



Australian

Submission

For decision

s. 33(a)(i), s. 33(a)(iii), s. 37(2)(b), s. 47E(d), s. 47F(1)

Recommendations

That you:

1. s. 33(a)(i), s. 37(2)(b), s. 47E(d), s. 47F(1)
2. s. 33(a)(i), s. 33(a)(iii), s. 37(2)(b), s. 47E(d), s. 47F(1)
3. s. 33(a)(i), s. 37(2)(b), s. 47E(d), s. 47F(1)
4. s. 33(a)(i), s. 37(2)(b), s. 47E(d), s. 47F(1)

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

5.

s. 33(a)(i), s. 33(a)(iii), s. 37(2)(b), s. 42(1), s. 47E(d), s. 47F(1)

s. 33(a)(i), s. 37(2)(b), s. 47E(d)

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Key Issues

1. s. 33(a)(i), s. 33(a)(iii), s. 37(2)(b), s. 47E(d), s. 47F(1)
[Redacted]
2. [Redacted]
3. s. 33(a)(i), s. 33(a)(iii), s. 37(2)(b), s. 47E(d), s. 47F(1)
[Redacted]
4. s. 33(a)(i), s. 37(2)(b), s. 47E(d)
[Redacted]
5. s. 33(a)(i), s. 37(2)(b), s. 47E(d), s. 47F(1)
[Redacted]
6. s. 33(a)(i), s. 37(2)(b), s. 47E(d)
[Redacted]

Background

s. 33(a)(i), s. 33(a)(iii), s. 37(2)(b), s. 47E(d)
[Redacted]

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s. 33(a)(i), s. 37(2)(b), s. 47E(d), s. 47F(1)

11. s. 33(a)(i), s. 33(a)(iii), s. 37(2)(b), s. 47E(d), s. 47F(1)

12. s. 33(a)(i), s. 33(a)(iii), s. 37(2)(b), s. 47E(d), s. 47F(1)

13.

14. s. 33(a)(i), s. 37(2)(b), s. 47E(d), s. 47F(1)

15. s. 33(a)(i), s. 33(a)(iii), s. 37(2)(b), s. 47E(d), s. 47F(1)

16.

17. s. 33(a)(i), s. 37(2)(b), s. 47E(d), s. 47F(1)

18. s. 33(a)(i), s. 33(a)(iii), s. 37(2)(b), s. 42(1), s. 47E(d), s. 47F(1)

Consultation – internal/external

19. s. 33(a)(i), s. 37(2)(b), s. 47E(d)

Consultation – Secretary / Associate Secretary

20. s. 33(a)(i), s. 37(2)(b), s. 47E(d)

21.

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Client service implications

22. s. 33(a)(i), s. 37(2)(b), s. 47E(d), s. 47F(1)

Risks and Sensitivities

23. s. 33(a)(i), s. 37(2)(b), s. 47E(d)

Financial/systems/legal/deregulation/media implications

24. s. 33(a)(i), s. 37(2)(b), s. 47E(d)

Attachments

s. 33(a)(i), s. 33(a)(iii), s. 37(2)(b), s. 47E(d), s. 47F(1)

Attachment B Statement to Parliament for the purposes of Subsection 198AE

s. 33(a)(i), s. 33(a)(iii), s. 37(2)(b), s. 47E(d), s. 47F(1)

Attachment D Sections 198AD and 198AE of the Act

s. 33(a)(i), s. 33(a)(iii), s. 37(2)(b), s. 47E(d), s. 47F(1)

s. 33(a)(i), s. 33(a)(iii), s. 37(2)(b), s. 47E(d), s. 47F(1)

s. 33(a)(i), s. 37(2)(b), s. 47E(d)

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

s. 33(a)(i), s. 37(2)(b), s. 47E(d), s. 22(1)(a)(ii)

Through

s. 33(a)(i), s. 37(2)(b), s. 47E(d)

Cc

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**STATEMENT TO PARLIAMENT FOR THE PURPOSES OF SUBSECTION
198AE(4) OF THE MIGRATION ACT 1958**

**EXERCISE OF MINISTERIAL DISCRETION UNDER SUBSECTION
198AE(1) OF
THE MIGRATION ACT 1958**

Exercising my power under subsection 198AE(1) of the *Migration Act 1958* (the Act), I have determined that section 198AD of the Act does not apply to one unauthorised maritime arrival.

The particular circumstances of the unauthorised maritime arrival is that, unless exempted by me using my power under subsection 198AE(1), they must be taken, as soon as reasonable practicable, to a regional processing country.

I considered that it was in the public interest to make a determination in respect of the unauthorised maritime arrival that section 198AD of the Act does not apply to this person.

A handwritten signature in dark ink, appearing to read 'Clare O'Neil', is positioned above the printed name.

THE HON CLARE O'NEIL MP

Minister for Home Affairs

13/07/2023

Section 198AD Taking unauthorised maritime arrivals to a regional processing country

(1) Subject to sections 198AE, 198AF and 198AG, this section applies to an unauthorised maritime arrival who is detained under section 189.

Note: For when this section applies to a transitory person, see section 198AH.

(2) An officer must, as soon as reasonably practicable, take an unauthorised maritime arrival to whom this section applies from Australia to a regional processing country.

(2A) However, subsection (2) does not apply in relation to a person who is an unauthorised maritime arrival only because of subsection 5AA(1A) or (1AA) if the person's parent mentioned in the relevant subsection entered Australia before 13 August 2012.

Note 1: Under subsection 5AA(1A) or (1AA) a person born in Australia or in a regional processing country may be an unauthorised maritime arrival in some circumstances.

Note 2: This section does not apply in relation to a person who entered Australia by sea before 13 August 2012: see the *Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012*.

Powers of an officer

(3) For the purposes of subsection (2) and without limiting that subsection, an officer may do any or all of the following things within or outside Australia:

- (a) place the unauthorised maritime arrival on a vehicle or vessel;
- (b) restrain the unauthorised maritime arrival on a vehicle or vessel;
- (c) remove the unauthorised maritime arrival from:
 - (i) the place at which the unauthorised maritime arrival is detained; or
 - (ii) a vehicle or vessel;
- (d) use such force as is necessary and reasonable.

(4) If, in the course of taking an unauthorised maritime arrival to a regional processing country, an officer considers that it is necessary to return the unauthorised maritime arrival to Australia:

- (a) subsection (3) applies until the unauthorised maritime arrival is returned to Australia; and
- (b) section 42 does not apply in relation to the unauthorised maritime arrival's return to Australia.

Ministerial direction

- (5) If there are 2 or more regional processing countries, the Minister must, in writing, direct an officer to take an unauthorised maritime arrival, or a class of unauthorised maritime arrivals, under subsection (2) to the regional processing country specified by the Minister in the direction.
- (6) If the Minister gives an officer a direction under subsection (5), the officer must comply with the direction.
- (7) The duty under subsection (5) may only be performed by the Minister personally.
- (8) The only condition for the performance of the duty under subsection (5) is that the Minister thinks that it is in the public interest to direct the officer to take an unauthorised maritime arrival, or a class of unauthorised maritime arrivals, under subsection (2) to the regional processing country specified by the Minister in the direction.
- (9) The rules of natural justice do not apply to the performance of the duty under subsection (5).
- (10) A direction under subsection (5) is not a legislative instrument

Section 198AE Ministerial determination that section 198AD does not apply

- (1) If the Minister thinks that it is in the public interest to do so, the Minister may, in writing, determine that section 198AD does not apply to an unauthorised maritime arrival.

Note: For specification by class, see the Acts Interpretation Act 1901.

- (1A) The Minister may, in writing, vary or revoke a determination made under subsection (1) if the Minister thinks that it is in the public interest to do so.
- (2) The power under subsection (1) or (1A) may only be exercised by the Minister personally
- (3) The rules of natural justice do not apply to an exercise of the power under subsection (1) or (1A).
- (4) If the Minister makes a determination under subsection (1) or varies or revokes a determination under subsection (1A), the Minister must cause to be laid before each House of the Parliament a statement that:
- (a) sets out the determination, the determination as varied or the instrument of revocation; and
 - (b) sets out the reasons for the determination, variation or revocation, referring in particular to the Minister's reasons for thinking that the Minister's actions are in the public interest.
- (5) A statement under subsection (4) must not include:
- (a) the name of the unauthorised maritime arrival; or

(b) any information that may identify the unauthorised maritime arrival; or

(c) if the Minister thinks that it would not be in the public interest to publish the name of another person connected in any way with the matter concerned — the name of that other person or any information that may identify that other person.

(6) A statement under subsection (4) must be laid before each House of the Parliament within 15 sitting days of that House after:

(a) if the determination is made, varied or revoked between 1 January and 30 June (inclusive) in a year — 1 July in that year; or

(b) if the determination is made, varied or revoked between 1 July and 31 December (inclusive) in a year — 1 January in the following year.

(7) The Minister does not have a duty to consider whether to exercise the power under subsection (1) or (1A) in respect of any unauthorised maritime arrival, whether the Minister is requested to do so by the unauthorised maritime arrival or by any other person, or in any other circumstances.

(8) An instrument under subsection (1) or (1A) is not a legislative instrument.

s. 33(a)(i), s. 33(a)(iii), s. 37(2)(b), s. 47E(d), s. 47F(1)

s. 33(a)(i), s. 33(a)(iii), s. 37(2)(b), s. 47E(d), s. 47F(1)