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s501 Removals to New Zealand

Talking points (if raised)

- **Note** that there has been media reporting in New Zealand in December 2023 relating to individuals removed or likely to be removed from Australia under s501 of the *Migration Act 1958* (see media stories at Attachment A and B).

Ministerial Direction 99

- A new Ministerial Direction on character-related visa decision-making, which made long-term residence in Australia a primary consideration in character-related visa decision-making, commenced on 3 March 2023.
- This Ministerial Direction requires decision-makers in both the Department of Home Affairs and the AAT to give greater consideration to the length of time a person has resided in Australia, when considering whether to refuse or cancel a visa under section 501 of the Migration Act, and whether to revoke a mandatory cancellation decision, for all non-citizens.
- Under the new Ministerial Direction, decision-makers must consider the length of residence in the Australian community as a primary consideration and would need to weigh in the non-citizens favour, the time a non-citizen has spent as ordinarily resident in Australia during and since their formative years.
- This consideration needs to be balanced against other considerations including the seriousness of the conduct and expectations of the Australian community.
- While a ministerial direction can guide decision-makers to exercise their discretion, it cannot direct a decision-maker to make a particular decision.
- **Note** that the Government does not comment on individual cases.
- The Australian Government is committed to the protection of the Australian community.
- Where individuals pose a risk to the community, the Australian Government will continue to cancel their visas and remove them.

Background (not for further release)

S. 47F(1)

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Australia shifts on controversial NZ deportations

By [Paul Osborne](#)

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New Zealand has welcomed the Albanese government's changes to deportation policies. (Bianca De Marchi/AAP PHOTOS)

Australia's "common sense" approach to deporting New Zealanders on character grounds won't threaten national security, with authorities to consider how long they've been in the country before booting them out.

Prime Minister Anthony Albanese said he discussed the change with New Zealand counterpart Jacinta Ardern last year and insisted Australia would still take action if it was necessary.

The changes have been welcomed in New Zealand, whose leaders have long complained about the issue of deportations.

"That is something that was discussed with Jacinda Ardern in the first meeting that was held and we said we would apply some common sense (that) needs to be applied here between Australia and New Zealand," Mr Albanese told reporters in Perth on Wednesday.

"But we retain, of course, our right to take action on the basis that it is appropriate action."

was being taken to deportations after a shift was triggered when Labor took power last year.

"Under these changes, the Department of Home Affairs must now consider the length of time someone has lived in the Australian community as one of the primary considerations when determining whether to cancel someone's visa," the representative said.

"Where individuals pose a risk to the community, the Australian government will continue to cancel their visas and remove them."

Opposition home affairs spokeswoman Karen Andrews said the government had "gone soft on criminals".

She said the coalition had cancelled and refused more than 10,000 visas of serious criminals while in office.

"Non-citizens convicted of offences like child abuse, rape, breaching apprehended violence orders and possessing illegal weapons do not belong in our community," she said in a statement.

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convicted of serious crimes who fail the character test."

Australia deports hundreds of people to New Zealand annually using a power under the Migration Act that allows the immigration minister to evict on the basis of character rather than criminal convictions.

New Zealand sees it as an abrogation of the trans-Tasman friendship, as many of those deported have little to no connection to Australia's near-neighbour.

Australian Associated Press

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Media

[Albanese vows to reconsider Australia's deportations rules in olive branch to New Zealand | Australian foreign policy | The Guardian](#) – 10/6/22

The Australian Prime Minister, Anthony Albanese, has vowed to consider changing how the government handles visa cancellations in an olive branch to ease longstanding tensions with New Zealand.

The pledge to look at tweaking the scheme prompted the visiting New Zealand prime minister, Jacinda Ardern, to declare the talks in Sydney on Friday allowed for “a reset” in the trans-Tasman relationship.

New Zealand has repeatedly objected to the deportation of people “who have lived in Australia for a long time and are essentially Australians”. “There are some who are being deported from Australia who, for all intents and purposes, are Australian – often zero connection to New Zealand, sometimes not even having stepped foot there,” she said.

[Anthony Albanese offers New Zealanders fresh approach on voting rights in Australia and deportation policy | Australian foreign policy | The Guardian](#) – The Guardian, 8 July 2022

New Zealanders in Australia may soon benefit from voting rights, a faster pathway to citizenship and increased protections against deportation, the countries’ prime ministers have revealed.

At a press conference in Sydney, the Australian prime minister, Anthony Albanese, committed to take a more “commonsense” approach when applying the power to cancel New Zealand citizens’ visas, signalling his government will limit its use on longterm residents of Australia.

“But we will have some commonsense applied here – and where you have a circumstance where someone has lived their entire life, effectively, in Australia with no connection whatsoever to New Zealand, then commonsense should apply.”

[Anthony Albanese says Australia will take a 'common sense' approach to deporting New Zealand criminals under Section 501 | Sky News Australia](#) – Sky News, 8/7/22

Prime Minister Anthony Albanese has flagged Australia will use a "common sense" approach to the deportation of New Zealanders convicted of a crime across the Tasman.

New Zealand argues its citizens who have spent the bulk of their lives in Australia should remain in the country and not be deported.

"We will continue to deport people when appropriate. But we will have some common sense apply here.

"Where you have a circumstance where someone has lived their entire life, effectively, in Australia with no connection whatsoever to New Zealand, common sense should apply and we will act friends and we will work through those issues in a common sense way."

Ms Ardern at a press conference alongside Mr Albanese last month called for Australia to reconsider its policy of deporting Kiwis who often have "zero connection to New Zealand".

[Anthony Albanese says New Zealanders might be allowed to vote in Australian elections, after meeting Jacinda Ardern - ABC News](#) – ABC news, 8/7/22

Deportations to remain, but with 'common sense' applied

The pair discussed the sensitive issue of convicted criminals being deported in significant numbers to New Zealand. In recent years, Australia has deported hundreds of New Zealand citizens found guilty of serious criminal offences, despite some holding few ties to the country.

It has been a source of tension between the two countries, and Mr Albanese said the government's approach to the issue will shift.

"We will continue to deport people when appropriate," he said.

"But we will have some common sense apply here.

"Where you have a circumstance where someone has lived their entire life, effectively, in Australia with no connection whatsoever to New Zealand, common sense should apply and we will act as friends."

[Jacinda Ardern in Australia: Albanese on 501s - Countries to show 'common sense' and work 'as friends' - NZ Herald](#) – New Zealand Herald, 8/7/22

Australian Prime Minister Anthony Albanese has announced a major shift on the contentious "501" deportations policy towards New Zealanders and vowed to work on pathways to citizenship and grant voting rights to residents.

Albanese stated while Australia would retain the right to deport people, it would now be done in a "common sense" approach based on "actions of friends".

"In situations where someone had lived their entire life in Australia and they have no connection to New Zealand we will work through it as friends and in a common-sense way."

[Australia's Anthony Albanese applies 'common sense' to 501 deportations, but Chris Hipkins aware fight isn't over | Newshub](#) – News hub – 1/2/23

Documents signed off by Australia's Immigration Minister eight days ago change the rules. 'We said we would apply some common sense' said Australian Prime Minister Anthony Albanese. That means considering any 'immediate family members in Australia' and weighing up if deporting is within the 'best interest of the child'.

'On average Australia departs on 501 a day, but soon convicted criminals "strength, nature and duration of ties to Australia" will become a primary consideration and if they've been in "Australia during their formative years"'

Albanese pledged to consider changes to the policy after talks with the former New Zealand prime minister Jacinda Ardern in Sydney last year, which she said allowed for a "reset" of the trans-Tasman relationship.

[New Zealand PM welcomes change to Australia's 'corrosive' deportation policy | New Zealand | The Guardian](#) – The Guardian/NZ PM Commentary – 1/2/23

New Zealand's prime minister, Chris Hipkins, has welcomed Australia's announcement it will overhaul its approach to deporting NZ citizens who have spent more than one year in an Australian prison.

Rather than changing section 501 of Australia's Migration Act, the Australian immigration minister, Andrew Giles, has issued a ministerial direction to his department to pay greater attention to the strength, duration and nature of a person's connection to the Australian community.

A spokesperson for Giles said the change would deliver a more "common sense approach" although deportations would still occur.

"The Department of Home Affairs must now consider the length of time someone has lived in the Australian community as one of the primary considerations when determining whether to cancel someone's visa.

The change would require decision-makers to pay greater attention to where a person has spent the majority of their life, regardless of when the offence occurred and its nature.

[Oz Kiwi - Changes for New Zealanders facing deportation from Australia \(ozkiwi2001.org\)](#) – Oz Kiwi – 1/2/23

A spokesperson for Immigration Minister Andrew Giles said the government had told the department of Home Affairs to take a “common sense” approach to the deportation of New Zealanders. The new directive will come into effect from 03 March 2023.

More consideration will be given to:

- The length of time someone has lived in Australia.
- The impact on their family members in Australia, especially their children.
- Whether they resided in Australia during and since their formative years.

[Immigration: Australia makes changes to 'corrosive' New Zealand deportation policy | SBS News](#) - SBS news – 1/2/23

Australia has softened its controversial approach to deporting New Zealanders on character grounds, with authorities to consider how long they've been in the country before cancelling their visas.

But Prime Minister Anthony Albanese insists the "common sense" decision won't threaten national security, despite the Coalition accusing his government of "going soft on criminals".

Mr Albanese said he had discussed the deportation of New Zealanders who had spent the majority of their life in Australia - a key friction point between Canberra and Wellington - with former New Zealand Prime Minister Jacinda Ardern last year.

"The acknowledgement on the Australian side that actually some of the people that we are talking about have had a long history in Australia - some of them have been there since they were very young children - and sending them to New Zealand when they have no connections here other than a very historic one isn't really a fair or just outcome," he told reporters.

[Kerre Woodham: 501 deportees halved under the common-sense approach \(newstalkzb.co.nz\)](#) – Radio NZ article, 14/11/23

501 deportations from Australia to New Zealand have halved under a common-sense approach adopted by the Australian Government. That basically means that for those people who have lived most of their lives in Australia, who came as children, or who were born to New Zealand parents in Australia, if they have been ordinarily resident in Australia during and since their formative years, then considerable weight will be given to that fact.

[The former prisoners deported to New Zealand after a lifetime in Australia \(smh.com.au\)](#) – NZ Deportees, Sydney Morning Herald, 29/12/22

Despite assurances from Prime Minister Anthony Albanese that Australia would apply “common sense” in its deportation of non-citizens who committed crimes here, *The Age* and *The Sydney Morning Herald* can reveal a 74-year-old man with advanced dementia, “Jerry”, was recently deported to New Zealand. He had lived in Australia since the early 1970s and was deported after committing property offences.

*JOINT STATEMENT**08 Jul 2022**Prime Minister, Prime Minister of New Zealand*

The Prime Minister of Australia, the Hon Anthony Albanese, and the Prime Minister of Aotearoa New Zealand, Rt Hon Jacinda Ardern, joined by Ministerial colleagues from both countries, met in Sydney on 8 July 2022 for the annual Australia New Zealand Leaders' Meeting.

The Prime Ministers' discussion reflected the richness of trans-Tasman cooperation; their shared perspectives and goals on regional and global issues; and a joint desire to see our world-leading cooperation grow from strength to strength.

Australia and New Zealand have a uniquely close relationship. Our countries' deep friendship is bound together by our history and our home in the Blue Pacific Continent. We are united by shared values, a common outlook and deep people-to-people links.

Meeting during Australia's NAIDOC Week, the Prime Ministers acknowledged the unique role of Māori and Australia's First Nations peoples in the identity of both our countries, including their rich cultures and languages, and their ancestral, spiritual and continuing connections to the land, water and community.

The Prime Ministers acknowledged the important contribution of First Nations and Māori peoples in Australia and New Zealand and committed to working together to continue strengthening indigenous voices and perspectives in policymaking and diplomacy, including through the Australia and Aotearoa New Zealand Indigenous Collaboration Arrangement.

Prime Ministers welcomed the signing of an Indigenous Trans-Tasman Strategic Alliance Agreement on Science and Innovation (ITSAASI) between the Federation of Māori Authorities (FOMA) and Aboriginal and Torres Strait counterpart scientists at a Signing Ceremony in Canberra on 5 July, witnessed by Australian and New Zealand Chief Scientists.

The Prime Ministers reflected on the enduring value of trans-Tasman ties for the people of both countries. They discussed New Zealand and Australia's pandemic recovery, and the economic opportunities this presents. They welcomed the re-opening of travel between Australia and New Zealand.

The Prime Ministers committed to working together to achieve greater prosperity for our citizens. New Zealanders and Australians who choose to move between our countries represent our close ties and kinship. Both leaders agreed that no New Zealander or Australian should be rendered permanently “temporary” when it comes to residence in either country, and agreed to ensure viable pathways to citizenship. Reflecting the Prime Ministers’ shared ambition for the bilateral relationship, Australia and New Zealand will identify options to provide citizens of both countries better access to opportunities and benefits and enable more enduring social and economic integration outcomes by ANZAC Day 2023.

The Prime Ministers noted the value of the Australia–New Zealand Closer Economic Relations free trade agreement (CER) in underpinning our unique trade and economic relationship. They looked forward to celebrating its 40th year in 2023 and agreed to mark the anniversary in ways that reflect CER’s continued vitality and importance.

Prime Ministers noted the success of the Single Economic Market (SEM) under CER and recognised ongoing progress since their last meeting on trans-Tasman integration across a range of areas such as mutual recognition of digital identity, circular economy and seamless movement of goods and people. They agreed relevant ministers would continue to deepen economic integration between New Zealand and Australia for the benefit of businesses and consumers in both countries.

The Prime Ministers also noted the 80th anniversary of reciprocal diplomatic representation in 2023. They emphasised their commitment to ensuring the trans-Tasman partnership remains agile and responsive to a changing world. They agreed to enhance the trans-Tasman bilateral architecture by establishing annual meetings of Foreign Affairs, Defence, Treasurer/Finance and Climate Change Ministers.

The Prime Ministers reflected on the strength of the Australia–New Zealand bilateral defence partnership, and reiterated their shared commitment to advance interoperability. They reaffirmed their commitment to the global non-proliferation regime and their determination that both countries continue to meet their non-proliferation obligations. They resolved to build support for practical measures for nuclear disarmament, including at the forthcoming 10th Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons.

As proud Pacific nations, the Prime Ministers reaffirmed their steadfast commitment to supporting a peaceful, stable, prosperous, and resilient Pacific, with a strong and united Pacific Islands Forum at the centre. The Prime Ministers recognised the importance of the Pacific Islands Forum and welcomed the sustained efforts of Pacific leaders in support of Forum unity. They underscored that Pacific countries’ own priorities should guide our regional engagement, and called on other partners to adopt this approach. To

this end, they looked forward to reconnecting with their Pacific counterparts at the Pacific Island Forum in Suva (Fiji) the following week, and to the important discussions set to take place on the 2050 Strategy for the Blue Pacific Continent.

The Prime Ministers noted with utmost concern that human activities have caused around 1.1 degrees of global warming to date, and emphasised the urgent need for all nations to collectively reduce emissions and limit global warming to 1.5 degrees. Prime Ministers acknowledged climate change is the single greatest threat to the livelihoods, security and wellbeing of the peoples of the Pacific. They discussed the need to deliver effective climate finance and address climate adaptation in the region. They recognised the importance of working together in order to accelerate climate action and support the ambitions of Pacific island countries to lower greenhouse gas emissions and increase climate resilience.

Prime Ministers reaffirmed their commitment to support the region's COVID-19 recovery, prosperity and security, including through joint support for high-quality, climate-resilient infrastructure. The two countries will work in concert with Pacific island countries and other partners through the Pacific Islands Forum, and through the successful implementation of the PACER Plus trade agreement and other regional trade arrangements.

They noted the region's long tradition of working together in a transparent and consultative way to advance regional priorities, including Pacific Island countries' strong commitment and capacity to meet the security needs of the region, as articulated in the *Biketawa Declaration* and *Boe Declaration on Regional Security*. To that end, the Prime Ministers highlighted the value of consultation on security measures within the region and called on other partners to engage with the region on security issues in an open and frank manner in line with regional priorities.

The Prime Ministers committed to working collaboratively with Pacific countries to strengthen gender equality, champion women's empowerment and social inclusion across the region and in Australia and New Zealand.

The Prime Ministers reaffirmed their commitment to an open and resilient Indo-Pacific which is stable, prosperous and respectful of sovereignty. The Prime Ministers expressed concern about growing challenges to agreed rules, which threatens to undermine the region's security, and committed to strengthen cooperation and coordination to support robust regional institutions and respect for international rules and norms.

They reiterated the importance of ASEAN centrality and the ASEAN Outlook on the Indo-Pacific to their shared vision for the region. They reaffirmed their commitment to a substantial conclusion of negotiations to upgrade the Agreement to Establish the ASEAN-Australia-New Zealand Free Trade Area

(AANZFTA) by September 2022, and effective implementation of the Regional Comprehensive Economic Partnership Agreement (RCEP). They highlighted their shared commitment to the East Asia Summit as the region's premier, leader-level forum for strategic exchange.

The Prime Ministers reiterated their strong support for the ASEAN-led efforts to chart a course out of the crisis in Myanmar and urged the Myanmar military to engage meaningfully with ASEAN to urgently implement the ASEAN Five Point Consensus. They called on the Myanmar military to cease violence; engage in dialogue; release those arbitrarily detained, including Australian Professor Sean Turnell; and allow unimpeded access for humanitarian assistance.

The Prime Ministers welcomed the recent launch of discussions on the Indo-Pacific Economic Framework (IPEF) and reiterated their commitment to work closely with regional partners to strengthen links and prosperity.

The Prime Ministers reaffirmed their ongoing commitment to a free, open and secure internet. They agreed to continue working together to combat online terrorism and violent extremism, and reiterated their commitment to the Christchurch Call to Action, and to advancing collaborative multistakeholder approaches to address global tech challenges.

The Prime Ministers also agreed to continue to work together in the World Trade Organization, APEC and other key international organisations in support of open, rules-based trade. Leaders welcomed the strong outcomes on the pandemic response and fisheries subsidies at the recent 12th WTO Ministerial Conference in Geneva. Australia and New Zealand will continue to work closely together on meaningful progress on agricultural trade reform, including on agricultural subsidies.

The Prime Ministers noted the positive developments in their external trade and economic relationships, and the impetus these brought in support of the multilateral trading system. They reinforced the importance of early entry into force of their countries' bilateral trade agreements with the United Kingdom, and noted that this will underpin the United Kingdom's accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) Agreement. As the first country to seek to accede to CPTPP, the UK's accession process sets an important precedent for future candidates. The Prime Ministers expressed their strong support for the CPTPP accession guidelines and consensus-based decision making on accession matters, whereby any applicant economy must demonstrate it will meet, implement, and adhere to the high standard rules and ambition of the agreement.

The Prime Ministers condemned Russia's illegal invasion of Ukraine. They discussed the response of the international community in holding Russia responsible for its unprovoked and unjustified war of aggression. They reaffirmed their support for Ukraine's sovereignty and territorial integrity and

their commitment to continue to encourage international cooperation to support Ukraine for as long as it takes. They recalled the close coordination between New Zealand and Australia on sanctions against Russia and Belarus, on the international diplomatic response, and on military and humanitarian assistance for Ukraine. They urged Russia to immediately stop its indiscriminate attacks against civilians and civilian infrastructure in Ukraine, and withdraw all its troops and military equipment from the entire territory of Ukraine.

The Prime Ministers affirmed the need for both countries to hold fast to their values in support of the international rules-based order, which underpins the rights and sovereignty of all countries. They agreed to continue to work together through the United Nations and other multilateral institutions, including to promote respect for human rights. Leaders reiterated concerns regarding the human-rights violations in Xinjiang, and the erosion of rights and freedoms in Hong Kong.

The Prime Ministers expressed serious concern over developments in the South China Sea, including the continued militarisation of disputed features and an intensification of destabilising actions that increase tensions in the area. The Prime Ministers further underscored the importance of freedom of navigation and overflight, as guaranteed by the United Nations Convention on the Law of the Sea (UNCLOS). They emphasised that maritime zones must accord with UNCLOS and called on all parties to respect and implement decisions rendered through UNCLOS dispute settlement mechanisms.

The Prime Ministers condemned North Korea's repeated ballistic missile tests this year, all of which violated its obligations under United Nations Security Council resolutions. They both expressed deep concern that North Korea appears to be ready to conduct a nuclear test, and implored North Korea to return to dialogue and diplomacy and abandon its reckless pursuit of nuclear weapons and ballistic missile programs, which threaten stability and security on the Korean peninsula and in the broader Indo-Pacific region. Both leaders reaffirmed the importance of fully implementing United Nations Security Council sanctions on North Korea.

The leaders highlighted their mutual ambition for taking the bilateral relationship to new heights in 2023 as we mark 40 years of our ground-breaking CER agreement, and 80 years of opening diplomatic missions in each other's country. They look forward to the next ANZLM meeting, in New Zealand in 2023.

PRIME MINISTER OF AUSTRALIA

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