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Australian Government
Department of Home Affairs

Submission

For decision

PDMS Ref. Number: MS23-002374

Date of Clearance: 20/11/2023

To Minister for Home Affairs
 Minister for Cyber Security

Subject Seeking amendments to the Migration Regulations 1994 for in response to NZYQ

Timing *For consideration by 20 November 2023, as agreed with your office in order to meet the timeframes for a special Federal Executive Council*

Recommendations

That you:

S. 47C(1)

Minister's Comments

Minister for Home Affairs
Minister for Cyber Security

Signature.....

Date:...../...../2023

Released by the Department of Home Affairs
 under the Freedom of Information Act 1982

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Key Issues

1. This submission proposes amendments to the *Migration Regulations 1994* (Migration Regulations) to address matters arising from the High Court's decision in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs & Anor* (NZYQ) on 8 November 2023.
2. On 18 November 2023, the *Migration Amendment (Bridging Visa Conditions) Act 2023* (the Act), commenced. This Act introduced the ability to impose stringent BVR conditions, including requirements to wear an electronic monitoring device and abide by a curfew, with criminal offences and mandatory minimum sentences.

3.

S. 47C(1)

4.

s. 47C(1)

Background

5. On 8 November 2023, the High Court delivered an ex tempore decision in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs & Anor* (NZYQ), and made orders allowing NZYQ's application. The Court declared that NZYQ's detention was unlawful "by reason of there having been and continuing to be no real prospect of removal of the plaintiff from Australia becoming practicable in the reasonably foreseeable future".
6. The release of detainees on the Subclass 070 (Bridging (Removal Pending) visa) (BVR) is occurring following the NZYQ decision. As at Sunday, 20 November 2023 there were 93 detainees released from detention and granted a BVR.

Consultation – internal/external

7. The following areas were consulted in the development of this submission:
 - Legislation Branch
 - Status Resolution Branch
 - National Removals, ABF
 - Group Manager Legal
 - Australian Government Solicitor

Consultation – A/g Secretary / ABF Commissioner

8. The A/g Secretary was consulted on the approach outlined in this submission.
9. The ABF Commissioner was not consulted on this approach.

Client service implications

10. The proposed amendments are intended to further encourage appropriate conduct in the Australian community by BVR holders.

Risks and Sensitivities

11.

S. 47C(1)

12. The information contained in this submission is classified and should not be publicly released without the authority of the Department of Home Affairs. In accordance with our long standing practices, should you wish for unclassified media lines to be prepared in relation to this issue please contact the Home Affairs Media Coordination team – media@homeaffairs.gov.au.

Financial/systems/legal/deregulation/media implications

13. Legislative amendments to the Migration Regulations are required, should you agree to this submission.

Attachments

Attachment A

S. 47C(1)

Authorising Officer Cleared by: Michael Burke First Assistant Secretary Immigration Policy Division Date: 20/11/2023 Mob: S.22(1)(a)(ii)

Contact Officer David Gavin, Assistant Secretary, Compliance and Community Protection Branch, Ph S.22(1)(a)(ii)

CC

A/g Secretary
Commissioner Australian Border Force
Deputy Commissioner Regional Operations
A/g Deputy Secretary Immigration
DS Strategic Initiatives
DS Chief Operating Officer
DS Social Cohesion and Citizenship
DS Executive
GM Technology and Major Capability
Group Manager Legal
GM Cyber and Infrastructure Security Centre
Chief Finance Officer
FAS Executive Coordination
Assistant Secretary Legislation