SERIOUS OFFENDER REMOVAL PRIORITY AND PROPORTIONATE CHARACTER DECISIONS POLICY 2026 — CSPC-P 2026/01

Serious offenders first. Sentence length is a trigger, not proof of equivalent harm. Exile of a long-term resident must not strip rights Australia has ratified.

Companion instruments: Migration Amendment (Serious Offender Removal Priority and Proportionate Character Decisions) Bill 2026 and Explanatory Memorandum EM-CSPC 2026/01. Receiving-country annex CSPC-A 2026/01. 21 September 2026.

1 Policy statement

Australia's migration character and removal system must protect the community from people who present the greatest risk of serious harm. Grave sexual, child-sex, violent, family-violence, terrorism, trafficking, slavery, torture, genocide and comparable offending must receive the highest priority for visa cancellation, risk assessment, case management and lawful removal.

The system must also distinguish genuine community-protection risk from the blunt operation of a sentencing threshold. A sentence of 12 months or more can activate character consequences. Sentence length alone does not establish that every offence involved the same harm, motive, victim impact or present danger. Decisions concerning long-term permanent residents whose proven offending was non-violent and non-sexual must be individualised, evidence-based and proportionate.

This policy gives effect to a statutory seriousness hierarchy. It strengthens action against the highest-risk offenders, directs limited removal resources towards those cases first, and creates a defined proportionality pathway for qualifying lower-risk long-term residents. It does not create an amnesty. It does not weaken the character test. It does not authorise exile that would take rights Australia has ratified.

This paper is the single parent of the Migration Amendment (Serious Offender Removal Priority and Proportionate Character Decisions) Bill 2026. That Bill amends the Migration Act 1958. Departments administering that Act are to apply this paper until the companion Act commences and, after commencement, consistently with it.

This instrument is operative Commonwealth policy. The companion Bill gives it legal effect.

2 Purpose

The purpose of this policy is to establish a clear national framework for the administration of character cancellation, revocation and removal powers under the Migration Act 1958. It is designed to ensure that:

2.1 serious sexual and violent offenders are identified and progressed as a priority;

2.2 child protection and community safety remain the first considerations in high-risk cases;

2.3 proven offending is assessed according to its actual conduct and consequences, not sentence length alone;

2.4 long-term lawful residence is considered where the offending is non-violent and non-sexual and current serious-harm risk is not established;

2.5 protective or humanitarian context is considered where material supports it, without re-litigating a conviction;

2.6 human rights Australia has ratified are assessed before a long-term resident is refused revocation or removed;

2.7 decision-makers provide reasons that show how seriousness, current risk, receiving-country conditions and proportionality were assessed; and

2.8 Parliament and the public receive reliable, de-identified information about cancellation, revocation and removal outcomes.

3 Scope

This policy applies to visa refusal, visa cancellation, mandatory cancellation, ministerial intervention, revocation of mandatory cancellation, unlawful non-citizen removal and related case-management functions where the person's criminal history is relevant to character or community protection. It applies to decision-makers, delegates, case officers, Australian Border Force officers and any other Commonwealth official implementing the framework.

This policy does not override a court conviction, a protection finding, the statutory prohibition on removal to a country where the person faces the relevant harm, judicial review, merits review, constitutional limits or any other mandatory requirement of Australian law.

4 Core principles

4.1 Community protection first where the proven conduct demonstrates grave sexual, child-sex or violent harm.

4.2 The character threshold is a legal trigger. It is not a substitute for assessing what the person actually did.

4.3 Present risk must be assessed separately from the fact of conviction and separately from the length of sentence.

4.4 Permanent exclusion must be justified by the seriousness of the conduct, current risk, national interest and the practical consequences of removal.

4.5 Sexual or serious physical harm to a child, predatory conduct, exploitation and sustained family violence require heightened protection weighting.

4.6 Operational urgency does not authorise unlawful removal, indefinite detention, disregard of protection restrictions or denial of procedural fairness.

4.7 A character decision that would exile a long-term resident must assess the instruments Australia has ratified.

5 Statutory seriousness hierarchy

All character and removal decisions must distinguish three categories. The categories are not interchangeable and must not be collapsed into a single measure based only on the length of the sentence.

5.1 Priority community protection offences

The highest category consists of offences that directly demonstrate grave sexual, child-sex or violent harm, or an equivalent threat. It includes a sexually based offence involving a child; rape, sexual penetration without consent, aggravated sexual assault or an attempt; murder or manslaughter; an offence punishable by imprisonment for 10 years or more where the conduct caused, intended to cause or threatened death or serious physical injury; family-violence offending involving sexual violence, strangulation, kidnapping, serious physical injury or a sustained course of comparable violence; terrorism, slavery, trafficking in persons, torture or genocide; and any prescribed offence that necessarily involves grave violence, sexual offending or direct harm of comparable seriousness.

An offence is not placed in this category merely because it attracted a long sentence, generated media attention, was politically controversial or formed part of a substantial criminal record.

To avoid doubt, none of the following is, by itself, a priority community protection offence: an offence of publishing an account of proceedings; an offence of using a carriage service in a way that is menacing, harassing or offensive; an offence against the administration of justice that did not involve violence, a threat of violence or sexual conduct; or an offence of assisting a parent or family member in a family-law dispute where the conduct was non-violent and non-sexual. That is the rule in section 501P(4) of the companion Bill.

5.2 Other serious criminal conduct

Serious offending that can establish a character concern but does not meet the definition of a priority community protection offence. It must be assessed on the actual facts.

5.3 Non-violent and non-sexual offending

Offending that did not involve sexual conduct, physical violence, a threat of physical violence or sexual or serious physical victimisation of a child. It remains relevant to character. It must not be treated as equivalent to grave sexual or violent offending solely because the sentence reached or exceeded 12 months.

6 Visa cancellation and character decisions

6.1 Mandatory cancellation for priority offences

Where a court in Australia has convicted a person of a priority community protection offence, the conviction remains in force and the person is serving a full-time custodial sentence, the visa must be cancelled whether or not the sentence is 12 months or more. The rule does not narrow existing powers.

6.2 Current risk and proportionality

Every revocation or intervention decision must separately identify the seriousness category; the nature, circumstances and actual harm of the offending; whether violence, a threat of violence or sexual conduct was involved; the current risk of reoffending and, separately, the current risk of serious violent or sexual harm; the time since the offending; rehabilitation and sentence compliance where relevant to future risk; age on arrival and length of lawful residence; ties to Australia including adult children, grandchildren, a partner and carers; the best interests of any affected child including a grandchild; the practical consequences of removal including housing, income, health care and disability support in the receiving country; whether the conduct involved personal gain, exploitation, domination or predatory purpose; protective context where section 6.4 applies; and the human-rights and receiving-country matters in Parts 10 and 11.

Generalised community expectations must not replace that assessment. Where sentence length materially affects the outcome the reasons must explain why it is probative of present risk beyond satisfying the statutory threshold.

6.3 Long-term low-risk resident presumption

A rebuttable presumption in favour of revocation applies where the person held a permanent visa, had ordinarily and lawfully resided in Australia for at least 10 years, was cancelled on a substantial-criminal-record ground rather than a child-sex ground, committed non-violent and non-sexual offending, has not been convicted of a priority community protection offence, the conduct did not involve sexual or serious physical harm to a child, and current evidence does not establish an unacceptable risk of serious violent or sexual harm.

The presumption can be displaced only by substantial current evidence of unacceptable serious harm or by a compelling national-interest reason. In deciding whether it is displaced the decision-maker must apply sections 501S, 501SA, 501SB, 501RC, 501SD and 501SE of the companion Bill.

6.4 Protective or humanitarian context

Where the relevant offending was non-violent and non-sexual and material supports a contention that the person believed they were attempting to protect a child or vulnerable person from serious harm, including sexual harm, the decision-maker must consider that context when assessing motive, predation, present risk, rehabilitation and proportionality. This does not authorise a decision-maker to disregard, overturn or re-litigate a conviction. It does not apply to offending involving sexual abuse, violence or exploitation of the child or vulnerable person.

6.5 Priority offender revocation rule

Where a person has been convicted of a priority community protection offence and the conviction remains in force, protection of the Australian community receives paramount weight. Revocation is restricted to cases in which the person passes the character test, the conviction has been quashed, set aside or shown not to relate to the person, or the Minister personally determines that exceptional and compelling circumstances make revocation necessary in the national interest and gives written reasons tabled within 15 sitting days. The rule does not authorise removal contrary to section 501SA.

6.6 Written reasons

Written reasons must identify the statutory seriousness category, current-risk findings, whether the long-term resident presumption or priority offender rule applies, the findings under sections 501SA, 501SB, 501RC, 501SD and 501SE, the material proportionality factors and the explanation for any material reliance on sentence length. A general reference to a ministerial direction does not cure a failure to consider a mandatory matter.

7 Removal priority and case management

7.1 Subject to lawful removability, the Department and Australian Border Force must give the highest operational priority to unlawful non-citizens convicted of priority community protection offences.

7.2 Resources must ordinarily be progressed in this order: priority community protection offence cases first; other serious criminal cases second; non-violent and non-sexual criminal cases after the higher-risk categories.

7.3 The completion of lower-priority removals must not be treated as a substitute for reasonably progressing removable high-risk cases.

7.4 Operational priority must operate within the Migration Act 1958, protection findings, non-refoulement obligations, section 501SA, judicial orders, receiving-country requirements and the constitutional limits on detention, including NZYQ v Minister for Immigration [2023] HCA 37.

8 Transitional reconsideration

A one-time transitional pathway must be available for qualifying existing cases in which a permanent visa holder with at least 10 years of lawful residence was cancelled before commencement, remains in Australia, was cancelled on a substantial-criminal-record ground rather than a child-sex ground, committed non-violent and non-sexual offending, and has not been convicted of a priority community protection offence.

An eligible person may apply within 90 days after commencement. A late application may be accepted where exceptional circumstances prevented a timely application. Age, disability, detention or want of legal advice may amount to exceptional circumstances. Eligibility is not removed merely because an earlier revocation request was refused, an earlier merits review was unsuccessful or judicial review has concluded.

A timely application must prevent removal while undecided unless the Minister personally certifies an immediate and unacceptable risk of serious violent or sexual harm or a national-security risk. The application must be decided by the Minister personally or by a Senior Executive Service officer who was not the original decision-maker, applying sections 501SA to 501SE, within 60 days wherever reasonably practicable.

9 Governance

9.1 Within 60 days after commencement the Minister must issue a replacement direction under section 499 consistent with Division 2A of Part 9. The direction must not treat all substantial-criminal-record cases as equivalent, equate non-violent and non-sexual offending with priority offending solely because of sentence length, prevent application of the long-term resident presumption, or direct a decision-maker to ignore sections 501SA to 501SE.

9.2 Within 120 days the Secretary must audit unresolved priority community protection offence cases, including those subject to a restriction under section 501SA, and establish the first serious offender removal priority list under section 197F.

9.3 After each financial year the Secretary must prepare a de-identified report, by seriousness category, on cancellations, revocations, completed removals, median times, unresolved priority cases and the reason, section 501R outcomes, cases in which section 501SA prevented removal, long-term residents removed after 10 years or more, and personal ministerial interventions. The Minister must table the report within 15 sitting days.

10 Human rights

The policy advances the legitimate objective of protecting people in Australia from serious criminal harm while requiring the migration system to operate within Australian law and the instruments Australia has ratified. Every treaty is written out before any short name.

Liberty and security remain subject to statutory, constitutional and judicial limits, including NZYQ. Family includes adult children, grandchildren, a partner and carers. A foreign passport is not conclusive that the receiving country is still the person's own country. Nystrom v Australia, Human Rights Committee Communication No. 1557/2007, is the test. The absence of a lodged protection visa does not close the non-refoulement inquiry. A theoretical hospital is not disability support. A publication or carriage-service sentence must not be treated as equivalent to child-sex offending solely because it crossed 12 months.

11 Rights that removal of a long-term resident takes

Removal of a long-term permanent resident to a country of former nationality takes rights. The table is the operative list. The statute names no individual.

No.	Right taken by removal	Instrument and article	Bill clause
1	Right to enter one's own country after long lawful residence	International Covenant on Civil and Political Rights Art 12(4); Nystrom v Australia	s 501SD
2	Family life with adult children, partner, grandchildren and carers	International Covenant on Civil and Political Rights Arts 17 and 23	s 501RC
3	Best interests of a child or grandchild	Convention on the Rights of the Child Arts 3, 9, 12; International Covenant on Civil and Political Rights Art 24	s 501RC(3)
4	Home and private life built in Australia	International Covenant on Civil and Political Rights Art 17	ss 501RC and 501SD
5	Liberty after the criminal sentence ends	International Covenant on Civil and Political Rights Art 9; NZYQ	s 501SA(3)
6	Humane treatment of an older or disabled detainee	International Covenant on Civil and Political Rights Art 10; Convention on the Rights of Persons with Disabilities Arts 14–15	s 501SB
7	Life, and freedom from cruel treatment on return, including publicity-created harm	International Covenant on Civil and Political Rights Arts 6–7; Convention against Torture Arts 3 and 16	s 501SA(2)
8	Health care for existing injury and disability	International Covenant on Economic, Social and Cultural Rights Art 12; Convention on the Rights of Persons with Disabilities Art 25	s 501SB(2)
9	Independent living with disability	Convention on the Rights of Persons with Disabilities Arts 19, 28	s 501SB(3)
10	Equality — a publication sentence treated as child-sex offending	International Covenant on Civil and Political Rights Art 26	s 501P(4)
11	Expression that was the gist of the conviction	International Covenant on Civil and Political Rights Art 19	ss 501P(4), 501S
12	Expulsion only with law and review	International Covenant on Civil and Political Rights Art 13	ss 501CA, 501U; Sch 2

13	Fair hearing where disability or want of representation affected the trial	International Covenant on Civil and Political Rights Art 14; Convention on the Rights of Persons with Disabilities Art 13	s 501SB(4)
14	Non-refoulement even if no protection visa was lodged	Convention against Torture Art 3; Migration Act s 197C; Refugees Convention Art 33	s 501SA(4)
15	Australia as home after decades	International Covenant on Civil and Political Rights Art 12(4)	s 501SD(2)
16	Public identification on arrival	International Covenant on Civil and Political Rights Arts 7, 17	ss 501SA(2)(d), 501SE(2)(e)
17	Work, housing and an adequate standard of living	International Covenant on Economic, Social and Cultural Rights Arts 6, 9, 11	ss 501RC, 501SD
18	Culture, language and religion after long absence	International Covenant on Civil and Political Rights Arts 18 and 27	ss 501SD, 501SE
19	Veteran or service-related injury	Convention on the Rights of Persons with Disabilities Art 25	s 501SB(2)(e)
20	Receiving-country violent crime and racialised political speech	International Covenant on Civil and Political Rights Arts 6–7; Convention against Torture Art 3; International Convention on the Elimination of All Forms of Racial Discrimination Arts 2, 5 and 6	s 501SE

12 Receiving-country country information

A receiving-country assessment is an assessment of risk to the particular person. It is not a vote on the government of that country. Before non-revocation or removal of a long-term resident the decision-maker must consider current country information under section 501SE: the general rate of homicide and other serious violent crime; whether an older, isolated, disabled or publicly identified returnee faces an elevated risk; political speech, official policy or legislation that targets people by race, religion, language or political opinion, including land or property measures; whether a court, a competent international body or another country has recognised comparable protection claims; whether Australian publicity would follow the person; and the difference between a working-age person returning to family and property, and an older or disabled person returning with no housing, carer, income or treating doctor.

A statement by a foreign head of government is country information. It is not conclusive. A dispute about the word genocide does not authorise the decision-maker to ignore violent crime, farm or rural attacks, expropriation laws or racialised incitement that is relevant to the person. Membership of a racial or religious group is not, by itself, proof of risk. The absence of a genocide finding is not, by itself, proof of safety.

12.1 South Africa as a worked receiving-country example

Where the receiving country is South Africa the decision-maker must still do the individual assessment. Public country information that must be put on the file includes South Africa's homicide rate (more than 26,000 murders in 2024); farm and rural attacks (AfriForum recorded 184 farm attacks and 29 farm murders in 2025; older people are over-represented); the 21 May 2025 Oval Office exchange in which the President of the United States put persecution and farm-killing claims to President Ramaphosa, and the subsequent United States refugee pathway; and the Expropriation Act. Detail is in CSPC-A 2026/01.

This policy will not write into Australian law that every white Christian would be killed if returned to South Africa. That claim is too wide. This policy will not ignore violent crime, farm attacks, expropriation law, racialised incitement, or the fact that another liberal democracy has treated comparable claims as protection claims. The individual assessment is mandatory.

13 Legislative alignment

This policy corresponds to the Migration Amendment (Serious Offender Removal Priority and Proportionate Character Decisions) Bill 2026. The policy is to be read consistently with the Bill's amendments to sections 501, 499, 501BA and 501CA of the Migration Act 1958, proposed Division 2A of Part 9 (sections 501N to

501V), proposed section 197F and Schedule 2. Division 2A is inserted after section 501M. It is not Division 4 of Part 9.

14 Implementation and performance

On Royal Assent, commence the preliminary provisions. During the 28-day implementation period, update systems, templates and removal-priority procedures. Within 60 days issue the replacement ministerial direction. Within 90 days open the transitional reconsideration period. Within 120 days complete the first priority audit. After the first full year review the policy.

Performance must be measured by community-protection outcomes and decision quality rather than by the number of removals completed alone. A case must not be marked as resolved merely because a lower-priority removal was completed.

15 Sources

Migration Act 1958, Compilation No. 171, 4 June 2026. Direction No. 110. NZYQ v Minister for Immigration [2023] HCA 37. Nystrom v Australia, Human Rights Committee Communication No. 1557/2007. Human Rights (Parliamentary Scrutiny) Act 2011. International Covenant on Civil and Political Rights. International Covenant on Economic, Social and Cultural Rights. International Convention on the Elimination of All Forms of Racial Discrimination. Convention against Torture. Convention on the Rights of the Child. Convention on the Rights of Persons with Disabilities. Convention Relating to the Status of Refugees and the 1967 Protocol. Convention on the Prevention and Punishment of the Crime of Genocide. Oval Office meeting, 21 May 2025. Companion Bill; EM-CSPC 2026/01; CSPC-A 2026/01.