

EXPLAINER: THE MIGRATION AMENDMENT ACT 2024 (Cth) and The MIGRATION AMENDMENT (REMOVAL AND OTHER MEASURES) ACT 2024 (Cth)

On 29 November 2024 the Government passed a suite of new laws that dramatically expand the Minister's powers to remove people from Australia, reverse protection findings for a larger cohort of people than currently allowed by law, seize "prohibited items" in immigration detention (including mobile phones) and designate whole countries as banned such that its citizens are prohibited citizens from applying to enter Australia with limited exceptions.

We understand that the new laws are extremely distressing and there is a lot of confusion in the community. Please obtain advice and information from reputable sources. As more information becomes available we will provide it to you.

This fact sheet does **not** address the *Migration Amendment (Prohibited Items in Immigration Detention) Act 2024* (Cth) which also passed on 29 November 2024. Please refer to our other factsheet.

WHAT DO THE NEW LAWS DO?

- Allow the Government to spend money and take action to enter into "third country reception arrangements" with foreign countries.^[1] Any person liable for removal could be subjected to such arrangements.
- Expand the Minister's power to revisit protection findings.^[2] This applies to all "removal pathway non-citizens"^[3] which includes people in detention who are liable for removal, BVR holders in the community, Bridging "E" visa holders in the community granted their visa on the basis that they are making arrangements to depart Australia and BVE holders awaiting Ministerial Intervention in certain circumstances;
- allows the Minister to issue a written direction to a "removal pathway non-citizen" to facilitate their removal from Australia.^[4] This includes directing them to complete an application for passport or other travel document, attending an interview or appointment with an officer or other person and providing documents or information to an officer/person specified in the direction.
- A person who does not cooperate with their removal may face detention and criminal penalties - up to 5 years' imprisonment with a minimum mandatory sentence of 12 months, irrespective of whether the person genuinely fears harm or is otherwise medically unable to cooperate with their removal.^[5] It is not a reasonable excuse that the person has a genuine fear of suffering persecution or significant harm if the person

were removed to a particular country or claims to be a person in respect of whom Australia has non-refoulement obligations.^[6]

- Introduces a new test to impose curfew and ankle monitoring conditions for BVR holders.^[7]
- Allows the Minister to prevent people from certain countries from entering Australia^[8] - this ban applies to people who are already outside Australia; it does not apply to people applying for visas who are already in Australia.

WHAT DOES THIS MEAN FOR ME?

It is critically important that you contact a lawyer as soon as you receive any correspondence about removal or detention from the Government.

If you are in immigration detention

If you are in immigration detention facing removal you may be issued a written direction by the Minister to take steps to cooperate with your own removal from Australia. As stated above, this includes, completing an application form for a passport or travel document, providing documentation or information necessary for the Government to make enquiries about your removal (for example, about your identity) and attending appointments necessary for your removal.

You are unlikely to be issued a direction if you are awaiting the outcome of a visa application.

Although the law stipulates that the duty to remove someone applies while someone is awaiting a court hearing, in practice the Government generally does not remove people while they have ongoing judicial review matters.

As a result of the new laws, it may be lawful to keep you in detention for longer while the Government investigates how and where to remove you from Australia (e.g. if you cannot be removed to your home country because of a protection finding).

If you are in the community on a Bridging Visa R

If you are residing in the community on a **Bridging Visa R**, your visa will **cease** if you are granted permission to enter and remain in a foreign country.^[9] You also may face the prospect of being re-detained for this purpose.

The consequence of this is that you may be subject to an expanded offshore processing regime. There is a possibility that you could face detention in the third country and even removal to your home country.

You **cannot** be removed if you have made a valid application for a protection visa that has not been finally determined.

If you are in the community on a Bridging Visa E

If you are holding a **Bridging Visa E** on the basis that **you lodged a Ministerial Intervention request** or **are making arrangements to depart**, the Minister can revisit your protection finding. If the Minister makes a decision that you no longer have a protection finding, you will have the right to seek review of this decision at the Administrative Review Tribunal.

New laws relating to Ministerial Intervention requests

It is still law that unlawful non-citizens must be removed as soon as reasonably practicable, even if you have lodged a Ministerial Intervention request.^[10] However, if the Minister decides to consider your request, then the duty to remove you is **temporarily suspended**.^[11]

During the suspension period, you **cannot** be removed from Australia, however this doesn't prevent other action being taken to prepare you to be removed from Australia.^[12] For example, the Government could apply for a travel document on your behalf.

The suspension period will ordinarily be six months, starting from the day that the Minister decides to consider whether to exercise their power to intervene unless during the six month period, you and the Minister agree in writing to a later end date.^[13]

In certain circumstances, the suspension period can end earlier. The suspension period will finish at the end of the day if the Minister does any of the following:

- decides not to exercise their power to intervene;^[14]
- decides to stop considering whether to exercise their power to intervene,^[15] or exercises their power to intervene, but the intervention does not enable you to make a visa application.^[16]

If the Minister intervenes to allow you to make a visa application within a specified time period, then the suspension period will end on the last day that the visa application can be made.^[17]

If you are holding a **Bridging Visa E** on the basis of a **judicial review matter**, you are unlikely to be affected by these new laws.

If you are a transitory person

If you are a **transitory person**, i.e. you were transferred to Australia from PNG or Nauru for medical treatment, the Government may take steps to remove you to a third country.

At this time, we do not know which foreign countries the Government is thinking of entering into arrangements with and we do not know have any timeframe for when this could occur.

If you are holding a permanent Australian visa

You are unlikely to be impacted by these new laws.

WHAT DOES THIS MEAN FOR MY FAMILY OVERSEAS?

At this time, we do not know which countries the government will include in the entry ban or when any ban will start. It is likely that countries that do not accept involuntary removals (i.e. do not accept return of its citizens who do not want to return) may be included.

If a visa application is made by a citizen of a banned country, it will be deemed invalid.^[18] The Minister has the power to lift the bar and enable invalid applicants the opportunity to re-lodge a visa application even though they are from a “banned” country.

The entry ban does not apply if the person applying for the visa:

- Is a dual national (holding citizenship of another country in addition to the banned country);
- Is the spouse, de facto partner or dependent child of an Australian citizen, permanent visa holder or person who is usually resident in Australia;
- Is the parent of a child in Australia under 18 years old; or
- Is applying for a Refugee and Humanitarian (Class XB) visa.

The Minister has the power to allow other groups of people to enter Australia despite the entry ban.

WHERE CAN I GET LEGAL HELP?

It is important that you get advice from ethical and reputable sources. You may contact the organisations below for free legal assistance, noting that you may need to wait until the new year to speak with a lawyer as organisations will have limited capacity at the end of December and start of January.

Organisation	Who can they assist?	Contact details
Asylum Seeker Resource Centre	<p>If you:</p> <ul style="list-style-type: none"> • are in immigration detention in Australia; OR • live in the community in Victoria; OR <ul style="list-style-type: none"> • were recently released from detention into the community in Queensland or Western Australia; AND • fear harm on return to your country of birth. 	<p>Email: legal@asrc.org.au. Please note we will only respond to email requests from people who are in detention.</p> <p>Phone or drop-in:</p> <ul style="list-style-type: none"> • Hours: Monday, Tuesday, Thursday and Friday from 10am – 12.30pm (closed on Wednesdays) • Phone: (03) 9274 9889 • Address: 214-218 Nicholson Street, Footscray VIC 3011
Refugee Advice Casework Service (RACS)	<p>If you:</p> <ul style="list-style-type: none"> • live in the community in New South Wales or the Northern Territory; OR • are detained at Yongah Hill Immigration Detention Centre. 	<p>Email: admin@racs.org.au</p>
Refugee Legal	<p>If you:</p> <ul style="list-style-type: none"> • are in immigration detention; OR • live in the community in Victoria, South Australia and the Northern Territory. 	<p>Email: admin@refugeelaw.org.au</p>

The Human Rights Law Program is a service provided by ASRC ABN 64 114 965 815
Incorporation Number: A0042918

Legal Aid NSW	<p>If you:</p> <ul style="list-style-type: none"> • are in New South Wales (detention or in the community); OR • are in detention and were living in New South Wales before being detained. 	<p>Phone: (02) 9219 5790</p>
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WHERE CAN I GET OTHER SUPPORT?

Government-funded service providers are providing limited support to people who have been recently released, including organising temporary housing and assisting them to apply for Medicare (to access healthcare) and Centrelink. You will also be eligible for short-term SRSS (Status Resolution Support Services).

You can contact the service providers below to find out what assistance they can provide.

If you already have a caseworker, it is recommended that you contact them directly on the contact details they have provided.

Organisation	Contact details
Life Without Barriers	Email: info@lwb.org.au Phone: <ul style="list-style-type: none">• Sunshine (VIC) office: (03) 9245 2701• Dandenong (VIC) office: (03) 8752 8500• After hours for emergencies (5pm to 9am): 1800 861 862
Settlement Services International (SSI)	Email: srss.intake@ssi.org.au Phone: <ul style="list-style-type: none">• Monday to Friday: (02) 9685 0100• After hours for emergencies (weekdays 5pm to 9am & weekends): (02) 1800 774 142
Lifeline	Phone: 13 11 14 (available 24/7); Chat/text online: https://www.lifeline.org.au/
Beyond Blue	Phone: 1300 22 4636 (available 24/7) Chat online: https://www.beyondblue.org.au/get-support/talk-to-a-counsellor/chat

[1] *Migration Act 1958* (Cth), s 198AHB.

[2] *Migration Act 1958* (Cth), s 197D.

[3] “*Removal pathway non-citizen*” is a new term defined in s 5(1) of the *Migration Act 1958* (Cth).

[4] *Migration Act 1958* (Cth), s 199C.

[5] *Migration Act 1958* (Cth), s 199E.

[6] *Migration Act 1958* (Cth), s 199E(4).

[7] *Migration Act 1958* (Cth), s 76E(4)(b).

[8] *Migration Act 1958* (Cth), s 199F; 199G.

[9] *Migration Act 1958* (Cth), section 76AAA.

[10] *Migration Act 1958* (Cth) s 197E (1),(2). See also 198.

[11] *Migration Act 1958* (Cth) s 197E (5).

[12] *Migration Act 1958* (Cth) s 197E (10).

[13] *Migration Act 1958* (Cth) s 197E (6)(a).

[14] *Migration Act 1958* (Cth) s 197E.

[15] *Migration Act 1958* (Cth) s 197E.

[16] *Migration Act 1958* (Cth) s 197E

[17] *Migration Act 1958* (Cth) s 197E (6)(a).

[18] *Migration Act 1958* (Cth), s 199G(1).