2025–2026

The Parliament of the Commonwealth of Australia
HOUSE OF REPRESENTATIVES

MIGRATION AMENDMENT
(SERIOUS OFFENDER REMOVAL PRIORITY AND PROPORTIONATE CHARACTER DECISIONS) BILL 2026

EXPLANATORY MEMORANDUM

(Circulated by authority of Alecomm (Australian Legislative Ethics Commission))

EM-CSPC 2026/01

General outline

Purpose

The Bill would amend the Migration Act 1958 to do four things. First, it would create a statutory seriousness hierarchy so that grave sexual, child-sex and violent offending is treated as the highest community-protection category. Second, it would require operational removal priority to follow that hierarchy. Third, it would create a rebuttable presumption of revocation for a narrow cohort of long-term permanent residents whose proven offending was non-violent and non-sexual and who do not present an unacceptable present risk of serious harm. Fourth, it would require human-rights and receiving-country assessment before a long-term resident is refused revocation or removed.

The Bill is the child of CSPC-P 2026/01. It does not create an amnesty. It does not weaken section 501 for grave sexual and violent offending. It stops a 12-month sentence being treated as proof that every offence is the same.

Parent policy

Serious Offender Removal Priority and Proportionate Character Decisions Policy 2026 — CSPC-P 2026/01. Receiving-country annex CSPC-A 2026/01.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

The Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The restrictive rules are tied to grave sexual, child-sex and violent offending. The new clauses increase individualised assessment for everyone else. Exile of a long-term resident is not an automatic consequence of a 12-month sentence.

Treaties written out

International Covenant on Civil and Political Rights — Articles 2, 6, 7, 9, 10, 12(4), 13, 14, 16, 17, 18, 19, 23, 24, 26 and 27. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment — Articles 3 and 16. International Convention on the Elimination of All Forms of Racial Discrimination — Articles 2, 5 and 6. Convention Relating to the Status of Refugees and the 1967 Protocol — Articles 1A(2) and 33(1). Convention on the Rights of the Child — Articles 2, 3, 9, 12, 16, 18 and 27. Convention on the Rights of Persons with Disabilities — Articles 5, 9, 10, 11, 12, 13, 14, 15, 17, 19, 25 and 28. International Covenant on Economic, Social and Cultural Rights — Articles 2, 6, 9, 10, 11 and 12. Convention on the Prevention and Punishment of the Crime of Genocide — Articles I and II, cited so a dispute about the word genocide cannot close a complementary-protection file.

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	International Covenant on Civil and Political	s 501SB(4)

	representation affected the trial	Rights Art 14; Convention on the Rights of Persons with Disabilities Art 13	
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

Notes on clauses

Section 501P(4)

Publishing an account of proceedings, a carriage-service offence, a non-violent administration-of-justice offence, or non-violent assistance in a family-law dispute is not a priority community protection offence merely because the sentence crossed 12 months.

Section 501R

Creates the long-term low-risk resident presumption. It is rebuttable. It is not an amnesty.

Section 501S

Protective context includes a belief that the person was protecting a child from sexual harm. The conviction stays on the record.

Section 501SA

Writes non-refoulement and complementary protection into the character decision, including harm created by Australian publicity.

Section 501SB

Age, health and disability, including service-related injury, must be assessed against the receiving country's actual capacity.

Section 501RC

Family includes adult children, grandchildren and carers.

Section 501SD

Implements Article 12(4) of the International Covenant on Civil and Political Rights. A passport is not conclusive of where home is.

Section 501SE

Requires current country information for the particular person. A statement by a foreign head of government — including the 21 May 2025 Oval Office exchange — is country information. It is not conclusive. A dispute about the word genocide does not authorise ignoring violent crime, farm or rural attacks, expropriation laws or racialised incitement that is relevant to the person.

Section 197F

Operational removal priority follows the statutory hierarchy. It does not authorise removal contrary to subsection 197C(3) or section 501SA.

Schedule 2

A 90-day transitional reconsideration for qualifying existing long-term residents. A timely application holds removal unless the Minister personally certifies an immediate violent or sexual risk or a national-security risk.

Financial impact

Modest administrative cost from the extra assessment. The Bill redirects existing resources.

Sources

CSPC-P 2026/01. CSPC-A 2026/01. Migration Act 1958 Compilation No. 171, 4 June 2026. Direction No. 110. NZYQ [2023] HCA 37. Nystrom v Australia. Human Rights (Parliamentary Scrutiny) Act 2011.