certain non-citizens who are on a removal pathway, including non-citizens who hold a Bridging (Removal Pending) visa.

The statutory safeguards in place ensure such a direction is given in the context of removal related cooperation only – and only to a non-citizen who is on a removal pathway. The power will be exercised at an appropriately senior level by delegates of the Minister, and there will be policy guidelines, in addition to the legislative parameters that must be complied with.

Q15. What safeguards and exceptions are attached to the power to issue such a direction?

A person in respect of whom a protection finding has been made cannot be required to interact with the country to which that finding relates, nor to take any actions to facilitate their removal to that country.

- The term protection finding in section 197C of the Act reflects the circumstances in which Australia has *non-refoulement* obligations in respect of a person under international law – that is, to not return them to face certain types of harm.
- Such a person may however be directed to comply with a direction that would help facilitate their removal to a third country, if for example their removal to a third country was a viable option and would be compliant with international human rights and *non-refoulement* obligations.

The power to issue a removal pathway direction is also not available with respect to a person who has applied for a protection visa but where that visa application has not yet been finally determined or to a child under 18.

Further, a removal pathway direction must not require a person to not commence, discontinue or take or not take particular steps in the conduct of court or tribunal proceedings. Nor can a removal pathway direction require a person not to make, or to withdraw, a visa application made under the Migration Act.

Q16. In what circumstances would you use this power to compel action in relation to removal to a third country?

A direction could be issued if a person's removal to a third country was a viable option and would be compliant with international human rights and *non-refoulement* obligations.

- For example this could be where a person has rights of residency in that country through family connections or previous residence.

Q17. Isn't this using a very large sledgehammer to crack a small nut? What other efforts has the Government made to gain the cooperation of these non-citizens?

This is not a small issue. There are hundreds of non-citizens who would be able to be removed from Australia immediately if they would cooperate in obtaining travel documents. While they are able to get away with non-cooperation, without any penalty, it will continue to provide an incentive for others to do the same.

Q18. What is the Government going to do if it turns out these provisions are ineffective in getting non-citizens to cooperate?

The Government does not put legislation before the Parliament that we think will not work in practice. We are confident that these provisions will have the desired effect. I remind all members that the Migration Act is quite clear that once a non-citizen has no lawful entitlement to remain in Australia, they must be removed. This will not change.

Q19. Is designating a country to be a 'country of removal concern' a way of naming and shaming that country?

Designation would only take place after a range of bilateral considerations were taken into account, and all reasonable efforts and attempts had been made to engage another country to cooperate and facilitate the lawful removal of its nationals.

At this stage, if the Minister considers that it is in the national interest to do so, the country could be designated as a removal concern country - but only after the Minister has consulted the Prime Minister and the Foreign Minister.

In these circumstances, the exercise of the designation power may be a necessary step to prevent a further inflow of nationals from the country concerned, in order to prevent a build-up of intractable removals cases.

Q20. Are countries likely to care if their nationals are prevented from making Australian visa applications?

There may be a range of reactions from countries toward such a designation. That is a matter for the country concerned – we are particularly concerned with obtaining their cooperation on the removals and return front and prevention of the build-up of intractable removals caseloads. It is reasonable to expect that other countries should cooperate with Australia to facilitate the lawful removal from Australia of a non-citizen who is a national of that country. Such a designation will in some circumstances provide a strong incentive for the country concerned to cooperate with removals.

Q21. What sort of consultation will the Minister do before designating a country of removal concern? Is this obligatory?

The power would only be available to be exercised if the Minister considers it is in the national interest to do so, and it can only be done after consultation with the Prime Minister and the Minister for Foreign Affairs. These requirements are specifically stated in the provisions of the bill at proposed section 199F(2).

This doesn't prevent the Minister from also seeking the views of other members of the Executive Government, such as the Minister for Trade and Tourism, or other relevant Ministers where appropriate.

Q22. What safeguards are attached to the power to designate a country?

The power to designate a removal concern country is a personal power of the Minister. It cannot be delegated to another person.

The power would only be available to be exercised if the Minister considers it is in the national interest to do so and would be done after consultation with the Prime Minister and the Minister for Foreign Affairs. These requirements are specifically stated in the provisions of the bill at proposed section 199F(2).

If the Minister designates a country as a removal concern country, the Minister is also required to table a copy of the designation in both Houses of Parliament within 2 sitting days, together with a statement of reasons for making the designation. This ensures there is appropriate accountability to the Parliament in the event that the designation power is exercised.

Q23. What's the consequence of designating a country as a removal concern country?

When a country is designated as a removal concern country, nationals of that country who are outside Australia will be prevented from making a valid application for a visa to travel to Australia while the designation remains in force.

Dual nationals will not be prevented by the designation from making a valid application for a visa, unless both of the countries of nationality are removal concern countries.

Applications that had been received before designation would remain valid and continue to be processed as per normal.

There would be no change to visas that are held and in effect at the time of the designation.

Q24. Will it affect nationals of that country who are in Australia?

The designation only affects the validity of new applications made by nationals of a designated country who are outside Australia.

If a national of a designated country is in Australia, they may continue to make valid visa applications. The bar doesn't affect applications by people who are in Australia. If a national of a designated country no longer holds a valid visa, they will be expected to depart Australia voluntarily at the end of their lawful stay or apply for another visa for which they are eligible.

Q25. Are there any exceptions to the bar on making new applications outside Australia?

The Bill provides for a number of exceptions, including for visa applications by family members of Australians and by persons applying for resettlement under Australia's refugee and humanitarian resettlement program.

There is also power under proposed subsection 199G(3) of the Bill for the minister to prescribe an exception for particular classes of visas or persons by legislative instrument. The minister can also decide to allow visa applications by an individual where it is in the public interest – this is a personal power of the minister, consistent with the designation power.

Q26. What about relatives of Australian Citizens and children who are in Australia?

Where a country is designated there are appropriate exemptions in the Bill to continue to allow visa applications from close family relatives of Australian citizens and permanent visa holders and in certain other circumstances. These are found at subsection 199G(2) of the Bill.

A spouse, de facto partner or dependent child of an Australian citizen or permanent visa holder can still make a valid application for a visa. A parent of a child in Australia can still make a valid application for a visa. In practice, appropriately trained visa officers in the Department will consider any claimed relationship of this kind as a first step in considering whether or not there is a valid application to be considered. Procedural instructions and training will support staff to undertake this assessment.

Q27. What about Australia's trade and other international obligations?

Where a country is designated, there are appropriate exemptions in place to exempt applications from certain classes of people and for some classes of visa to, for example, continue to respect any international obligations that Australia, including under trade or other international arrangements and to permit applications for re-entry to Australia by persons who previously held a permanent visa.

In accordance with subsection 199F(2) of the Bill the Minister is required to consult the Prime Minister and Minister for Foreign Affairs before making a designation. The Minister may also consult with the Minister for Trade and Tourism if trade obligations are in play, and other relevant Ministers as required.

Q28. What about dual nationals?

A dual national will not be prevented by the designation from making a valid application for a visa, unless both of the countries of nationality are removal concern countries.

However, a dual national who seeks to rely on their nationality of the country which is not of removal concern will need to hold a valid passport from that other country in order to make a valid visa application.

Q29. What about unforeseen urgent and compassionate situations requiring nationals of a country of removal concern needing to travel to Australia?

The minister can also decide to allow visa applications by an individual in the public interest such as, for example, where particular compassionate and compelling circumstances exist. This power is provided for at subsections 199G(3) and (4) of the Bill. This is a personal power of the minister.

Q30. What will happen to the visa applications from nationals of a country of removal concern?

Where such persons are outside of Australia, any new application will be invalid and of no legal effect, unless the person is also a national of another country that is not a removal concern country and holds a passport issued by that other country.

Q31. What about visa applications already received prior to designation of a country of removal concern?

Such visa applications would be valid and continue to be processed as per normal. The designation only operates to make new visa applications invalid, so long as the designation remains in force.

Q32. What about visa applications by nationals of a designated country who are in Australia?

The designation only affects the validity of new applications made by nationals of a designated country who are outside Australia.

If a national of a designated country is in Australia, they may continue to make valid visa applications. The bar doesn't affect applications by people who are in Australia. If a national of a designated country no longer holds a valid visa, they will be expected to depart Australia voluntarily at the end of their lawful stay or apply for another visa for which they are eligible.

Q33. Will anything in this legislation enable the government to put a non-citizen back in immigration detention?

No.

NZYQ-affected non-citizens cannot be detained for the purpose of removal until such time as their removal becomes reasonably practicable.

The new powers in this Bill are intended to address the possibility that where a non-citizen is on a removal pathway, any lack of cooperation on the part of the non-citizen with lawful removal efforts can be addressed.

Q34. Why is there a power to revisit protection findings for lawful non-citizens?

Non-citizens who have a protection finding that was made in the course of considering a protection visa application cannot be removed to the country to which the protection finding relates. They can however be removed to a third country.

There is an existing power to revisit those findings for unlawful non-citizens, to allow their removal to their country of origin if the Minister is satisfied a protection finding would no longer be made in respect of that country.

Currently a protection finding can only be revisited at the point a person is an unlawful non-citizen and a power to remove them has been enlivened. It may be necessary to revisit a protection finding for bridging visa holders on a removal pathway, and the amendments to s 197D will enable that.

The Bill extends this power to allow that assessment to take place while the person holds a removal-related bridging visa, or another visa that may be prescribed for the purposes of removal.

A decision that a protection finding would no longer be made is subject to both merits and judicial review.

Q35. In what circumstances would a protection finding be revisited?

This power might be exercised if, for example, there is a significant improvement in country conditions or a change in the person's circumstances which would mean that person's removal to that country could now be effected without breaching Australia's *non-refoulement* obligations.

Q36. Will it be used to cancel protection visas? What other visas could you prescribe?

No. The power is intended for those on a removal pathway – that is where they have already been refused a substantive visa or their substantive visa has been cancelled on other grounds, such as on character grounds.

The power to prescribe other visas would be used only to include visas that might be granted to those on a removal pathway.

The power will not be used for holders of protection visas, or other visas former protection visa holders might now hold, such as resident return visas or resolution of status visas.

Q37. What does the change to section 76E of the Migration Act actually do?

This is a technical change which makes clear that the Minister can grant a subsequent BVR from time to time if that is necessary to manage changes to the BVR holder's status, regardless of whether the holder has been invited to make representations about why certain visa conditions should not be imposed. For example, where a BVR holder is arrested and held on remand, it may be necessary to grant a new BVR which does not carry an electronic monitoring or curfew condition.

[if asked]

Q38. Do the measures in the Bill breach Australia's international obligations?

The measures in the Bill contain a range of safeguards to ensure that any limitations on human rights are reasonable, necessary and proportionate to the legitimate aim of protecting the integrity of Australia's migration system. These include:

That a removal pathway direction cannot require a person to interact with a country in relation to which a protection finding has been made for that person, cannot be issued while the person has an ongoing protection visa process and cannot be issued to a child.

That the power to designate a removal concern country won't prevent applications by persons seeking family reunification and has provision for other exceptions to be made to cover situations where Australia's international obligations may be engaged.

In limiting judicial discretion to consider the individual circumstances of a person's case, the imposition of a mandatory minimum sentence for failing to comply with a removal pathway direction may not be compatible with human rights obligations, depending on the circumstances of the case.



OFFICIAL

TALKING POINTS

Subject	Migration Amendment (Removal and Other Measures) Bill 2024		
Date	26/03/2024		
Type	Whole of Government		
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ISSUE

The following talking points address questions related to the Migration Amendment (Removal and Other Measures) Bill 2024, introduced by the Australian Government on 26 March 2024.

TALKING POINTS **OFFICIAL**

- On 26 March 2024, the Government introduced the Migration Amendment (Removal and Other Measures) Bill 2024 (the Bill).
- The Bill brings forward mechanisms to assist in effecting removals of persons who have exhausted all legal avenues to remain lawfully in Australia but who seek to obstruct their removal from Australia.
- Importantly, this legislation does not expand the cohort of people who are eligible for removal.
- In particular, this legislation provides an express statement of legislative intent that would, if enacted, make clear that the Parliament expects that a non-citizen will leave Australia voluntarily when they have exhausted all avenues to remain, and if they do not leave voluntarily, that they will cooperate with their lawful removal from Australia.
- This legislative statement would also make clear that Australia expects other countries to cooperate with Australia and take back their own nationals who are liable to be removed from Australia.
- The legislation also provides the Minister with the power to direct a non-citizen to do a specific thing to facilitate their removal.
 - The direction would go to matters such as applying for a passport or other document to facilitate travel and removal from Australia or attending an interview with the consulate of their home country.
- This legislation sends a strong signal about the Australian Government's expectations of cooperation with removal efforts.

- The new powers together make up a package of reforms that will provide enhanced powers to encourage and where necessary direct non-citizens who are on a removal pathway to cooperate with their lawful removal, where they no longer have an entitlement to remain in Australia.
- It is also reasonable to expect that other countries will cooperate with the Australian Government and facilitate the lawful removal of non-citizens who are on a removal pathway.
- This legislation sends a strong signal about the Australian Government's expectations of cooperation with removal efforts – by non-citizens who are on a removal pathway, and by other countries where it is appropriate for them to facilitate the removal of their nationals from Australia.

RATIONALE

- A robust legislative framework is important for the management of the migration system.
- There is no more important element of the system than decisions on who may come to Australia, and who has to leave.
- There is an ongoing problem that Australia faces in sending home individuals who will not cooperate with our removal efforts. Some of these people are in immigration detention, and some are in the community on temporary bridging visas.
- In addition, there are countries that will not work with the Australian government to facilitate the lawful removal of their nationals.
 - o For example, there are countries who will not issue travel documents to individuals who are their citizens, unless the individual is cooperating with the removal process.

MIGRATION AMENDMENT (REMOVAL AND OTHER MEASURES) BILL 2024

- The Bill amends the Migration Act 1958 (the Migration Act) to strengthen the legislative framework in the Act relating to the removal from Australia of certain non-citizens who are on a removal pathway.
- This includes unlawful non-citizens as well as non-citizens who hold certain bridging visas, including the Subclass 070 (Bridging (Removal Pending)) visa.
- The Bill strengthens the integrity of the migration system by requiring non-citizens who are on a removal pathway and have exhausted all avenues to remain in Australia to cooperate in efforts to ensure their prompt and lawful removal.

- The amendments in the Bill are necessary to address circumstances where non-citizens who have no valid reason to remain in Australia, and who have not left voluntarily as expected, are not cooperating with appropriate and lawful efforts to remove them.
- The Bill passed the House on 26 March 2024, however, was referred to the Senate Committee for Legal and Constitutional Affairs (the Committee) for hearing.
- On 27 March 2024, the Senate referred the Bill to the Committee for inquiry, with a report to be handed down by 7 May 2024.

REMOVAL DIRECTION

- Under existing settings, non-citizens eligible for removal from Australia include those who have come to the end of any visa application process, have exhausted all avenues to remain in Australia and who are on a removal pathway. This is not changing.
- The proposed laws provide a mechanism for the department to ensure that the government can give effect to the legal obligation upon Government to progress removal of non-citizens who have exhausted all avenues to remain in Australia and who are on a removal pathway.
- These individuals may be unlawful non-citizens who have exhausted their visa processing options who are being held in immigration detention or they may be in the community on a Bridging Visa that is issued for departure or removal purposes.
- It is imperative that individuals who are on a removal pathway cannot be allowed to frustrate the Government and the Australian people by refusing to cooperate with their removal from Australia.
- The measures in the Bill contain a range of safeguards to ensure that any actions taken are reasonable, necessary and proportionate to the legitimate aim of protecting the integrity of Australia's migration system. These include:
 - o That a removal pathway direction cannot require a person to interact with a country in relation to which a protection finding has been made for that person, cannot be issued while the person has an ongoing protection visa process.
 - o That the power to designate a removal concern country won't prevent applications by persons seeking family reunification and has provision for other exceptions to be made to cover situations where Australia's international obligations may be engaged.

- o Non-citizens who are on a removal pathway and who are under 18 years of age also cannot be given a removal direction. However, if a parent of the child is also a removal pathway non-citizen, the Minister may give that parent a direction in relation to the child.
 - o Further, the Minister cannot direct a non-citizen to make or withdraw an Australian visa application; and cannot give a direction in relation to commencing or discontinuing court or tribunal proceedings, or the conduct of such proceedings.
- A direction given to a non-citizen who is on a removal pathway is enforceable. If a non-citizen does not comply with a direction, this would be an offence.
- If prosecuted and convicted, a removal pathway non-citizen would be liable for a mandatory minimum penalty of 12 months' imprisonment. The available maximum penalty is 5 years' imprisonment or 300 penalty units or both.
 - o From 1 July 2024, the amount of a penalty unit will be equivalent to \$330 AUD.
 - o This penalty is in line with those that the Parliament agreed to and enacted last year for breaches of visa conditions by people released from immigration detention after the NZYQ High Court decision.
- If a person has been found to engage Australia's protection obligations relating to a particular country, or has an ongoing protection visa application, then the Minister cannot give that person a direction in relation to that country.

REMOVAL CONCERN COUNTRIES

- Australia does not return individuals to countries in respect of which Australia owes protection to the individual. This Bill would not change that.
 - o Persons who do not engage Australia's protection obligations, and who have exhausted all administrative avenues for appeal, have no lawful basis for remaining in Australia and are expected to depart.
- The legislation provides the Minister with a personal power to designate a country as a 'removal concern country' if the Minister thinks it is in the national interest to do so.
 - o this designation would have the effect of barring new visa applications by nationals of the designated country who are outside Australia, while the designation remains in force.
- This measure is aimed at countries that do not work with the Australian Government to facilitate the lawful removal of their nationals, and would complement the proposed power to issue directions to individuals to do things to facilitate their removal.

- The power would be available to be exercised if the Minister considers it is in the national interest to do so. Before the power can be exercised, the legislation requires the Minister to consult with the Prime Minister and the Minister for Foreign Affairs.
- Where a country is designated there are appropriate exemptions in the Bill to continue to allow visa applications from close family relatives of Australian citizens and permanent residents, and applications for a Refugee and Humanitarian (Class XB) visa.
 - o The Minister will also have the power to exempt applications from certain classes of people and for some classes of visa to, for example, continue to respect any international obligations that Australia may have under trade or other multilateral arrangements.
 - o Applications from dual nationals who hold a valid passport from a country that is not a removal concern country will also be exempt.
- Designating a country would also have the effect of slowing down particular entry pipelines to Australia, and may be useful in encouraging particular countries to accept return of their own nationals.
- The Department's primary focus is continuing positive engagement with all countries to support effective removal processes.
 - o It would be premature to name individual countries as countries of removal concern, and could prejudice our ability to achieve removal outcomes.

ADMINISTRATION OF THE BRIDGING (REMOVAL PENDING) VISA SCHEME

- The Bill contains amendments to support the effective administration of the Bridging (Removal Pending) visa scheme established to manage NZYQ-affected non-citizens.
- This includes amendments to clarify that a new BVR may be granted without application at any time to a current BVR holder – for example, where it may be appropriate to adjust the imposition of certain visa conditions to respond to a change in the level of risk the visa holder presents to the community.
- The Bill also includes amendments to enable the Minister to revisit a protection finding in certain circumstances, where a non-citizen who holds a visa – such as a BVR – is on a removal pathway. At present, it is only possible to revisit a protection finding under the Act for an unlawful non-citizen.
- Following the High Court's decision in NZYQ, we now face circumstances in which this power needs to be expanded to certain non-citizens who hold a visa – particularly BVR holders.

- o Without this amendment, the Act would not provide a means to revisit a protection finding while a removal pathway non-citizen is in the community on a visa.
- Not all Bridging Visa E holders will be impacted by this Bill.
 - o These measures would only impact those BVE holders whose visas have been granted on departure grounds and who are not cooperating with the removals process.

On background **OFFICIAL** (for use in reporting, not for attribution):

(The talking points in this section will be provided to the journalist on background and should support the formal response. This section will not be attributable to a Department spokesperson but should not include anything above OFFICIAL).

Nil.

BACKGROUND NOT FOR PUBLIC RELEASE

(The information below is classified and should not be publicly released without the authority of the Department of Home Affairs.)

Please note: It is the Business Areas responsibility to include any pertinent sensitive information in the background of this document. Exemptions to this requirement can be negotiated with the Assistant Secretary Media & Communication Branch

Nil.

CLEARANCE

All clearances below must be completed before being returned to Media Operations.

Lead business area
The Media team will contact the area(s) should further clarification be required.
Branch / Division or Group

Drafting officer		
David Gavin	AS Compliance & Community Protection Policy	26/03/24

International Division clearance	
	Yes ☐ N/A ☒

Other Government agency consultation/clearance		Yes ☐ N/A ☒
PM&C	Branch/area	Date (DD/MM/YYYY)
DFAT	Branch/area	Date (DD/MM/YYYY)

Final SES clearance (minimum SES Band 1) and approval for release		
SES of lead business area must verify that all appropriate consultation and clearances have been undertaken.		
David Gavin	AS Compliance & Community Protection Policy	26/03/24
Jodi Stubbs	Chief Superintendent, Removal Operations Branch	02/04/24

Media and Communication Branch		
s. 22(1)(a)(ii)	A/g Director Media Operations and Social Media.	02/04/24
Review / Consultation		
Full Name	Position / Branch / Division or Group	Date (DD/MM/YYYY)



OFFICIAL: Sensitive
Legal privilege

Migration Amendment (Removal and Other Measures) Bill 2024

Additional questions

Timing and process to develop the bill

- The first DIs were issued on 5 March and were followed by further instructions over the following days/weeks.
- Drafting was substantively completed on Friday 22 March.

When did we issue drafting instructions?

- The first DIs were issued on 5 March.

Why is it needed now?

- This Bill amends the Migration Act to strengthen the legislative framework in the Act relating to the removal from Australia of certain non-citizens who are on a removal pathway.
- This Bill will provide the government with additional levers to increase the removability of a cohort of non-citizens who are on a removal pathway but are not cooperating voluntarily with removal efforts.
- If a non-citizen who no longer has a lawful basis to remain in Australia will not leave voluntarily, this Bill will provide additional powers to encourage and where necessary direct them to do things to cooperate with removal efforts.

Can people who are failed asylum seekers be sent back? Do you have confidence in the protection assessment process?

- Australia does not return individuals to countries in respect of which Australia owes protection to the individual. Protection assessment processes are conducted in accordance with legislative criteria, including as set out in s36 of the Migration Act.
- Officers undertaking protection obligations assessments are supported by robust induction training, quality control and assurance processes and ongoing professional development.
- Persons who do not engage Australia's protection obligations and who have exhausted all administrative avenues for appeal, have no lawful basis for remaining in Australia and are expected to depart.
- Historically, approximately 77% of refused Protection visa applicants apply for Merits review.
 - Of those that apply for Merits review, around 10% of cases are remitted back to the Department. There are a range of factors that may lead to a remittal, including for example because of a change in country circumstances.
- Approximately 30% of Protection visa applications affirmed at the tribunal lodge an application for judicial review.

How many people will these laws apply to?

- There are currently approximately 150-200 people in immigration detention who may be in scope of the new legislation ie. likely to be uncooperative with their removal process.

- o This number is subject to change as further detainees become available for removal.
- The Department will need to further analyse the number of individuals currently holding a bridging visa to determine whether or not they will be impacted by these laws.

How many removals are successfully effected each year?

- In 2022-23 the ABF removed 2,274 unlawful non-citizen from Australia.
 - o This includes people in immigration detention and those refused immigration clearance at the border.

How many people went through the fast track process?

- The Immigration Assessment Authority (IAA) and fast track assessment process were established on 18 April 2015, for certain unauthorised maritime arrivals who made a valid application for a protection visa on or after 18 April 2015. Since its commencement in 2015, the majority of fast track applications made have now been finalised.
- As at 31 October 2023 (most recent cleared stats available)*:
 - o 26,437 fast track applications had been lodged. This includes applications for Temporary Protection (subclass 785) visas (TPV) and Safe Haven Enterprise (subclass 790) visas (both initial and subsequent);
 - o 25,982 fast track applications had been finalised;
 - o 455 fast track applications were on-hand with the Department;
 - o A breakdown of the finalised applications is below:

Application not allowed	S-47F
Granted	15,892
Invalid	313
Otherwise Finalised**	<200
Refused	8,839
Withdrawn	755
Total	25,982

**Includes those who became Australian citizens, were granted other visas, departed Australia or died.

*Note: This includes applications recorded as 'fast track applicants' in Departmental systems.

Immigration Assessment Authority caseload

- The IAA has a low on-hand caseload. As at 31 December 2023, the IAA had 21 cases on-hand.
- As at 31 December 2023, the median processing time for IAA cases was 51 days
- In 2022-23, the IAA made 173 decisions, and in 2021-22, the IAA made 1,077 decisions.
- From its commencement to today, the IAA has made 10,557 decisions (noting some individuals may have more than one decision by the IAA).

- The top 5 source countries (1 July 2015 – 31 December 2023) are s. 33(a)(i), s. 33(a)(iii) s. 33(a)(i).

s. 47C(1)

Detail - Opposition [sheet 2] - TEHAN, Dan, MP

TBC

2nd reading amendment - BANDT, Adam, MP

A second reading amendment has been circulated by the Greens. No longer applicable, has been dealt with.

s. 42(1), s. 47C(1)

s. 42(1), s. 47C(1)

CW - Pauline Hanson's One Nation [sheet 2491]

HANSON, Sen Pauline

s. 47C(1)

s. 42(1), s. 47C(1)

From: s. 22(1)(a)(ii)
To: s. 22(1)(a)(ii)
Cc: s. 22(1)(a)(ii) s. 47E(d)
Subject: RE: OSB / 46A TP for views: Senate Legislation Program for Today - Migration Amendment (Removal and Other Measures) Bill 2024[SEC=PROTECTED]
Date: Wednesday, 27 March 2024 8:55:03 AM
Attachments: [image004.png](#)

PROTECTED

Kevin

Id be comfortable with these OSB points, noting the OSB ones have been cleared by OSB and are consistent with their QTB also updated this morning.

Michael and David will have some points for you on the amendments shortly.

What impact will this bill have to the OSB?

- OSB remains in place. Anyone who attempts to travel to Australia irregularly by boat without a valid visa will be detected, intercepted and returned to their country of departure or origin, where it is safe to do so.
- People who cannot be safely returned will be transferred to a regional processing country
- Consistent with Australia's long-standing maritime people smuggling policies, any unauthorised maritime arrivals are to be safely transferred to a regional processing country.
- Unauthorised maritime arrivals are barred from making a visa application in Australia, by section 46A of the Migration Act.
- The Bill includes a specific exemption from the application bar for Refugee and Humanitarian (Class XB) visas.
- A non-citizen of a designated country who is outside Australia could still legitimately apply for a Humanitarian visa – outside Australia – in this way.

If asked: was OSB consulted on the development of this bill?

- Operation Sovereign Borders was consulted during the development of the policy underpinning the Migration Amendment (Removal and Other Measures) Bill 2024.

If asked: does this create push or pull factors for further irregular migration?

- Australia continues to be a highly attractive destination for migrants around the world, which opens a market for people smugglers intent on exploiting vulnerable migrants by selling unauthorised passage to Australia.
- People smugglers monitor the Australian news for significant events and policy changes (real or perceived) that can be used to increase demand for maritime people smuggling ventures.
- OSB continues to implement strategic communication activities in key source and transit countries to counter the deceptive narratives being pushed by criminal people smuggling syndicates.

- The Australian Government remains committed to OSB, countering maritime people smuggling, and preventing avoidable deaths at sea.
- Australia's strong border protection policies have not, and will not change.

Tara Cavanagh

Group Manager

Immigration Policy, Immigration Group

Department of Home Affairs

P: s. 22(1)(a)(ii)

E: s. 22(1)(a)(ii)@homeaffairs.gov.au

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s. 22(1)(a)(ii)

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