

## Talking Points: THE MIGRATION AMENDMENT BILL 2024

### *The Migration Amendment Bill 2024*

The Migration Amendment Bill 2024 was introduced in the House of Representatives on 7 November 2024 by Minister Burke.

### *What the Bill does*

It provides for a more effective administration of the Bridging (Removal Pending) visa scheme that was established to manage the NZYQ cohort and strengthens the Government's power to remove to third countries people who have had their visas cancelled and who have no right to remain in Australia.

To support this, the Bill creates a new ceasing event so that Bridging (Removal Pending) visas cease once permission is obtained from another country for the holder to travel to, and remain in, that other country, and notification of grant of that permission or authority has been given.

### *Agreements with other countries*

The Bill provides for the establishment of agreements with foreign countries to allow removal from Australia for this specific cohort. This includes amendments to ensure that sufficient legislative authority is in place to support and authorise third country reception arrangements, and Commonwealth action, including spending, in relation to that reception, should that be required.

Many of the NZYQ-affected non-citizens, whose visas have been cancelled, cannot be removed to their home country due to a protection finding existing in relation to that country. For these individuals, the only realistic removal option is to a third country.

At present there are no countries being considered for third country reception of non-citizens being removed from Australia. Any negotiations in that regard would await passage and commencement of this Bill.

*Verification of protection findings*

The Bill allows for verification of protection findings in certain circumstances, where a non-citizen holds a certain visa – such as a Bridging (Removal Pending)

visa— and is on a removal pathway. This will ensure that Australia's international obligations are, at all times, met.

To be clear, Australia does not return individuals to countries in respect of which they have been found to engage Australia's *non-refoulement* obligations. This Bill would not change that.

#### *Protection from civil liability for officers*

Further, the Bill has provisions that clarify that no civil liability is incurred by Commonwealth officers, and the Commonwealth, in relation to anything done in good faith, and in connection with the exercise of the officer's powers or duties, in relation to certain removals of certain non-citizens.

#### *Supporting community safety*

In addition to strengthening the legislative framework for removals, the Bill also contains two measures to support community safety and management of non-citizens while they remain in Australia.

The first confirms that officers, and those who support officers, such as the Community Protection Board may continue to take into account spent convictions when making decisions or recommendations on community protection or character-related matters.

This provides clarity and certainty that officers are not breaching State and Territory laws by using spent conviction information for those purposes.

The second provides that disclosure of personal information to foreign countries may be made in support of determining whether any such non-citizens may be removed, except where Australia's protection obligations are in play.

Finally, in response to the High Court's decision in YBFZ, the Bill includes amendments that provide for procedural fairness for individuals who have had electronic monitoring or curfew imposed on their visa.

These provisions reflect the new community safety test described above that is set out in the Migration Regulations, as amended on 7 November 2024. This new test raises the bar for when the strictest visa conditions can be imposed, as is required by the High Court's decision in YBFZ.

## GOVERNMENT-SPONSORED AMENDMENTS TO THE BILL

### *Procedural fairness for persons being granted Bridging (Removal Pending) visas*

- The amendments of s 76E clarify that the rules of natural justice do not apply to any decision to grant a BVR with one or more of the prescribed conditions imposed, such as electronic monitoring and curfew.
- This ensures that the same 'post-decision' procedural fairness mechanism will be available in relation all individuals subject to the community protection conditions, not just those in the NZYQ cohort.

### *Grant of Bridging (Removal Pending) visa ceases any previous BVR*

- The amendments to subsection 68(5) put beyond doubt that a grant of a further BVR will cease the previous BVR as opposed to reactivation under subsection 68(4) of the Act.

### *Amendments to the offences relating to monitoring conditions on BVRs*

- The amendment to subsection 76B(1) maintains the NZYQ cohort as in scope of the offence, but also provides that a person commits an offence if the person was granted their initial BVR under the Ministerial Intervention powers at s195A on or after commencement.
- These changes provide an appropriate framework for the management of individuals in the Australian community who are on a removal pathway and who present community protection concerns.

**If Asked – Inclusions in this Bill that address opposition recommendations to the Migration Amendment (Removal and Other Measures) Bill 2024**

# S. 47C(1)

- Recommendations 2, 3 and 16 in the Dissenting Report in the Legal and Constitutional Affairs Legislation Committee for the Removal and Other Measures Bill related to the definition of Removal Pathway Non-Citizen.
- The definition of Removal Pathway Non Citizen has been brought forward in the Migration Amendment Bill.
- This definition address those recommendations by clarifying that it applies only to unlawful non-citizens and holders of certain other visas only where a criteria for grant is that the person is making, or subject to, acceptable arrangements to depart Australia.
  - This means that it will not capture a broader cohort of Bridging visa holders who are not subject to arrangements to depart Australia.
- Additionally where a visa is prescribed for the purpose of the definition of Removal Pathway Non-Citizen, any regulations made for this purpose would be a disallowable legislative instrument for the purposes of the Legislation Act 2003, and appropriately subject to parliamentary scrutiny.



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## TALKING POINTS

|                       |                               |                  |                 |
|-----------------------|-------------------------------|------------------|-----------------|
| <b>Subject</b>        | Migration Amendment Bill 2024 |                  |                 |
| <b>Date</b>           | 26/11/2024                    |                  |                 |
| <b>Type</b>           | Whole of Government           |                  |                 |
| <b>Media Officer:</b> | s. 22(1)(a)(ii)               | <b>Media Ph:</b> | s. 22(1)(a)(ii) |

### ISSUE

*The following talking points address questions related to the Migration Amendment Bill 2024, introduced by the Australian Government on 7 November 2024.*

### TALKING POINTS OFFICIAL

- On 7 November 2024, the Government introduced the Migration Amendment Bill 2024 (the Bill).
- The Bill provides for a more effective administration of the Bridging (Removal Pending) visa scheme that was established to manage the NZYQ cohort, and strengthens the Government's power to remove to third countries people who have had their visas cancelled and who have no right to remain in Australia.

### Agreements with other countries

- The Bill provides for the establishment of agreements with foreign countries to allow removal from Australia for this specific cohort.
- Many of the NZYQ-affected non-citizens, whose visas have been cancelled, cannot be removed to their home country due to a protection finding existing in relation to that country.
  - For these individuals, the only realistic removal option is to a third country.
- Negotiations relating to designated third countries would not take place until passage and commencement of the Bill.
- The Bill allows for verification of protection findings in certain circumstances, where a non-citizen holds a certain visa – such as a Bridging (Removal Pending) visa – and is on a removal pathway.
  - This will ensure that Australia's international obligations are, at all times, met.
- To be clear, Australia does not return individuals to countries in respect of which they have been found to engage Australia's non-refoulement obligations.
  - This Bill would not change that.

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### Protection from civil liability for officers

- Further, the Bill has provisions that clarify that no civil liability is incurred by Commonwealth officers, and the Commonwealth, in relation to anything done in good faith, and in connection with the exercise of the officer's powers or duties, in relation to certain removals of certain non-citizens.

### Supporting community safety

- In addition to strengthening the legislative framework for removals, the Bill also contains two measures to support community safety and management of non-citizens while they remain in Australia.
  - o The first confirms that officers, and those who support officers, such as the Community Protection Board may continue to take into account spent convictions when making decisions or recommendations on community protection or character-related matters.
    - This provides clarity and certainty that officers are not breaching State and Territory laws by using spent conviction information for those purposes.
  - o The second provides that disclosure of personal information to foreign countries may be made in support of determining whether any such non-citizens may be removed, except where Australia's protection obligations are in play.
- In response to the High Court's decision in YBFZ, which found that curfew and electronic monitoring conditions were invalid, the Bill includes amendments to align procedural fairness provisions with the new community safety test - that is set out in the Migration Regulations, as amended on 7 November 2024.
  - o To address the High Court judgement in YBFZ, Regulation amendments created a new, stricter test for imposing the community safety conditions, such as electronic monitoring and curfew.
    - The new test provides that the Minister must only impose the conditions where the Minister is satisfied that the holder poses a substantial risk of seriously harming any part of the Australian community by engaging in conduct that would constitute a serious offence under any law of the Commonwealth, a state or territory.

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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).*

The Bill proposes to amend the Migration Act to strengthen the legislative framework relating to the removal from Australia of certain non-citizens who are on a removal pathway.

The Bill has also been the subject of inquiry by the Senate Legal and Constitutional Affairs Legislation Committee. The Committee is scheduled to provide its report on 26 November 2024.

The Bill is scheduled for debate in the Senate on 27 November 2024.

**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.)*

Nil.

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| Zoe Moses               | AS Compliance & Community Protection Policy | 26/11/24 |

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