

OFFICIAL: Sensitive

Australian Government
Department of Home Affairs

Submission

For decision

PDMS Ref. Number: MS23-001109

Date of Clearance: 08/09/2023

To Minister for Immigration, Citizenship and Multicultural Affairs

Subject Regularising immigration status for unlawful Unauthorised Maritime Arrivals (UMAs) in the community

Timing *Not time critical.*

Recommendations

That you:

1. note that there is a cohort of unlawful UMAs in the community who are unable to regularise their immigration status other than through Ministerial Intervention; noted / please discuss

AND

2. agree to the overarching principle that all UMAs in the community should equally be able to regularise their immigration status by making an application for a Bridging E (subclass 050) visa (BVE) directly with the Department rather than requiring ongoing Ministerial Intervention, where legislatively possible; agreed / not agreed

AND

3. agree to the Department referring to you, in a streamlined group submission, all unlawful UMAs in the community, both now and going forward, that require a statutory bar lift under subsections 46A(2) and/or 46B(2) of the *Migration Act 1958* (the Act), to allow them to apply for further BVEs directly with the Department (should they also be an eligible non-citizen); agreed / not agreed

AND

4. agree to the Department referring to you in streamlined group submissions, both now and going forward, all unlawful UMAs in the community that require your intervention to become eligible non-citizens under section 72 of the Act, to enable them to make valid BVE applications by either; agreed / not agreed

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- a) making those referrals in the form of a submission for you to consider granting a Special Purpose Visa (SPV) under section 33 of the Act, valid until midnight the following day – (no administrative detention required);

agreed / not agreed

OR

- b) making those referrals in the form of a direct second-stage section 195A submission for you to intervene to grant a Humanitarian Stay (Temporary) (subclass 449) visa (HSTV) for a period of seven days – (administrative detention required to enliven the power);

agreed / not agreed

AND

5. agree to the Department exploring longer term legislative and policy options to improve the management of UMAs in the Australian community, to be presented to you in a future submission.

agreed / not agreed

Minister for Immigration, Citizenship and Multicultural Affairs

Signature.....



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

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Minister's Comments

Condition 8207 should not be applied to the BVE of those who arrived prior to 19/7/2013. Thanks.

Key Issues

1. The purpose of this submission is to seek your agreement to a proposed streamlined administrative approach to re-regularising the immigration status of unlawful UMAs in the community who are currently unable to do so without Ministerial Intervention.
2. The options being provided to you in this submission would allow you to regularise the immigration status of these UMAs immediately. There are however legislative changes which may be possible to reduce the need for Ministerial Intervention. It will take some time to make any regulation changes and will therefore not be an option that can be given immediate effect.
3. Over the past 15 years, there has been no consistent approach to the lifting of statutory bars that affect UMAs or the granting of visas through Ministerial Intervention which would allow a person to become an eligible non-citizen in accordance with section 72 of the Act, for the purpose of making a BVE application.
4. The Department Home Affairs (the Department) is seeking your authority to refer to you unlawful UMAs that fall into different cohorts requiring your intervention under different powers within the Act.
5. Some UMAs and their children are unable to regularise their immigration status through a BVE while they await the outcome of a primary decision, merits review or judicial review in relation to their protection application, Ministerial Intervention request or while they make departure arrangements, other than through Ministerial Intervention.
6. As a result, there is a cohort of UMAs onshore who remain unlawful non-citizens (UNC) who cannot work lawfully and do not have access to Medicare pending status resolution and there is inconsistent treatment of non-citizens in the same caseload.
7. Individuals unable to regularise their status may be at increased risk of harm linked to worker exploitation, lack of access to medical care, avoiding engagement with law enforcement where they are a victim of crime due to their unlawful status due to fear of being detained/re-detained and risk to minor children in their care associated with these risks.
8. This cohort of unlawful UMAs in the community continues to grow as more UMAs have their protection visa application refusals affirmed in merits and judicial review processes. Any associated BVEs cease and due to statutory bars in place or not being an eligible non-citizen, these UMAs are unable to lodge a valid BVE application.
9. The Department is seeking your agreement to the overarching principle that all UMAs in the community should be able to regularise their immigration status by making an application for a Bridging E (subclass 050) visa (BVE) directly with the Department rather than requiring ongoing Ministerial Intervention.

Definitions

10. Under section 5AA of the Act, a person is a UMA if:
- (a) the person entered Australia by sea:
 - (i) at an excised offshore place at any time after the excision time for that place; or
 - (ii) at any other place at any time on or after the commencement of this section; and
 - (b) the person become an unlawful non-citizen because of that entry; and
 - (c) the person is not an excluded maritime arrival.
11. Section 5AA also operates so that a person who is born in the migration zone to a parent who is a UMA at the time of the person's birth will be a UMA, as long as the person is not an Australian citizen at the time of their birth.
12. UMAs are prevented from making a valid visa application in Australia by several statutory bars. The subsection 46A(1) statutory bar applies to all UMAs. The subsection 46B(1) statutory bar only applies to transitory persons. Certain UMAs are also transitory persons and as such both the subsections 46A(1) and 46B(1) statutory bars may apply at once to some non-citizens (there is a group of transitory persons onshore who arrived between 13 August 2012 and 19 July 2013 whose claims for protection were assessed and processed in Australia). Under subsections 46A(2) and 46B(2) of the Act, Home Affairs Portfolio Ministers have the ability to exercise their personal powers to lift these statutory bars to allow UMAs to lodge an application for a specified subclass of visa. It is also open to Portfolio Minister to determine that these statutory bars are lifted for a specified or indefinite timeframe.
13. Applicants for a Bridging visa, including a BVE, must be an eligible non-citizen as defined in section 72 of the Act. Under section 72 of the Act, a person is an eligible non-citizen if they are a non-citizen who has been immigration cleared or is in a prescribed class of persons or the Minister has determined them to be an eligible non-citizen. Section 172(1)(c) of the Act provides that a person who is refused immigration clearance and is subsequently granted a substantive visa is immigration cleared.
14. Between 13 August 2012 and 31 May 2013, there were several vessels containing irregular maritime arrivals who arrived directly in the Australian migration zone, in a location not declared to be an Australian port of entry. As they did not arrive at an excised offshore place, they are categorised as non-Offshore Entry Persons or Maritime Direct Entry Persons. 'Direct Entry Persons' is not a term that is defined in the Act. Unlawful Maritime Direct Entry Persons in the community are not included in this submission. Ministerial Intervention options for this cohort will be considered in a separate submission **s. 22(1)(a)(ii)**
15. Currently, there are approximately **s. 47F(1)** UMAs residing unlawfully in the community. They have all previously been detained under section 189 of the Act. Subsequently, former Portfolio Ministers have intervened in each of their cases under section 195A of the Act to grant a BVE and release them from immigration detention; however, those BVEs have now ceased. An HSTV valid for seven days was granted to only some of these UMAs, at the same time they were also granted a BVE, which made them an eligible non-citizen in accordance with section 72 of the Act. This allowed some of them to be able to make a valid application for a BVE in their own right if the subsections 46A(1) and/or 46B(1) statutory bars were also lifted in their individual cases.

16. The UMAs referenced in this submission cannot lodge valid BVE applications because they have statutory bars in place or they are not an eligible non-citizen. Without Ministerial Intervention, these individuals will remain unlawful in the community, be unable to work lawfully or access Medicare, and will continue to be liable for immigration detention.

Breakdown of groups within the cohort

17. Although the Department estimates there are over ^{s. 47F(1)} unlawful UMAs in the community, there are currently only records for ^{s. 47F(1)} UMAs residing unlawfully in the community. It is known that there are many UMAs who have given birth to children in Australia but have not notified the Department and hence there is no record of these children currently in departmental systems to be able to determine an exact number. Details of all known clients will be provided in the group submissions but there may be a need for further submissions in the future once any children who are not currently known are brought forward. A summary is at **Attachment A**. Of the ^{s. 47F(1)} known unlawful UMAs in the Australian community, this group can be broken down into the following cohorts:

Cohort 1 – UMAs who only require a bar lift under subsection 46A(2) and/or subsection 46B(2) of the Act

18. There are ^{s. 47F(1)} known UMAs in the community, who require Ministerial Intervention under subsection 46A(2) and/or 46B(2) to have these statutory bars lifted and allow them to lodge a valid BVE application for a departmental delegate to decide.
19. All UMAs in this cohort are eligible non-citizens under section 72 of the Act as they have been previously granted a HSTV. UMAs in this cohort only require a subsection 46A(2) and/or 46B(2) statutory bar lift to enable them to make a valid BVE application. Ministerial Intervention under subsections 46A(2) and/or 46B(2) does not require the non-citizen to be administratively detained at the time of intervention.
20. Should you agree to the Department referring non-citizens in this cohort to you to consider, the Department recommends that you lift the relevant statutory bars indefinitely for BVE applications only, so that the Department can continue to manage the immigration status resolution outcome for each person.
21. Should you agree to the Department referring non-citizens in this cohort for your consideration, a group submission with all persons identified in this cohort will be referred for your consideration, noting that the Department may then issue the notification of the decisions in a staged manner so as to manage the timeframe of subsequent BVE applications which may be lodged.

Cohort 2 – UMAs who only need to become eligible non-citizens under section 72 of the Act in order to regularise their immigration status

22. There are ^{s. 47F(1)} known UMAs in the community, who need to become eligible non-citizens under section 72 of the Act in order to be able to lodge a valid BVE application and regularise their immigration status.

23. In order for these individuals to become eligible non-citizens under section 72 of the Act, you have two options currently available:

- a. You may consider intervening under section 195A of the Act to grant a HSTV valid for seven days. From the point of the grant of the HSTV the individual would become an eligible non-citizen and be able to make a valid application for a BVE in their own right, once the HSTV expires. This is the way in which most other UMAs have become eligible non-citizens in the past. Some children born in Australia to UMA parents have also become eligible non-citizens at birth through Regulation 2.20(11A) of the *Migration Regulations 1994* (the Regulations) – that is the eligible non-citizen status was passed on from the parent to the child, rather than through a substantive visa grant or immigration clearance.

This option requires non-citizens to be administratively detained under section 189 of the Act in order to enliven your power under section 195A of the Act. As such, there are additional administrative processes to be undertaken by both your office and the Department to arrange the logistics to administratively detain this many people. In order to undertake administrative detention for this number of people a third party location would need to be sourced as no departmental office across Australia has capacity to accommodate more than 10 individuals in a room at a time.

...or...

- b. You may choose to grant an SPV under section 33 of the Act for a short defined period. The use of SPVs for this purpose has not been used in the past; however, has been identified by the Department as a viable option open for you to consider using.

The Department recommends that if you choose to grant SPVs to this cohort that the duration of the visa only be for a short period, preferably midnight the following day.

s. 47C(1)

Notification letters will advise the individuals they have become eligible non-citizens and provide information to them on how to lodge a valid BVE application in order to guide their attention to that pathway. s. 47C(1)

This option does not require the individuals to be administratively detained. As such, there are less administrative processes required by your office and the Department as there is no need to arrange the logistics which would be required if you were to choose the option to intervene under section 195A of the Act.

24. Should you choose the option for UMAs to become eligible non-citizens through the grant of an SPV, the Department would only provide you with the relevant submission to grant the SPV and not ask that you also intervene to grant a BVE. By making these UMAs eligible non-citizens, the onus will then be on them to make a valid BVE application and engage with the Department in regards to their ongoing visa process or departure arrangements.

Cohort 3 – UMAs who require both a bar lift under subsection 46A(2) and/or subsection 46B(2) of the Act AND need to become eligible non-citizens under section 72 of the Act in order to regularise their immigration status

25. There are ^{s. 47F(1)} known UMAs in the community, who require both a bar lift under subsection 46A(2) and/or subsection 46B(2) of the Act and who need to become eligible non-citizens under section 72 of the Act in order to regularise their immigration status.
26. This cohort faces a combination of the issues discussed above for the first two cohorts and the Department would refer these cases in the same manner that you so choose to manage those two cohorts.
27. If you agree to the Department referring to you all of the UMAs in *Cohort 1* referenced above, to consider lifting the statutory bars under subsections 46A(2) and/or 46B(2) of the Act, to allow them to apply for further BVEs directly with the Department, we will also include all UMAs in *Cohort 3* in that submission.
28. If you agree to the Department referring to you all of the UMAs in *Cohort 2* referenced above, to either grant an SPV, or to grant HSTVs under section 195A, to allow them to become eligible non-citizens in accordance with section 72 of the Act, we will also include all UMAs in *Cohort 3* in that submission.

Cohort 4 – UMAs who are barred from making any visa application due to the section 501E statutory bar

29. There are ^{s. 47F(1)} known UMAs in the community, who can only be managed through Ministerial Intervention under section 195A of the Act due to the section 501E statutory bar being in place, as they have previously had a visa mandatorily cancelled under section 501 of the Act.
30. These UMAs have previously been released into the community on a BVE, due to a decision by a former Minister to intervene under section 195A of the Act. After the initial BVE granted through Ministerial Intervention ceases, these UMAs are unable to lodge a valid application for a further BVE due to the section 501E statutory bar.

31.

s. 47C(1)

Cohort 5 – UMAs who are already delegate manageable

32. There are ^{s. 47F(1)} known unlawful UMAs in the community, who are able to regularise their immigration status if they engage with the Department and meet BVE eligibility criteria. They do not require any Ministerial Intervention to regularise their immigration status.
33. There is no action required by you in regards to this cohort. This cohort is raised to explain where the remaining unlawful UMAs in the community fall into and show that approximately ^{s. 47F(1)} per cent of the population of unlawful UMAs in the community are already delegate manageable; however, for various reasons they have not sought to apply for a BVE of their own accord. The Status Resolution Network is aware of this cohort and continues to encourage these UMAs to engage with the Department to regularise their immigration status.

34.

s. 47C(1)

Options for management

Ministerial Intervention under subsections 46A(2) and/or 46B(2) of the Act

35. Subsections 46A(2) and 46B(2) of the Act provide you with the power to lift the subsections 46A(1) and 46B(1) statutory bars which ordinarily operate to prevent a UMA and a transitory person (respectively) who is in Australia, and is either an unlawful non-citizen (UNC) or holds a prescribed temporary visa, from making a valid visa application.
36. You may intervene under subsections 46A(2) and 46B(2) of the Act, to lift the sections 46A(1) and 46B(1) bars if you think it is in the public interest to do so for a specified visa subclass.
37. Should you lift the subsections 46A(1) and 46B(1) statutory bars, the Department will consider the grant of further BVEs on each application, provided the individual continues to meet the relevant criteria for the grant of a BVE.
38. The Department will apply the following conditions, as a minimum, to any BVE granted:
- conditions to promote engagement – **8401** (report every fortnight) and **8506** (notify new address),
 - conduct related conditions – **8564** (must not engage in criminal behaviour) and **8566** (must abide by Code of Behaviour), and
 - study restricted unless under 18 – **8207** (no study).

Ministerial Intervention under section 195A of the Act

39. Section 195A of the Act provides you with the power to grant a visa to a person in immigration detention if you think it is in the public interest to do so. Your section 195A power is non-compellable which means you are under no obligation to exercise or to consider exercising the power.
40. To enliven your section 195A power, these individuals will need to be administratively detained under section 189 of the Act. The Department would need to refer multiple section 195A group submissions to seek your intervention in these cases. The Department would liaise closely with your office and these individuals in order to arrange a time for you to make such decisions once the individuals are administratively detained. No departmental office has a facility to accommodate a large group administrative detention and will require an external facility.

Grant of a Special Purpose Visa (SPV) under section 33 of the Act

41. SPVs are a class of substantive temporary visas prescribed in the Act. They are designed to provide lawful status to non-citizens who need to travel to, enter and remain in Australia. SPVs apply to persons with prescribed status. The categories of non-citizens to whom SPVs usually apply are quite varied and can include those who are members of the royal family, guests of government, Status of Forces Agreement forces member, foreign naval force members and airline crew members.

42. SPVs are held by operation of law to non-citizens who have a prescribed status or who are declared by the Minister to hold SPVs. Paragraph 33(2)(b) of the Act provides you with the power to declare that a non-citizen is taken to have been granted an SPV and to specify the period that such a visa is valid for. s. 47C(1)
- 

43. The Department has identified granting SPVs to UMAs for the purpose of making them eligible non-citizen's in accordance with section 72 of the Act, is the only visa type which can be granted without the need to first administratively detain the individuals to enliven the section 195A Ministerial Intervention power. To make the process as logistically streamlined as possible, the Department would refer all necessary UMAs in one group SPV submission, allowing the Minister to consider the grant of these visas to all necessary individuals at the one time.

44. Although the original policy intent of the SPV was not for this proposed purpose of making UMAs eligible non-citizens, a Ministerial decision to grant these visas to this cohort is legally appropriate. Similar to any Ministerial Intervention decision, a decision by a Minister to grant an SPV must be accompanied by a Statement to Parliament to make such a decision transparently known to all Parliamentarians.

Amendments to legislation

45. The Department has provided you with the options outlined at paragraph 23 in order to make these individuals eligible non-citizens, as these are the only options available under the current legislation.

46.

47.

48.

s. 47C(1)

Consultation – internal/external

49.

s. 47C(1)

Consultation – Secretary / Associate Secretary / ABF Commissioner

- 50. The Secretary was not consulted on this submission.
- 51. The Associate Secretary was not consulted on this submission.
- 52. The ABF Commissioner was not consulted on this submission.

Client service implications

- 53. For the purpose of administrative detention under section 189 of the Act to enliven the section 195A power, no departmental office has a facility to accommodate a large group administrative detention and will require an external facility. The Department will need to hire conference rooms within the relevant regions or local council offices.
- 54. There may be a time limited impact on the Status Resolution Network depending on the number of BVE applications lodged should the subsections 46A(1) and 46B(2) statutory bars be lifted as outlined above. Extensive consultation has been undertaken to lessen the resourcing impact should the affected individuals lodge BVE applications within the same timeframe. The Department intends to lessen the impact of all individuals lodging BVE applications at the same time, by staggering the notification of any bar lifts.

Risks and Sensitivities

- 55. In respect of risk that individuals do not engage with Status Resolution, the Department will propose reporting conditions and relevant departure-related conditions be imposed for those granted a visa. Individuals who fail to comply with visa conditions may be liable for visa cancellation or may not meet the requirements for grant of a further visa. **s. 47C(1)**
[REDACTED]

- 56. The Department will use voluntary compliance to encourage departure for those granted a BVE on departure grounds. Through engagement with Status Resolution Officers, individuals will be reminded they must make satisfactory arrangements to depart, the support available through the Returns and Reintegration Assistance Program and the consequences of failing to do so. This will include ensuring individuals understand that non-compliance with visa conditions can impact their eligibility for a visa in future, through to their visa being cancelled and therefore being liable to detention under section 189 of the Act. Immigration compliance including voluntary compliance through to enforcement activity will be critical to manage individuals toward a status resolution outcome, particularly those released from held detention who are on a removal or departure pathway.

57.

s. 47C(1)

58. UMAs who are granted an SPV will be notified that the visa was granted for the purpose of making them an eligible non-citizen. They will also be advised if they have already had the subsection 46A(1) and 46B(1) statutory bars lifted and that they are now able to lodge a valid BVE application using the Department's online ImmiAccount system.

59.

s. 47C(1)

60. 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

61. There are no financial implications. All effort associated with the management of this cohort will be progressed within existing Departmental resources.

Attachments

62. Nil.

Authorising Officer
Cleared by:
Shawn Selles A/g Assistant Secretary Status Resolution Branch Status Resolution and Visa Cancellation Division
Date: 08/09/2023
Ph: s. 22(1)(a)(ii)

Contact Officer: Shawn Selles, A/g Assistant Secretary, Status Resolution Branch, Ph: s. 22(1)(a)(ii)

CC

- Minister for Home Affairs, Minister for Cyber Security
- Secretary
- Associate Secretary
- Special Counsel, Legal Group
- First Assistant Secretary Status Resolution and Visa Cancellation Division
- First Assistant Secretary Immigration Policy
- Assistant Commissioner, Detention and National Removals
- Assistant Secretary, Migration and Citizenship Law
- Assistant Secretary, Compliance and Community Protection Policy
- Assistant Secretary, Temporary Visas
- Senior Director, Status Resolution Network
- Chief Superintendent, National Removals
- Director, International Obligations and Complex Cases
- Director, Border and Event Visas
- Director, Status Resolution and Removals Policy
- Director, Status Resolution Support Programs
- Director, Status Resolution Operational Coordination
- Director, Status Resolution Program Management and Capability
- Director, Community Status Resolution Program Management
- Directors, Status Resolution NSW/ACT, Vic/Tas, Qld/SA/NT and WA/CI

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Australian Government
Department of Home Affairs

Submission

For decision

PDMS Ref. Number: MS23-000464

Date of Clearance: 29/08/2023

To Minister for Immigration, Citizenship and Multicultural Affairs
Subject Health and character policy flexibility - temporary visa applicants in Australia
Timing For consideration by 15 September 2023.

Recommendations

That you:

1. note the effect of the health and character flexibility for temporary visa applicants in Australia;
2. agree to cease health and character policy flexibility for temporary visa applicants in Australia from 01 November 2023 as set out in paragraph 12;
3. agree that the Department of Home Affairs engage further with health authorities to develop more detailed advice on the application of a Canadian style model to health assessments in Australia; and
4. agree to the Department of Home Affairs initiating work on exploring alternate service delivery models which will require procurement of new migration medical services and ongoing funding.

noted /
please discussagreed / not agreed /
please discussagreed / not agreed /
please discussagreed / not agreed /
please discuss**Minister for Immigration, Citizenship and Multicultural Affairs**

Signature.....

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

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

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Minister's Comments

Could you please arrange a briefing re Recs 3+4, to discuss these in greater detail, given potential risks and costs?

Key Issues

1. On 23 September 2022 you agreed to policy flexibility for temporary visa applicants in Australia to meet health and character requirements (MS22-001939). This submission provides a review of these requirements and updates recommendations about them.
2. These measures have had a major impact in reducing the backlog of on-hand applications in Australia. As immigration flows have returned to normal, it is now time to revisit these measures in light of advice from public health authorities.

Visa backlog reduction and risks

3. This policy flexibility resulted in streamlined visa decision making and a reduction in the number of bridging visa holders. Temporary visa applications on-hand in Australia decreased from over 251,000 on 31 August 2022 to 41,998 on 30 July 2023. Without this approach, many of this cohort would have continued to wait in Australia on a bridging visa for a visa outcome.
4. Over 2022-23, some 1,327,370 visa applicants have undertaken an immigration medical examination (IME), a 38% increase from 2021-22.
 - a. Of these, 352,490 were for onshore applicants, a decrease of 15% from the same period in 2021-22 (414,782 onshore applicants).
 - i. 195,969 were for permanent visas and 156,394 were for temporary visas (plus 127 Ministerial Interventions), compared to 125,348 and 289,146 respectively (plus 288 Ministerial Interventions) for 2021-22.
 - ii. 960 onshore applicants failed to meet the Health requirement, compared to 851 in 2021-22. (Note: date of IMEs and date of a failed health requirement may occur in different program years.).
 - b. 974,880 IMEs were for offshore applicants, an increase of 79% from the same period in 2021-22 (545,997 offshore applicants).
 - i. 161,926 were for permanent visas and 812,952 were for temporary visas (plus two Ministerial Interventions), compared to 85,864 and 460,121 respectively (plus 12 Ministerial Interventions) for 2021-22.
 - ii. 1,307 offshore applicants failed to meet the Health requirement, compared to 928 in 2021-22. (Note: date of IMEs and date of a failed health requirement may occur in different program years.)

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5. Of relevance, the Department of Home Affairs (the Department) has reviewed the country TB-risk list in the Health Matrix, in line with the latest WHO data.
6. As result of this review, from 1 July 2023, 18 countries moved from the higher to lower TB-risk list (Anguilla, Armenia, Belarus, Bosnia and Herzegovina, Cabo Verde, Comoros, Guam, Guatemala, Honduras, Iraq, Latvia, Lithuania, Maldives, Saint Vincent and the Grenadines, Suriname, Syrian Arab Republic, Togo and Vanuatu and 2 countries (Kosovo and Niue) will move up to the higher TB-risk list.
7. The change has resulted in a total of 126 countries now classified as lower TB-risk for IME screening purposes, compared to 110 lower TB-risk countries in the former Health Matrix. Migration Health modelling shows the changes to the TB-risk country list will result in less visa applicants being required to undertake IMEs, and will support further streamlining of visa processing.

Clinical Health issues raised to justify ceasing policy flexibility

8. Risks of this policy flexibility were outlined in MS22-001939. Due to the time lag in National Notifiable Disease Surveillance System Data, there is currently little evidence of any identified risks. Further time would be required to fully assess impacts of the policy change.

S. 47C(1)

s. 47C(1)

Character policy

17. In respect of character arrangements, the Department continues to improve information sharing with Australian law enforcement, particularly for more serious crimes committed by non-citizens in Australia. The ceased policy flexibility for character requirements will see temporary visa applicants required to provide Australian and overseas police clearance certificates when seeking a greater than twelve month stay which will support the detection of recent serious character concerns. Students, temporary graduates, working holiday makers and visitors granted short stays were already exempt from providing police certificates, prior to this policy flexibility.

Impact on the provider of onshore visa and migration medical services

18. The policy change and reduction in IMEs in Australia has impacted the operations of Bupa Health Services Pty Ltd (Bupa). Bupa signed a contract with the Department for the provision of onshore visa and migration medical services (the MMSP Contract), which commenced on 1 July 2022. Details of the service impacts were set out in MS22-002887.
19. As flagged in previous briefings, the Department has approved a three percent temporary increase to Bupa's Client Price List (CPL) from 1 July 2023. This is in addition to the previously approved (MS22-002887) temporary 25 percent CPL increase. The total 28 percent temporary increase is, to help mitigate the ongoing impacts of the policy flexibility. The additional three percent increase follows further analysis of data undertaken by the Department to ensure the CPL increase was relative to the impact the temporary policy is having on Bupa's operations and their ability to continue supporting visa processing. **Attachment D** provides the temporary CPL.

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20. Should the Department advise Bupa by notice in writing that the policy change has been reversed or otherwise has ceased to apply prior to 31 October 2023 (Policy Change Notice), the CPL will revert to the base CPL under the contract and will apply from the date of the Policy Change Notice.
21. You asked the Department to consider MMSP Contract options should the temporary policy change be extended or made permanent. The MMSP Contract is a no direct financial cost model to the Department. All of the work it undertakes, including Medical Officer of the Commonwealth opinions for offshore health cases and assurance of offshore panels, is funded through the CPL fees paid to Bupa by visa applicants who undergo an IME in Australia.

S. 47C(1)

Background

25. Visa applications on-hand in Australia are listed by category in Table 1:

Table 1 – Temporary visa applications on-hand (client in Australia) – BP0001 and BP0072

Temporary visa	31 August 2022	30 June 2023
Student (subclass 500)	79,950	18,714
Pandemic Event (subclass 408)	68,600	8,243
Temporary Graduate (subclass 485)	65,900	6,416
Visitor (subclass 600)	16,100	2,617
Working Holiday Visas (subclass 417 and 462)	5,200	675
Other	15,900	5,333
Total	251,635	41,998

Consultation – internal/external

26. Health Services Division and Status Resolution and Visa Cancellation Division have provided input into this submission.

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Consultation – Secretary / Associate Secretary

27. The Secretary was not consulted on the approach in the submission.
28. The Associate Secretary was consulted on the approach in this submission.

Client service implications

29. Should you agree, the changes will require more applicants to undertake an IME or complete police checks. This will have an impact applicant processing effort and processing times. Given the overall improvements in processing times however, the impact is manageable.

Risks and Sensitivities

30. Risks of the policy flexibility were outlined in MS22-001939 and MS22-002887 and remain current. There is also a risk that the move to reintroduce onshore IMEs for all temporary visa applicants may provoke criticism from visa applicants. The Department of Home Affairs assessment is that this approach is justifiable in the context of the extraordinary circumstances presented as Australia emerged from the COVID period and international travel resumed.

Financial/systems/legislation/deregulation/media implications

31. Should you agree to the proposed approach, the Department will publish a notice on the website and will provide information to Migration Agent peak bodies. The Department will consider other communication activities to ensure all key stakeholders are aware.

Attachments

- Attachment A** Correspondence from National Tuberculosis Advisory Committee
- Attachment B** Correspondence from the Commonwealth Acting Chief Medical Officer
- Attachment C** Health Matrix for onshore temporary visa applicants
- Attachment D** Current Client Price List
- Attachment E** Analysis of MMSP service delivery options

Authorising Officer

Cleared by:

Michael Willard
Group Manager
Immigration Operations Group
s. 22(1)(a)(ii)

Lee-anne Monterosso
First Assistant Secretary
Health Services Division
s. 22(1)(a)(ii)

Date: 29/08/2023

Contact Officer: s. 22(1)(a)(ii), Senior Director, Immigration Program Management Branch,
Ph: s. 22(1)(a)(ii).

CC Minister for Home Affairs, Minister for Cyber Security
Secretary
Associate Secretary
General Counsel, Legal Group
First Assistant Secretary, Status Resolution and Visa Cancellation Division
First Assistant Secretary, Health Services Division



Australian Government

Department of Health and Aged Care

Chief Medical Officer

Justine Saunders APM
Chief Operating Officer
Australian Government Department of Home Affairs
via email: **s. 22(1)(a)(ii)**@homeaffairs.gov.au

Dear Ms Saunders

s. 47C(1)

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¹ <https://www.who.int/teams/global-tuberculosis-programme/tb-reports/global-tuberculosis-report-2022/covid-19-and-tb>

² [Communicable Diseases Intelligence - The Strategic Plan for Control of Tuberculosis in Australia, 2021-2025 \(health.gov.au\)](https://www.health.gov.au/resources/publications/communicable-diseases-intelligence-the-strategic-plan-for-control-of-tuberculosis-in-australia-2021-2025)

³ [Communicable Diseases Intelligence - The Strategic Plan for Control of Tuberculosis in Australia, 2021-2025 \(health.gov.au\)](https://www.health.gov.au/resources/publications/communicable-diseases-intelligence-the-strategic-plan-for-control-of-tuberculosis-in-australia-2021-2025)

⁴ [Communicable Diseases Intelligence 2020 - Tuberculosis notifications in Australia, 2015-2018 \(health.gov.au\)](https://www.health.gov.au/resources/publications/communicable-diseases-intelligence-2020-tuberculosis-notifications-in-australia-2015-2018)

⁵

<https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/about+us/news+and+media/all+media+releases/response+to+tuberculosis+cases+on+apy+lands>

S. 47C(1)

Yours sincerely



Professor Michael Kidd AM
Acting Chief Medical Officer

22 May 2023

⁶ <https://immi.homeaffairs.gov.au/help-support/meeting-our-requirements/health/threats-to-public-health>

National Tuberculosis Advisory Committee

a subcommittee of the Communicable Diseases Network Australia

Justine Saunders APM
Deputy Secretary and Chief Operating Officer
Australian Government Department of Home Affairs
PO Box 25 Belconnen ACT 2616

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

Dear Ms Saunders

Temporary cessation of onshore immigration medical examinations for specific visa categories

S. 47C(1)

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s. 47C(1)

Yours sincerely

s. 47F(1)

Chair, National Tuberculosis Advisory Committee

8 March 2023

Copy to: s. 47F(1), Chair, Communicable Diseases Network Australia

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Attachment C-The Health Matrix

Whilst most visa subclasses are subject to meeting the health requirement as set out in Public Interest Criteria 4005 and 4007 (Schedule 4 of the Migration Regulations 1994), not all visa applicants are required to undertake an Immigration Medical examination (IME). Most visa applicants satisfy the health requirement after having completed a health declaration only.

Instrument IMMI 15/144 – Required Medical Assessment, uses a risk based approach to determine the type of IME and processes a visa applicant will need to undergo for the purpose of ‘meeting’ the health requirement. It does not make a distinction between visa applicants applying overseas or from within Australia.

While the Health Matrix does not focus solely on Tuberculosis (TB), the core component is the applicant’s country TB risk level (using WHO collected data on the prevalence rate of TB at a national level). This is assessed together with the applicant’s period of stay in Australia, as it increases the health risks to the community.

Current Health Matrix (IMMI 15/144) – Minimum IME required for visa applicants.

	Temporary stay in Australia of less than 6 months	Temporary stay in Australia of 6 months or more	Permanent and provisional visa applicants
Lower TB risk applicant (A citizen of a country listed in Schedule 1 of the Instrument specified in clauses 4005(1)(aa) and 4007(1)(aa), and who has not spent three or more consecutive months in the last five years in a country not listed in Schedule 1).	No Immigration medical examination required unless special significance applies.	No Immigration medical examination required unless special significance applies.	Applicants must complete a medical examination, chest x-ray (if 11 years or over), HIV test, a serum creatinine/eGFR (if 15 years or over) and any special significance requirements must be met.
Higher TB risk applicant (Any applicant other than above)	No Immigration medical examination required unless special significance applies.	Applicants must complete a medical examination, chest x-ray (if 11 years or over), serum creatinine/eGFR (if 15 years or over) and any special significance requirements must be met.	Applicants must complete a medical examination, chest x-ray (if 11 years or over), HIV test (if 15 years or over), serum creatinine/eGFR (if 15 years or over), TB screening test (if aged from 2 to under 11 years) and any special significance requirements must be met.

Special significance requirements

Visa applicants intending to engage in the activities outlined below will also need to undergo health examinations to assess their health risks.

Situation / intended activity	Required Immigration Medical examinations
Likely to work or be a trainee at an Australian childcare centre (including preschool and creche)	Chest x-ray, a medical examination, latent TB screening test and serum creatinine/eGFR
Intending to work as (or study to be) a doctor, dentist, nurse or paramedic	Chest x-ray, medical examination, HIV, latent TB screening test, serum creatinine/eGFR, Hepatitis B and Hepatitis C
Likely to enter a health care facility and from a higher risk country	Chest x-ray, a medical examination, latent TB screening test and serum creatinine/eGFR
Pregnant and intending to give birth in Australia	Hepatitis B test
Aged 75 years and older (Subclass 600 visitor visas)	Medical Examination and serum creatinine/eGFR



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Attachment D – Temporary Onshore Immigration Medical Examination Client Price List (Temporary CPL) from 1 July 2023 to 31 October 2023

Table 1 – Temporary 28% CPL (applicable 1 July 2023 to 31 October 2023)

Table 1 sets out the temporary 28% increase to the base CPL, which has been approved to mitigate some of the impacts of the temporary streamlined visa policy flexibility. Should this temporary policy flexibility cease, the CPL will revert to the base level and will apply the date of the Policy Change Notice.

Service Description	Current Temporary 28% Fees (to 31 October 2023)	Base Fee (from 1 November 2023 to expiry of Contract)
Medical Examination and Chest X-ray	\$441.70	\$345.10
Medical Examination only	\$318.90	\$249.10
Chest x-ray only	\$164.70	\$128.70
Syphilis (Pathology as part of medical exam)	\$56.30	\$44.00
Hepatitis B (Pathology as part of medical exam)	\$79.40	\$62.00
Hepatitis C (Pathology as part of medical exam)	\$79.40	\$62.00
HIV (Pathology as part of medical exam)	\$68.60	\$53.60
TB Screening Test Interferon-Gamma Release Array (IGRA)	\$126.00	\$98.40
Paediatric Chest x-ray – 2 x Chest x-rays comprised of Posterior Anterior (PA) and Lateral view	\$171.30	\$133.80
Chest x-ray Lordotic view	\$164.70	\$128.70
HIV Pathology (not part of a medical exam)	\$111.50	\$87.10
Hep B Pathology (not part of a medical exam)	\$122.10	\$95.40
Hep C Pathology (not part of a medical exam)	\$122.10	\$95.40
Syphilis Pathology (not part of a medical exam)	\$99.20	\$77.50
Liver Function Tests (LFTs) (supplementary testing)	\$41.70	\$32.60
Serum Creatinine (supplementary testing)	\$22.90	\$17.90
Hepatitis C RNA testing (supplementary testing)	\$222.60	\$173.90
Hepatitis B DNA testing (supplementary testing)	\$296.40	\$231.60

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Table 2 - In-Home Assessment fees (applicable 1 July 2023 to 31 October 2023)

Table 2 sets out the fees for in-home assessments with the 28% temporary increase applied to the base CPL fees.

Service Description	Current Temporary 28% Fees (to 31 October 2023)	Base Fee (from 1 November 2023 to expiry of Contract)
<100kms of the nearest dedicated and/or purpose-built clinic location	\$528.50	\$412.90
100-150kms of the nearest dedicated and/or purpose-built clinic location	\$1,158.70	\$905.20
>150km from the nearest dedicated and/or purpose-built clinic location	To be priced on a case-by-case basis.	To be priced on a case-by-case basis.

Table 3 - Carer Visa Assessment fees (applicable 1 July 2023 to 31 October 2023)

Table 3 sets out the fees for carer visa assessments with the 28% temporary increase applied to the base CPL fees.

Service Description	Current Temporary 28% Fees (to 31 October 2023)	Base Fee (from 1 November 2023 to expiry of Contract)
Carer Visa Examination (in-centre)	\$483.60	\$377.80
Carer Visa Home Examination: Less than 10kms from nearest centre (Zone 1)	\$652.70	\$509.90
Carer Visa Home Examination: 10-20kms from nearest centre (Zone 2)	\$805.40	\$629.20
Carer Visa Home Examination: 20-30kms from nearest centre (Zone 3)	\$961.00	\$750.80
Carer Visa Home Examination: More than 30kms from nearest centre (Zone 4)	\$1,113.60	\$870.00
Carer Visa Assessment (on papers) - This is for exceptional circumstances only.	\$422.70	\$330.20



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Department of Home Affairs

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Attachment E – Comparative Analysis of Migration Medical Services Provider - Alternate Options

S. 47C(1)

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Australian Government
Department of Home Affairs

Submission

For decision

PDMS Ref. Number: MS23-002105

Date of Clearance: 15/11/2023

To Minister for Immigration, Citizenship and Multicultural Affairs

Subject Policy Approval - Safer Immigration Detention Facilities legislative reforms

Timing *For consideration as soon as possible in order to allow time for the provision of drafting instructions to the Office of Parliamentary Counsel no later than 24 November 2023.*

Recommendations

That you:

1. **agree** to seek the Prime Minister's, the Hon Anthony Albanese MP, authority on a package of legislative reforms to enhance the safety of people in immigration detention centres, s. 47C(1)

s. 47C(1)

2.

s. 47C(1)

s. 47C(1)

3. **sign** the letter to the Prime Minister seeking policy authority for the proposed package of legislative reforms which reflects your decision at recommendation 2 (Attachment A or Attachment B).

signed/not signed/
please discuss

Minister for Immigration, Citizenship and Multicultural Affairs

Signature

Date 25/7/2024

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Minister's Comments

ABF to provide briefing on training strategy and support measures to be provided to staff ahead of implementation.

Key Issues

1. We seek your agreement to write to the Prime Minister seeking authority for a package of legislative reforms to enhance the safety of people in immigration detention centres.
2. The Commonwealth has a non-delegable duty of care for the safety and welfare of immigration detainees and people working in immigration detention facilities. Maintaining safety and good order in these facilities supports the performance of this duty.

3

s. 37(2)(b)

4. In the Annual Report *Monitoring Commonwealth Places of Detention (1 July 2021 – 30 June 2022)*, the Commonwealth Ombudsman noted that “drug infiltration is an ongoing problem throughout the immigration detention network and negatively impacts on the wellbeing of people in detention”. In this report, the Ombudsman further recommended that the government consider implementing reforms that will give officers powers to detect and address criminal activity of this nature.

5. s. 37(2)(b), s. 47C(1)

6. In line with the Ombudsman's recommendations, the Department of Home Affairs (the Department) is seeking to introduce legislative reforms s. 37(2)(b), s. 47C(1)

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7. s. 47C(1), s. 37(2)(b)

8. s. 37(2)(b)

9. s. 47C(1)

Limitations of current legislative framework

10. s. 42(1), s. 47C(1), s. 37(2)(b)

11.

12.

13.

14. Search and seizure powers are necessarily subject to significant scrutiny through parliamentary processes, and as such, there is an imperative to limit the scope of amendments to confer only the barest necessary powers. s. 42(1), s. 47C(1), s. 37(2)(b)

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20.

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

21.

22.

23. Pending your agreement to this proposal (Recommendation 1), a letter to the Prime Minister seeking policy authority is at **Attachment A** for your signature.

24.

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

25. Pending your agreement to this alternative proposal (Recommendation 2), an alternative letter to the Prime Minister is at **Attachment B** for your signature.

Background

26.

s. 47C(1)

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27.

s. 37(2)(b), s. 47C(1)

28.

s. 47C(1)

29.

- Submissions to the Senate and Legal Constitutional Affairs Legislation Committee (the Committee) regarding the *Migration Amendment (Maintaining the Good Order of Detention Facilities) Bill 2015* (lapsed), which expressed concern that the Bill sought to introduce broader coercive powers for officers in immigration detention facilities that were not adequately tied to a specific set of circumstances or conditions in which they could be applied objectively and proportionately. Additional concerns were raised that the Bill lacked sufficient safeguards for ensuring powers are exercised responsibly and in accordance with basic human rights standards.
- The highly contested *Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bills 2017 and 2020* (both lapsed), which sought to prohibit a range of items, including mobile phones, in immigration detention facilities, by empowering the Minister to specify an item as a 'prohibited thing' by legislative instrument. Submissions to the Committee argued that the proposed measures were unnecessary and disproportionate in relation to the security risks posed in immigration detention facilities. A common concern among NGOs included that prohibiting mobile phones in immigration detention unreasonably limits detainees' rights to privacy, freedom of expression, political communication and contact with family members and legal representatives. Another submission to the Committee also expressed concern regarding the potential use of strip searches for prohibited things which are not otherwise unlawful to possess.

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30.

S. 37(2)(b)

31. The Commonwealth has a duty of care to reasonably mitigate risks to safety and welfare in immigration detention facilities. **s. 37(2)(b)**

32.

S. 47C(1)

Consultation – internal/external

33. Internal – Legal Group, Status Resolution and Visa Cancellation Division and ABF Detention and National Removals.
34. External stakeholders have not yet been consulted on the proposed legislative reforms outlined in this submission. The Department will work with your office on progressing a consultation process with external stakeholders.

Consultation – A/g Secretary / A/g Deputy Secretary Immigration / ABF Commissioner

35. A/g Secretary was consulted on the approach to the package of legislative reforms reflected in this submission in her former capacity as Associate Secretary.
36. The A/g Deputy Secretary Immigration was not consulted on this submission.
37. The ABF Commissioner was not consulted on this submission, however has been consulted on the approach to the package of legislative reforms.

Client service implications

38. The proposed legislative reforms aim to minimise the risk of harm to detainees and people working in immigration detention facilities from substance-related abuse and incidents.

Risks and Sensitivities

39.

S. 47C(1)

Financial/systems/legal/deregulation/media implications

40. There are no financial or deregulation implications identified.

41.

s. 47C(1)

42. The Legal Group has been consulted on the legal implications of the legislative reforms proposed in this submission.

43. We will work with the Department's Media Coordination team to respond to public comments about the proposed reforms, and we will keep your office updated on any significant issues.

Attachments

Attachment A Letter to the Prime Minister (Recommendation 1)

Attachment B Letter to the Prime Minister (Recommendation 2)

Attachment C **s. 42(1)** - **s. 42(1)**

Authorising Officer

Cleared by:

Tara Cavanagh
Group Manager
Immigration Policy Group

Date: 15/11/2023

Mob: **s. 22(1)(a)(ii)**

Contact Officer Chad Hodgins, Assistant Secretary, Detention Policy Branch, Ph: **s. 22(1)(a)(ii)**

CC A/g Secretary
A/g Deputy Secretary Immigration
DS Chief Operating Officer
DS Social Cohesion and Citizenship
DS Executive
Group Manager Legal
Chief Finance Officer
FAS Executive Coordination
Assistant Secretary Legislation
Assistant Secretary, Migration and Citizenship Law
ABF Commissioner
ABF Deputy Commissioner, National Operations North, West and Detention
ABF Assistant Commissioner, Detention and National Removals

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THE HON ANDREW GILES MP

MINISTER FOR IMMIGRATION, CITIZENSHIP AND MULTICULTURAL AFFAIRS

Ref No: MS23-002105

The Hon Anthony Albanese MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

I am writing to seek policy authority to [REDACTED] s. 47C(1)

enhance the safety of people in immigration detention centres.

The Commonwealth has a non-delegable duty of care for the safety and welfare of all detainees and people working in immigration detention centres. s. 37(2)(b), s. 47C(1)

[REDACTED]

[REDACTED]

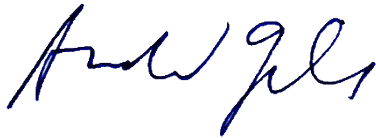
In the Annual Report *Monitoring Commonwealth Places of Detention (1 July 2021 – 30 June 2022)*, the Commonwealth Ombudsman noted that “drug infiltration is an ongoing problem throughout the immigration detention network and negatively impacts on the wellbeing of people in detention”. The Ombudsman further recommended in the same report that the government consider implementing reforms that will give officers relevant powers to detect and address criminal activity of this nature.

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s. 37(2)(b), s. 47C(1)

The contact officer in the Department of Home Affairs is Assistant Secretary Detention Policy, Chad Hodgins who can be contacted on s. 22(1)(a)(ii).

Yours sincerely



ANDREW GILES

25 / 7 / 2024

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THE HON ANDREW GILES MP

MINISTER FOR IMMIGRATION, CITIZENSHIP AND MULTICULTURAL AFFAIRS

Ref No: MS23-002105

The Hon Anthony Albanese MP
 Prime Minister
 Parliament House
 CANBERRA ACT 2600

Dear Prime Minister

I am writing to seek policy authority to [REDACTED] s. 47C(1) [REDACTED] enhance the safety of people in immigration detention centres.

The Commonwealth has a non-delegable duty of care for the safety and welfare of all detainees and people working in immigration detention centres. s. 47C(1), s. 37(2)(b)

[REDACTED]

[REDACTED]

In the Annual Report *Monitoring Commonwealth Places of Detention (1 July 2021 – 30 June 2022)*, the Commonwealth Ombudsman noted that “drug infiltration is an ongoing problem throughout the immigration detention network and negatively impacts on the wellbeing of people in detention”. The Ombudsman further recommended in the same report that the government consider implementing reforms that will give officers relevant powers to detect and address criminal activity of this nature.

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s. 37(2)(b), s. 47C(1)

The contact officer in the Department of Home Affairs is Assistant Secretary Detention Policy, Chad Hodgins who can be contacted on s. 22(1)(a)(ii).

Yours sincerely

ANDREW GILES

/ / 2023

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