



Migration Amendment (Removal and Other Measures) Act 2024

No. 107, 2024

An Act to amend the *Migration Act 1958*, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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An Act to amend the *Migration Act 1958*, and for related purposes

[Assented to 4 December 2024]

The Parliament of Australia enacts:

1 Short title

This Act is the *Migration Amendment (Removal and Other Measures) Act 2024*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	4 December 2024
2. Schedule 1	The day after this Act receives the Royal Assent.	5 December 2024
3. Schedule 2	The day after this Act receives the Royal Assent. However, the provisions do not commence at all if the <i>Migration Amendment Act 2024</i> commences on or before the day on which the provisions covered by table item 2 commence.	Never commenced
4. Schedule 3	The day after this Act receives the Royal Assent.	5 December 2024
5. Schedule 4	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of the <i>Migration Amendment Act 2024</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	5 December 2024

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

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- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Removal and removal concern countries

Migration Act 1958

1 Subsection 5(1)

Insert:

removal concern country means a country designated as such by the Minister under subsection 199F(1).

removal pathway direction means a direction given under subsection 199C(1) or (2).

removal pathway non-citizen has the meaning given by subsection 199B(1).

2 At the end of paragraph 46(1)(e)

Add:

; (vi) section 199G (visa applications by certain nationals of a removal concern country).

3 At the end of Division 8 of Part 2

Add:

Subdivision D—Duty to cooperate in relation to removal and removal concern countries

199A Reason for Subdivision

- (1) This Subdivision is enacted because the Parliament expects that a removal pathway non-citizen:
- (a) will voluntarily leave Australia; and
 - (b) if the non-citizen does not voluntarily leave Australia, will cooperate with steps taken under this Act for the purposes of arranging the non-citizen's lawful removal from Australia; and

- (c) will not attempt to obstruct or frustrate the non-citizen's lawful removal from Australia.
- (2) This Subdivision is also enacted because the Parliament expects that a foreign country will cooperate with Australia to facilitate the lawful removal from Australia of a non-citizen who is a national of that country.

199B Removal pathway non-citizens

Meaning of removal pathway non-citizen

- (1) Each of the following is a **removal pathway non-citizen**:
 - (a) an unlawful non-citizen:
 - (i) who is required to be removed from Australia under section 198 as soon as reasonably practicable; or
 - (ii) who would be required to be so removed except for the operation of subsection 197E(5);
 - (b) a lawful non-citizen who holds a Subclass 070 (Bridging (Removal Pending)) visa;
 - (c) a lawful non-citizen who:
 - (i) holds a Subclass 050 (Bridging (General)) visa; and
 - (ii) at the time the visa was granted, satisfied a criterion for the grant relating to the making of, or being subject to, acceptable arrangements to depart Australia;
 - (d) a lawful non-citizen who holds a visa prescribed for the purposes of this paragraph.

Note: For subparagraph (a)(ii), subsection 197E(5) temporarily suspends the duty to remove an unlawful non-citizen under section 198 if the Minister decides to consider whether to exercise a Ministerial intervention power in relation to the non-citizen. However, the suspension does not prevent other action being taken, or things being done, to facilitate or otherwise prepare for the removal of the non-citizen under section 198 (see subsection 197E(10)).

Removal pathway non-citizens for whom protection findings have been made

- (2) To avoid doubt, a removal pathway non-citizen for whom a protection finding has been made within the meaning of subsection 197C(4), (5), (6) or (7):

- (a) may be given a removal pathway direction by the Minister;
and
- (b) may commit the offence of refusing or failing to comply with the direction under section 199E.

Note: For the circumstances in which the Minister must not give a removal pathway direction, see section 199D.

- (3) To avoid doubt, nothing in section 199C or 199D authorises or requires the removal of an unlawful non-citizen under section 198 to a country to which the non-citizen could not be removed because of subsection 197C(3).

199C Minister may give removal pathway directions

Direction powers

- (1) The Minister may, by written notice given to a removal pathway non-citizen, direct the non-citizen to do one or more of the following things:
 - (a) complete, sign and submit an application for one or more of the following documents (including doing and providing all things required for the application process by the person or authority to which it is to be submitted):
 - (i) a passport;
 - (ii) a travel-related document within the meaning of the *Australian Passports Act 2005*;
 - (iii) a foreign travel document within the meaning of the *Foreign Passports (Law Enforcement and Security) Act 2005*;
 - (b) complete, sign and submit any other document or form required for, or to facilitate, travel (including doing and providing all things required for submission by the person or authority to which it is to be submitted);
 - (c) provide documents or information to an officer or another person specified in the direction;
 - (d) attend an interview or appointment with an officer or another person specified in the direction;
 - (e) report in person to an officer or another person in accordance with instructions specified in the direction.

- (2) Without limiting subsection (1), the Minister may, by written notice given to a removal pathway non-citizen, direct the non-citizen to do a thing, or not do a thing, if the Minister is satisfied that the non-citizen doing, or not doing, the thing is reasonably necessary to:
- (a) determine whether there is a real prospect of the removal of the non-citizen from Australia under section 198 becoming practicable in the reasonably foreseeable future; or
 - (b) facilitate the removal of the non-citizen from Australia under that section.

Note 1: For the circumstances in which the Minister must not give a direction under subsection (1) or (2), see section 199D.

Note 2: The Minister may give a direction under subsection (1) or (2) to a removal pathway non-citizen during the period that the non-citizen's removal is not required or authorised under section 198 as a result of the Minister considering whether to exercise a Ministerial intervention power in relation to the non-citizen (see section 197E).

- (3) The Minister may, by written notice given to a removal pathway non-citizen, revoke a removal pathway direction given to the non-citizen.

Period for compliance

- (4) A removal pathway direction must specify:
- (a) the period within which the non-citizen must do a specified thing; or
 - (b) for a direction not to do a specified thing—the period during which the non-citizen must not do the thing.

Consequences of non-compliance

- (5) A removal pathway direction must state that a non-citizen who refuses or fails to comply with the direction may commit an offence under section 199E.

Interaction with monitoring conditions on certain bridging visas

- (6) To avoid doubt, if a removal pathway non-citizen mentioned in paragraph 199B(1)(b) refuses or fails to comply with a removal pathway direction, the refusal or failure does not constitute a failure to comply with a requirement of a monitoring condition

(within the meaning of subsection 76B(4)) for the purposes of paragraph 76B(1)(d).

Multiple and concurrent directions

- (7) A non-citizen may be given more than one removal pathway direction.
- (8) However, the Minister must not give a removal pathway direction to a non-citizen to do a thing, or not do a thing:
 - (a) that is the subject of a direction previously given by the Minister to the non-citizen; and
 - (b) for which the period specified in the previous direction for the thing has not ended.

199D Circumstances in which Minister must not give a removal pathway direction

Non-citizens subject to a protection finding

- (1) The Minister must not give a removal pathway direction to a removal pathway non-citizen to do, or not do, a thing in relation to a particular country if:
 - (a) in the case of an unlawful non-citizen—the non-citizen cannot be removed to that country because of subsection 197C(3); or
 - (b) in the case of a lawful non-citizen—the non-citizen could not be removed to that country because of that subsection if the non-citizen were an unlawful non-citizen.

Non-citizens who have applied for protection visas

- (2) The Minister must not give a removal pathway direction to a removal pathway non-citizen if:
 - (a) the non-citizen has made a valid application for a protection visa; and
 - (b) the application is not yet finally determined.

Interaction with monitoring conditions on certain bridging visas

- (3) The Minister must not give a removal pathway direction to a removal pathway non-citizen if all of the following apply:
- (a) the non-citizen holds a Subclass 070 (Bridging (Removal Pending)) visa;
 - (b) the visa is subject to a monitoring condition (within the meaning of subsection 76B(4));
 - (c) an instruction or specification under the monitoring condition has been given to the non-citizen;
 - (d) the direction would require the non-citizen to do, or not do, a thing that is substantially the same as the instruction or specification;
 - (e) the Minister has not, in writing:
 - (i) withdrawn the instruction or specification; or
 - (ii) confirmed that the instruction or specification has been complied with.

Children

- (4) The Minister must not give a removal pathway direction to a removal pathway non-citizen if the non-citizen is a child under 18.
- (5) However, if the parent or guardian of the child is a removal pathway non-citizen, the Minister may give a removal pathway direction in relation to the child to the parent or guardian.

Court or tribunal proceedings etc.

- (6) The Minister must not give a removal pathway direction to a removal pathway non-citizen directing the non-citizen:
- (a) not to commence, or to discontinue, court or tribunal proceedings; or
 - (b) to take or not take particular steps in the conduct of such proceedings; or
 - (c) not to make a visa application under this Act; or
 - (d) to withdraw a visa application made under this Act.

199E Offence for non-compliance with removal pathway direction

- (1) A person commits an offence if:
- (a) the person is a removal pathway non-citizen; and
 - (b) the person is given a removal pathway direction; and
 - (c) the direction has not been revoked; and
 - (d) the person refuses or fails to comply with the direction.

Penalty: 5 years imprisonment or 300 penalty units, or both.

- (2) If a person is convicted of an offence under subsection (1), the court must impose a sentence of imprisonment of at least 12 months.

Exception

- (3) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (4) For the purposes of subsection (3), it is not a reasonable excuse that the person:

- (a) has a genuine fear of suffering persecution or significant harm if the person were removed to a particular country; or
- (b) is, or claims to be, a person in respect of whom Australia has non-refoulement obligations; or
- (c) believes that, if the person were to comply with the removal pathway direction, the person would suffer other adverse consequences.

Note: See subsections 199D(1) and (2) for restrictions on giving removal pathway directions to non-citizens who are subject to a protection finding or who have applied for a protection visa.

No continuing offence

- (5) Section 4K (continuing offences) of the *Crimes Act 1914* does not apply in relation to an offence under subsection (1) of this section.

199F Designation of removal concern country

- (1) The Minister may, by legislative instrument, designate a country as a ***removal concern country*** if the Minister thinks it is in the national interest to designate the country to be a removal concern country.
- (2) Before the Minister designates a country under subsection (1), the Minister must consult with:
 - (a) the Prime Minister; and
 - (b) the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.
- (2A) Before the Minister designates a country under subsection (1), the Minister must have regard to the matters (if any) prescribed by the regulations for the purposes of this subsection.
- (2B) Neither of the following limits, or otherwise affects, the matters the Minister may consider for the purposes of deciding under subsection (1) whether it is in the national interest to designate a country to be a removal concern country:
 - (a) the requirement under subsection (2A) that the Minister must have regard to matters (if any) that are prescribed by the regulations for the purposes of that subsection;
 - (b) the prescription of particular matters by the regulations for the purposes of subsection (2A).
- (3) If the Minister designates a country under subsection (1), the Minister may, by legislative instrument, revoke the designation.

Personal power etc.
- (4) The powers under subsections (1) and (3) may only be exercised by the Minister personally.
- (5) The rules of natural justice do not apply to the exercise of the power under subsection (1) or (3).

Copy of designation etc. to be laid before Parliament

- (6) If the Minister designates a country under subsection (1), the Minister must cause to be laid before each House of the Parliament:
 - (a) a copy of the designation; and
 - (b) a statement of the Minister's reasons for thinking it is in the national interest to designate the country to be a removal concern country.
- (7) The Minister must comply with subsection (6) within 2 sitting days of each House of the Parliament after the day on which the designation is made.
- (8) A failure to comply with subsection (6) or (7) does not affect the validity of the designation.

Automatic repeal

- (8A) Unless revoked earlier, the designation is repealed at the end of 3 years after the day on which the designation commences.

Definition

- (9) In this section, **country** includes:
 - (a) a colony, overseas territory or protectorate of a foreign country; and
 - (b) an overseas territory for the international relations of which a foreign country is responsible.

199G Visa applications by certain nationals of a removal concern country

- (1) An application for a visa by a non-citizen is not a valid application if, at the time the application is made:
 - (a) the non-citizen is a national of one or more removal concern countries; and
 - (b) the non-citizen is outside Australia.

Exceptions to bar on visa application

- (2) Subsection (1) does not apply in relation to an application for a visa by a non-citizen if:
- (a) both of the following apply:
 - (i) the non-citizen is a national of a country (within the meaning of subsection 199F(9)) that is not a removal concern country;
 - (ii) the non-citizen holds a passport issued by that country that is in force; or
 - (b) the non-citizen is the spouse, de facto partner or dependent child (within the meaning of the regulations) of:
 - (i) an Australian citizen; or
 - (ii) the holder of a permanent visa that is in effect; or
 - (iii) a person who is usually resident in Australia and whose continued presence in Australia is not subject to a limitation as to time imposed by law; or
 - (c) the non-citizen is the parent of a child who is under 18 and in Australia; or
 - (d) the application is for the grant of a Refugee and Humanitarian (Class XB) visa (within the meaning of section 39A); or
 - (e) the non-citizen is included in a class of persons determined in an instrument made under subsection (3) of this section; or
 - (f) the application is for the grant of a visa of a class determined in an instrument made under subsection (3) of this section.
- (3) The Minister may, by legislative instrument, determine the following:
- (a) a class of persons for the purposes of paragraph (2)(e);
 - (b) a class of visa for the purposes of paragraph (2)(f).

Minister may determine bar on visa application does not apply

- (4) If the Minister thinks that it is in the public interest to do so, the Minister may, by written notice given to a non-citizen, determine that subsection (1) does not apply to an application by the non-citizen for a visa of a class specified in the determination.

- (5) A determination under subsection (4) may provide that it has effect only for the period specified in the determination and, if it does so, the determination ceases to have effect at the end of the specified period.
- (6) The Minister may, by written notice given to a non-citizen, vary or revoke a determination made under subsection (4) in relation to the non-citizen if the Minister thinks that it is in the public interest to do so.
- (7) The power under subsection (4) or (6) may only be exercised by the Minister personally.
- (8) The Minister does not have a duty to consider whether to exercise the power under subsection (4) or (6) in respect of any non-citizen, whether the Minister is requested to do so by the non-citizen or by any other person, or in any other circumstances.

4 Paragraph 474(7)(a)

Before “351”, insert “199G.”

5 Application of amendments

Paragraphs 199B(1)(b) and (c) of the *Migration Act 1958*, as inserted by this Schedule, apply in relation to a non-citizen who holds a visa, whether the visa was granted before, on or after the commencement of this item.

Schedule 2—Measures relating to bridging visas and protection findings

Migration Act 1958

1 Subsection 76E(2)

Omit “For the avoidance of doubt”, substitute “To avoid doubt”.

2 At the end of section 76E

Add:

- (6) To avoid doubt, nothing in this section prevents the grant, from time to time, of a Subclass 070 (Bridging (Removal Pending)) visa to the non-citizen.

3 Subsections 197C(4), (5), (6) and (7)

Omit “For the purposes of subsection (3), a”, substitute “A”.

4 Subsection 197D(1)

Repeal the subsection, substitute:

- (1) This section applies in relation to a non-citizen if:
 - (a) the non-citizen is:
 - (i) an unlawful non-citizen; or
 - (ii) a lawful non-citizen of a kind mentioned in paragraph 199B(1)(b), (c) or (d); and
 - (b) the non-citizen has made a valid application for a protection visa that has been finally determined; and
 - (c) in the course of considering the application, a protection finding, within the meaning of subsection 197C(4), (5), (6) or (7), was made for the non-citizen with respect to a country (whether or not the protection visa was refused or was granted and has since been cancelled).

5 Subsection 197D(2)

Omit “an unlawful non-citizen to whom paragraphs 197C(3)(a) and (b) apply in relation to a valid application for a protection visa”, substitute “the non-citizen”.

6 After subsection 197D(2)

Insert:

(2A) A decision made under subsection (2) is a decision of a kind referred to in subparagraph 197C(3)(c)(ii), whether it is made in relation to:

- (a) an unlawful non-citizen; or
- (b) a lawful non-citizen of a kind mentioned in paragraph 199B(1)(b), (c) or (d).

7 Subsections 197D(3) and (4)

Omit “an unlawful non-citizen”, substitute “a non-citizen”.

8 Paragraph 411(1)(e)

Omit “an unlawful non-citizen”, substitute “a non-citizen”.

9 Application of amendments

Section 197D of the *Migration Act 1958*, as amended by this Schedule, applies in relation to a protection finding, whether the protection finding is made before, on or after the commencement of this item.

Schedule 3—Ministerial intervention

Migration Act 1958

1 Subsection 5(1)

Insert:

Ministerial intervention power means a power exercisable personally by the Minister under any one or more of the following provisions:

- (a) subsection 46A(2) (about visa applications by unauthorised maritime arrivals);
- (b) subsection 46B(2) (about visa applications by transitory persons);
- (c) subsection 48B(1) (about further applications for a protection visa after refusal or cancellation);
- (d) paragraph 72(1)(c) (about bridging visas for eligible non-citizens);
- (e) subsection 91F(1) (about non-citizens for whom there is a safe third country);
- (f) subsection 91L(1) (about holders of temporary safe haven visas);
- (g) subsection 137N(1) (about revocation of visa cancellation on the Minister's initiative);
- (h) subsection 195A(2) (about grant of visas to detainees);
- (i) subsection 198AE(1) (about Minister's power to determine that section 198AD does not apply);
- (j) subsection 351(1) (about Minister's power to substitute certain ART decisions);
- (k) subsection 501J(1) (about Minister's power to substitute ART protection visa decision).

2 After section 197D

Insert:

197E Relevance of Ministerial intervention powers to removal of unlawful non-citizens under section 198

- (1) For the purposes of section 198, it is irrelevant whether the Minister has been requested to exercise, or consider exercising, a Ministerial intervention power in relation to an unlawful non-citizen.
- (2) To avoid doubt:
 - (a) an officer's duty to remove as soon as reasonably practicable an unlawful non-citizen under section 198 arises irrespective of whether the Minister has been requested to exercise, or consider exercising, a Ministerial intervention power in relation to the unlawful non-citizen; and
 - (b) the fact that the Minister has been requested to exercise, or consider exercising, a Ministerial intervention power in relation to an unlawful non-citizen is irrelevant to whether or not the removal of the unlawful non-citizen is reasonably practicable for the purposes of section 198.
- (3) Subsection (1) applies whether a request is made by:
 - (a) the unlawful non-citizen; or
 - (b) an officer of the Department; or
 - (c) any other person.
- (4) Subsection (1) applies whether or not a request has been drawn to the Minister's attention.

Temporary suspension of duty to remove unlawful non-citizens

- (5) Despite subsection (1), if the Minister decides to consider whether to exercise a Ministerial intervention power (whether on request or otherwise) in relation to an unlawful non-citizen, section 198 does not require or authorise an officer to remove the non-citizen from Australia during the period covered by subsection (6).

Note: Despite this subsection, an unlawful non-citizen who asks the Minister, in writing, to be removed, must be removed under subsection 198(1) (see subsection (11) of this section).

Period during which duty to remove is suspended

- (6) For the purposes of subsection (5), the period is 6 months starting on the day (the **start day**) the Minister decides to consider whether to exercise the Ministerial intervention power in relation to the unlawful non-citizen, unless:
- (a) before the end of that 6 month period, the unlawful non-citizen has agreed, in writing, to a day occurring after the end of that 6 month period nominated, in writing, by the Minister—in which case the period ends on the agreed day (subject to paragraph (b)); or
 - (b) the period ends earlier under subsection (7).
- (7) For the purposes of paragraph (6)(b), the period ends at the earliest of the following times:
- (a) the end of the day the Minister decides not to exercise the Ministerial intervention power in relation to the unlawful non-citizen;
 - (b) the end of the day the Minister decides to stop considering whether to exercise the power in relation to the non-citizen;
 - (c) if the Minister exercises the power in relation to the non-citizen, and subsection (8) specifies a day—the end of that day;
 - (d) if the Minister exercises the power in relation to the non-citizen but the exercise does not result in the non-citizen being able to make a visa application—the end of the day that the Minister exercises the power.
- (8) For the purposes of paragraph (7)(c), this subsection specifies the following days:
- (a) in a case where, as a consequence of the exercise of the Ministerial intervention power, the unlawful non-citizen may make a visa application within a specified period—the last day of the period in which the non-citizen could make the visa application;
 - (b) in any other case where, as a consequence of the exercise of the power, the non-citizen may make a visa application—whichever of the following days occurs first:
 - (i) the last day of the period determined by the Minister in which the non-citizen could make the visa application;

- (ii) the day that is 3 months after the Minister exercises the power.

Working out start day for certain requests

- (9) If the Minister decides to consider whether to exercise a Ministerial intervention power in relation to a particular category of requests for such exercise by unlawful non-citizens, then, for the purposes of subsection (6), the **start day**, in relation to a particular unlawful non-citizen, is the day that the non-citizen's request is received, in writing, by the Minister.

Scope of suspension of duty to remove unlawful non-citizen

- (10) To avoid doubt, subsection (5) of this section:
 - (a) prevents the removal of an unlawful non-citizen during the period covered by subsection (6); but
 - (b) does not prevent any other action being taken, or thing being done, during that period to facilitate or otherwise prepare for the eventual removal of the non-citizen after the period ends.

Example: The Minister could give the unlawful non-citizen a removal pathway direction under section 199C during the period covered by subsection (6).

Unlawful non-citizen must be removed at non-citizen's request

- (11) Despite subsection (5), an officer is required and authorised to remove an unlawful non-citizen who asks the Minister, in writing, to be so removed under subsection 198(1).

3 At the end of subsection 198AD(2)

Add:

Note: For how this subsection operates if the Minister has been requested to exercise, or is considering exercising, a Ministerial intervention power in relation to an unauthorised maritime arrival, see section 198AHC.

4 Before section 198AI

Insert:

198AHC Relevance of Ministerial intervention powers to transfer of unauthorised maritime arrivals

- (1) For the purposes of subsection 198AD(2), it is irrelevant whether the Minister has been requested to exercise, or consider exercising, a Ministerial intervention power in relation to an unauthorised maritime arrival.
- (2) To avoid doubt:
 - (a) an officer's duty to take, as soon as reasonably practicable, an unauthorised maritime arrival from Australia to a regional processing country under subsection 198AD(2) arises irrespective of whether the Minister has been requested to exercise, or consider exercising, a Ministerial intervention power in relation to the unauthorised maritime arrival; and
 - (b) the fact that the Minister has been requested to exercise, or consider exercising, a Ministerial intervention power in relation to an unauthorised maritime arrival is irrelevant to whether or not the taking of the unauthorised maritime arrival from Australia to a regional processing country is reasonably practicable for the purposes of subsection 198AD(2).
- (3) Subsection (1) applies whether a request is made by:
 - (a) the unauthorised maritime arrival; or
 - (b) an officer of the Department; or
 - (c) any other person.
- (4) Subsection (1) applies whether or not a request has been drawn to the Minister's attention.

Temporary suspension of duty to transfer unauthorised maritime arrivals

- (5) Despite subsection (1), if the Minister decides to consider whether to exercise a Ministerial intervention power (whether on request or otherwise) in relation to an unauthorised maritime arrival, subsection 198AD(2) does not require or authorise an officer to take the unauthorised maritime arrival from Australia to a regional processing country during the period covered by subsection (6).

Note: Despite this subsection, an unauthorised maritime arrival who asks the Minister, in writing, to be taken from Australia to a regional processing country must be taken to that country (see subsection (10)).

Period during which duty to transfer is suspended

- (6) For the purposes of subsection (5), the period is 6 months starting on the day (the **start day**) the Minister decides to consider whether to exercise the Ministerial intervention power in relation to the unauthorised maritime arrival, unless:
- (a) before the end of that 6 month period, the unauthorised maritime arrival has agreed, in writing, to a day occurring after the end of that 6 month period nominated, in writing, by the Minister—in which case the period ends on the agreed day (subject to paragraph (b)); or
 - (b) the period ends earlier under subsection (7).
- (7) For the purposes of paragraph (6)(b), the period ends at the earliest of the following times:
- (a) the end of the day the Minister decides not to exercise the power in relation to the unauthorised maritime arrival;
 - (b) the end of the day the Minister decides to stop considering whether to exercise the power in relation to the unauthorised maritime arrival;
 - (c) if the Minister exercises the power in relation to the unauthorised maritime arrival, and subsection (8) specifies a day—the end of that day;
 - (d) if the Minister exercises the power in relation to the unauthorised maritime arrival but the exercise does not result in the unauthorised maritime arrival being able to make a visa application—the end of the day that the Minister exercises the power.
- (8) For the purposes of paragraph (7)(c), this subsection specifies the following days:
- (a) in a case where, as a consequence of the exercise of the Ministerial intervention power, the unauthorised maritime arrival may make a visa application within a specified period—the last day of the period in which the unauthorised maritime arrival could make the visa application;

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- (b) in any other case where, as a consequence of the exercise of the power, the unauthorised maritime arrival may make a visa application—whichever of the following days occurs first:
- (i) the last day of the period determined by the Minister in which the unauthorised maritime arrival could make the visa application;
 - (ii) the day that is 3 months after the Minister exercises the power.

Scope of suspension of duty to transfer unauthorised maritime arrival

- (9) To avoid doubt, subsection (5) of this section:
- (a) prevents an unauthorised maritime arrival being taken from Australia to a regional processing country during the period covered by subsection (6); but
 - (b) does not prevent any other action being taken, or thing being done, during that period to facilitate or otherwise prepare for the unauthorised maritime arrival being taken from Australia to a regional processing country after the period ends.

Unauthorised maritime arrival may request transfer to regional processing country

- (10) Despite subsection (5), if an unauthorised maritime arrival to whom section 198AD applies asks the Minister, in writing, to be taken from Australia to a regional processing country under section 198AD, the unauthorised maritime arrival must be taken, under that section, to that country.

5 At the end of Division 9 of Part 2

Add:

206A Relevance of Ministerial intervention powers to deportation

- (1) For the purposes of:
- (a) determining whether section 200 applies to a non-citizen; or
 - (b) executing a deportation order in relation to a non-citizen under subsection 206(1);

it is irrelevant whether the Minister has been requested to exercise, or consider exercising, a Ministerial intervention power in relation to the non-citizen.

- (2) Subsection (1) applies whether a request is made by:
 - (a) the non-citizen; or
 - (b) an officer of the Department; or
 - (c) any other person.
- (3) Subsection (1) applies whether or not a request has been drawn to the Minister's attention.

Temporary suspension of deportation

- (4) Despite subsection (1), if the Minister decides to consider whether to exercise a Ministerial intervention power (whether on request or otherwise) in relation to a non-citizen, the Minister must not order the deportation of the non-citizen, and the non-citizen must not be deported, during the period covered by subsection (5).

Period during which deportation is suspended

- (5) For the purposes of subsection (4), the period is 6 months starting on the day (the **start day**) the Minister decides to consider whether to exercise the Ministerial intervention power in relation to the non-citizen, unless:
 - (a) before the end of that 6 month period, the non-citizen has agreed, in writing, to a day occurring after the end of that 6 month period nominated, in writing, by the Minister—in which case the period ends on the agreed day (subject to paragraph (b)); or
 - (b) the period ends earlier under subsection (6).
- (6) For the purposes of paragraph (5)(b), the period ends at the earlier of the following times:
 - (a) the end of the day the Minister decides not to exercise the power in relation to the non-citizen;
 - (b) the end of the day the Minister decides to stop considering whether to exercise the power in relation to the non-citizen;

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- (c) if the Minister exercises the power in relation to the non-citizen, and subsection (7) specifies a day—the end of that day;
 - (d) if the Minister exercises the power in relation to the non-citizen but the exercise does not result in the non-citizen being able to make a visa application—the end of the day that the Minister exercises the power.
- (7) For the purposes of paragraph (6)(c), this subsection specifies the following days:
- (a) in a case where, as a consequence of the exercise of the Ministerial intervention power, the non-citizen may make a visa application within a specified period—the last day of the period in which the non-citizen could make the visa application;
 - (b) in any other case where, as a consequence of the exercise of the power, the non-citizen may make a visa application—whichever of the following days occurs first:
 - (i) the last day of the period determined by the Minister in which the non-citizen could make the visa application;
 - (ii) the day that is 3 months after the Minister exercises the power.

6 Application of amendments

- (1) The amendments of the *Migration Act 1958* made by this Schedule apply in relation to a request made to the Minister to exercise, or consider exercising, a Ministerial intervention power in relation to a person, whether the request is made before, on or after the commencement of this Schedule.
- (2) The amendments of the *Migration Act 1958* made by this Schedule apply in relation to a decision by the Minister to consider exercising a Ministerial intervention power (whether on request or otherwise) in relation to a person, whether that decision is made before, on or after the commencement of this Schedule.
- (3) If:
 - (a) apart from this subitem, the start day mentioned in subsection 197E(6), 198AHC(6) or 206A(5) of the *Migration*

Act 1958, as inserted by this Schedule, is a day before the day on which this item commences; and

- (b) none of the days mentioned in subsections 197E(7) and (8), 198AHC(7) and (8) or 206A(6) and (7) of that Act, as the case requires, are days before the day on which this item commences;

then the start day mentioned in subsection 197E(6), 198AHC(6) or 206A(5) of that Act, as the case requires, is taken to be the day on which this item commences.

- (4) For the purposes of subitems (1) to (3), the power of the Minister under subsection 417(1) of the *Migration Act 1958*, as in force immediately before the commencement of Schedule 2 to the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024*, is to be treated as if it were a Ministerial intervention power under the *Migration Act 1958*, as amended by this Schedule.

Note: Former subsection 417(1) of the *Migration Act 1958* allowed the Minister to substitute, for the Tribunal's decision, a more favourable Part 7-reviewable decision.

Schedule 4—Contingent amendments

Migration Act 1958

1 Subsection 5(1) (definition of *removal pathway non-citizen*) (the definition inserted by item 1 of Schedule 1 to this Act)

Repeal the definition.

2 Subsection 5(1) (paragraph (a) of the definition of *removal pathway non-citizen*) (the definition inserted by item 4 of Schedule 1 to the *Migration Amendment Act 2024*)

Repeal the paragraph, substitute:

- (a) an unlawful non-citizen:
- (i) who is required to be removed from Australia under section 198 as soon as reasonably practicable; or
 - (ii) who would be required to be so removed except for the operation of subsection 197E(5); or

3 Subsection 5(1) (before the note at the end of the definition of *removal pathway non-citizen*) (the definition inserted by item 4 of Schedule 1 to the *Migration Amendment Act 2024*)

Insert:

- Note 1: For subparagraph (a)(ii), subsection 197E(5) temporarily suspends the duty to remove an unlawful non-citizen under section 198 if the Minister decides to consider whether to exercise a Ministerial intervention power in relation to the non-citizen. However, the suspension does not prevent other action being taken, or things being done, to facilitate or otherwise prepare for the removal of the non-citizen under section 198 (see subsection 197E(10)).

4 Subsection 5(1) (note to the definition of *removal pathway non-citizen*) (the definition inserted by item 4 of Schedule 1 to the *Migration Amendment Act 2024*)

Omit “Note”, substitute “Note 2”.

5 Subsection 5(1) (note to the definition of *removal pathway non-citizen*) (the definition inserted by item 4 of Schedule 1 to the *Migration Amendment Act 2024*)

Omit “paragraph (1)(c)”, substitute “paragraph (c)”.

6 Subsection 76E(6) (the subsection (6) added by item 2 of Schedule 2 to this Act)

Repeal the subsection.

7 Subsection 197D(2A) (the subsection (2A) inserted by item 6 of Schedule 2 to this Act)

Repeal the subsection.

8 Section 199B (at the end of the heading)

Add “—protection findings etc.”.

9 Subsection 199B(1)

Repeal the subsection.

10 Subsection 199B(2) (heading)

Repeal the heading.

11 Subsection 199C(6)

Omit “mentioned in paragraph 199B(1)(b)”, substitute “covered by paragraph (b) of the definition of that expression in subsection 5(1)”.

[*Minister’s second reading speech made in—
House of Representatives on 26 March 2024
Senate on 27 March 2024*]

(45/24)
