2025–2026

The Parliament of the Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

MIGRATION AMENDMENT

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

No. , 2026

(Home Affairs)

A Bill for an Act to amend the Migration Act 1958 to prioritise the cancellation and lawful removal of serious sexual and violent offenders, to require proportionate character decisions for long-term low-risk residents whose offending is non-violent and non-sexual, to require human-rights and receiving-country assessment before exile of a long-term resident, and for related purposes

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The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act is the Migration Amendment (Serious Offender Removal Priority and Proportionate Character Decisions) Act 2026.

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.

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.	
2. Schedules 1 and 2	The 28th day after this Act receives the Royal Assent.	

(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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Serious offender priority and proportionate character decisions

Migration Act 1958

1 After paragraph 501(6)(e)

Insert:

(ea) the person has been convicted by a court in Australia or a foreign country of a priority community protection offence and the conviction has not been quashed or set aside; or

2 After subsection 501(3A)

Insert:

501(3AA) Mandatory cancellation — priority community protection offences

(1) The Minister must cancel a visa that has been granted to a person if:

(a) a court in Australia has convicted the person of a priority community protection offence; and

(b) the conviction has not been quashed or set aside; and

(c) the person is serving a sentence of imprisonment, on a full-time basis in a custodial institution, for that offence.

(2) Subsection (1) applies whether or not the sentence imposed for the priority community protection offence is 12 months or more.

(3) Subsection (1) does not limit subsection (2), (3) or (3A).

(4) In this subsection, priority community protection offence has the meaning given by section 501P.

3 After section 501M

Insert:

Division 2A — Serious offender priority and proportionate character decisions

501N Definitions

In this Division:

long-term resident means a non-citizen who, immediately before the relevant cancellation, held a permanent visa and had ordinarily and lawfully resided in Australia for a continuous or substantially continuous period of at least 10 years.

non-violent and non-sexual offence means an offence the conduct constituting which did not involve sexual conduct, physical violence, a threat of physical violence, or the sexual or serious physical victimisation of a child.

own-country connection means the connection described in section 501SD.

priority community protection offence means an offence described in section 501P.

receiving country means the country to which the person would be removed if the original cancellation is not revoked.

501P Meaning of priority community protection offence

(1) An offence is a priority community protection offence if it is:

(a) a sexually based offence involving a child within the meaning of paragraph 501(6)(e);

(b) rape, sexual penetration without consent, aggravated sexual assault, or an attempt to commit such an offence;

(c) murder or manslaughter;

(d) an offence punishable by imprisonment for 10 years or more where the conduct caused, intended to cause, or threatened death or serious physical injury;

(e) a family-violence offence involving sexual violence, strangulation, kidnapping, serious physical injury, or a sustained course of violence of comparable gravity;

(f) an offence involving terrorism, slavery, trafficking in persons, torture or genocide; or

(g) an offence prescribed by the regulations for the purposes of this paragraph where the offence necessarily involves grave violence, sexual offending or direct harm of comparable seriousness.

(2) Regulations made for the purposes of paragraph (1)(g) must not prescribe an offence merely because of the maximum penalty, the sentence imposed, political controversy, media attention or the fact that the offence is otherwise a serious offence.

(3) To avoid doubt, an offence is not a priority community protection offence merely because the person has a substantial criminal record within the meaning of subsection 501(7).

(4) To avoid doubt, none of the following is, by itself, a priority community protection offence:

(a) an offence of publishing an account of proceedings;

(b) an offence of using a carriage service in a way that is menacing, harassing or offensive;

(c) an offence against the administration of justice that did not involve violence, a threat of violence or sexual conduct;

(d) an offence of assisting a parent or family member in a family-law dispute where the conduct was non-violent and non-sexual.

501Q Statutory seriousness hierarchy

(1) In exercising a power under section 501, 501A, 501B, 501BA or 501CA, the decision-maker must distinguish between a priority community protection offence, other serious criminal conduct, and non-violent and non-sexual offending.

(2) Priority community protection offences are to be treated as the highest category of criminal seriousness for the purposes of community protection, subject to the actual facts of the offence and any greater national-security concern.

(3) A sentence of imprisonment of 12 months or more is capable of establishing a character-test ground but does not, by itself, establish that the underlying conduct is equivalent in seriousness to a priority community protection offence.

(4) A decision-maker must not treat a non-violent and non-sexual offence as equivalent to a priority community protection offence solely because of sentence length.

501R Long-term low-risk resident presumption

(1) This section applies to a person seeking revocation under subsection 501CA(4) if the person is a long-term resident; the mandatory cancellation arose from a substantial-criminal-record ground and not from a sexually based offence involving a child; the relevant offending was non-violent and non-sexual; the person has not been convicted of a priority community protection offence; the relevant conduct did not involve sexual or serious physical harm to a child; and current evidence does not establish that the person presents an unacceptable risk of serious violent or sexual harm to the Australian community.

(2) If this section applies, there is a rebuttable presumption that there is another reason why the original decision should be revoked for the purposes of subparagraph 501CA(4)(b)(ii).

(3) The presumption in subsection (2) may be displaced only if the decision-maker is satisfied, on substantial current evidence, that the person presents an unacceptable present risk of serious harm to the

Australian community, or there is a compelling national-interest reason why the original decision should not be revoked.

(4) In deciding whether the presumption is displaced, the decision-maker must apply sections 501S, 501SA, 501SB, 501RC, 501SD and 501SE.

501S Protective or humanitarian context in non-violent cases

(1) This section applies only where the relevant offending was non-violent and non-sexual.

(2) If the person contends, and there is material capable of supporting the contention, that the offending occurred in a context in which 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, whether the conduct was predatory, present risk, rehabilitation and proportionality.

(3) Nothing in this section authorises a decision-maker to disregard, overturn or re-litigate a conviction or finding of guilt.

(4) This section does not apply to offending by the person involving sexual abuse, violence or exploitation of the child or vulnerable person.

501SA Human rights that must be considered before non-revocation or removal

(1) This section applies to a decision under subsection 501CA(4), a decision under Schedule 2 to the Migration Amendment (Serious Offender Removal Priority and Proportionate Character Decisions) Act 2026, and the administration of section 198 in relation to a person whose visa was cancelled on a character ground.

(2) The decision-maker must not refuse to revoke a cancellation, and an officer must not remove the person, if there are substantial grounds for believing that, as a necessary and foreseeable consequence of removal, the person would face a real risk of arbitrary deprivation of life; a real risk of torture or cruel, inhuman or degrading treatment or punishment; a real risk of being returned onward to a place where those risks would arise; or a real risk of serious harm arising from public identification, media exposure, stigma or destitution in the receiving country because of the Australian proceedings.

(3) Immigration detention after the end of a criminal sentence may continue only while there is a real prospect of removal becoming practicable in the reasonably foreseeable future and the detention continues to serve a legitimate non-punitive purpose.

(4) If material before the decision-maker raises a claim that engages Australia's protection obligations, removal must not proceed until that claim has been assessed under this Act.

(5) This section does not displace subsection 197C(3) or authorise removal contrary to a protection finding.

501SB Age, health and disability

(1) Before deciding not to revoke a cancellation, or before removing a long-term resident, the decision-maker must assess the person's age, physical health, mental health and any disability.

(2) The assessment must include whether the person can in fact obtain, in the receiving country, the medical treatment and rehabilitation required for existing conditions; hearing impairment, mobility impairment, chronic pain, acquired brain or blast injury, and trauma-related illness; the effect of a long-haul removal and of immigration detention on those conditions; whether the person has a carer, accessible housing and a means of communication in the receiving country; and any service-related injury, including injury from military service.

(3) If the person has a disability, removal must not proceed unless the decision-maker is satisfied that the receiving country will, in fact, provide the support required for the person to live with dignity. A theoretical entitlement in the law of that country is not sufficient.

(4) A want of legal representation at the criminal trial, or a disability that affected the person's participation in that trial, does not reopen the conviction. It is relevant to present risk and to whether permanent exile is proportionate.

501RC Family, home and children

(1) Family, for this Division, includes a partner, a child of any age, a grandchild, a person who is in a genuine carer relationship with the person, and any other person whose family life with the person would be broken by removal.

(2) The decision-maker must consider the strength of family life in Australia, whether family members are citizens or permanent residents, whether they can reasonably relocate, the best interests of any child or grandchild, the views of a child capable of forming them, and the loss of home, work, community and medical continuity.

(3) The best interests of a child are not served by the removal of a parent, grandparent or carer merely because that person was sentenced to 12 months or more for a non-violent and non-sexual offence.

(4) An interference with family or home must be necessary to protect the Australian community from a present unacceptable risk of serious harm, or justified by a compelling national-interest reason stated in writing.

501SD Own-country connection

(1) The decision-maker must consider whether Australia is, in substance, the person's own country for the purposes of Article 12(4) of the International Covenant on Civil and Political Rights.

(2) Foreign nationality or a right to enter the receiving country is not conclusive. The decision-maker must consider age on arrival, length of lawful residence, whether the person's adult life, work, family and medical care have been in Australia, whether the person has effective family, housing and support in the receiving country, language and social ties in each country, and the time since the person last lived in the receiving country.

(3) If Australia is the person's own country in substance, removal is a deprivation of the right to enter that country and must not be arbitrary. A 12-month sentence for a non-violent and non-sexual offence is not, by itself, a sufficient reason for that deprivation.

501SE Receiving-country country information

(1) Before deciding not to revoke a cancellation of a long-term resident, or before removing such a person, the decision-maker must consider current country information about the receiving country. The assessment is of risk to the particular person. It is not a political finding about the government of that country.

(2) The matters that must be considered include the general rate of homicide and other serious violent crime; whether an older, isolated, disabled or publicly identified returnee faces an elevated risk of violent crime, destitution or denial of medical care; 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 protection or refugee claims by people in a comparable situation, and the reasons given; whether Australian or foreign publicity about the person would follow the person into the receiving country and create a real risk of harm, stigma or destitution; 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.

(3) A statement by a foreign head of government, including a statement that a racial or religious group is being persecuted, is country information. It is not conclusive and it does not bind an Australian decision-maker.

(4) A dispute about whether the word genocide is accurate does not authorise the decision-maker to ignore violent crime, farm or rural attacks, expropriation laws, or racialised political incitement that is relevant to the particular person.

(5) The decision-maker must not treat membership of a racial or religious group as, by itself, proof of a real risk to the person. The decision-maker must also not treat the absence of a finding of genocide as proof that the person faces no real risk.

(6) If, after that assessment, there are substantial grounds for the belief in subsection 501SA(2), the person must not be removed.

501T Priority offender revocation rule

(1) If the person has been convicted of a priority community protection offence and the conviction remains in force, the decision-maker must give paramount weight to protection of the Australian community.

(2) The Minister or a delegate must not revoke a cancellation under subsection 501CA(4) in relation to a priority community protection offence unless satisfied that the person passes the character test, or 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.

(3) A determination under subsection (2) must be tabled in each House within 15 sitting days.

(4) Subsection (2) does not authorise removal contrary to section 501SA.

501U Written reasons and consistency

(1) Written reasons for a decision under subsection 501CA(4) must identify the statutory seriousness category, the current-risk findings, whether section 501R or 501T applies, the findings under sections 501SA, 501SB, 501RC, 501SD and 501SE, the material proportionality factors, and, where sentence length materially affected the decision, why that sentence is probative of present risk beyond the character-test threshold.

(2) A failure to consider a mandatory matter in this Division is not cured merely by referring generally to a direction under section 499.

501V Annual character and removal outcomes report

(1) As soon as practicable after the end of each financial year, the Secretary must prepare a de-identified report on the operation of sections 501 to 501U.

(2) The report must include, by statutory seriousness category, 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 to a country of former nationality after 10 years or more, and personal Ministerial interventions in priority cases.

(3) The Minister must cause the report to be tabled in each House within 15 sitting days after receiving it.

4 After subsection 499(2A)

Insert:

(2B) A direction under this section concerning the exercise of a power under section 501, 501A, 501B, 501BA or 501CA must be consistent with Division 2A of Part 9.

(2C) Without limiting subsection (2B), a direction must not treat all substantial-criminal-record cases as equivalent in seriousness, treat a non-violent and non-sexual offence as equivalent to a priority community protection offence solely because of sentence length, prevent a decision-maker from applying the presumption in section 501R, or direct a decision-maker to ignore sections 501SA to 501SE.

5 After section 197E

Insert:

197F Serious offender removal priority

(1) This section applies to the administration of section 198 and to operational steps taken for the purpose of making removal under that section reasonably practicable.

(2) Subject to law, urgent individual circumstances and practical removability, the Secretary and the Australian Border Force Commissioner must give the highest operational priority to removal of an unlawful non-citizen who has been convicted of a priority community protection offence.

(3) In allocating removal resources, the Department must ordinarily progress priority community protection cases first, other serious criminal cases second, and non-violent and non-sexual criminal cases after those.

(4) Subsection (3) does not delay an immediately available lawful removal that would not impede a higher-priority case, give a lower-priority person a right to remain, require removal contrary to subsection 197C(3) or section 501SA, or authorise detention beyond the limits of the Constitution.

6 Subsection 501BA(1)

After “subsection 501(3A)”, insert “or subsection 501(3AA)”.

7 After subparagraph 501BA(2)(a)(ii)

Insert:

(iii) paragraph 501(6)(ea) (priority community protection offence); or

8 Section 501CA (heading)

Omit “subsection 501(3A)”, substitute “subsection 501(3A) or (3AA)”.

9 Subsection 501CA(1)

After “under subsection 501(3A)”, insert “or subsection 501(3AA)”.

10 Subsection 501CA(4)

After “The Minister may revoke the original decision if”, insert “, subject to Division 2A of this Part,”.

Schedule 2—Application, saving and transitional provisions

1 Definitions

commencement day means the day Schedule 1 commences.

eligible existing person means a non-citizen whose visa was cancelled under subsection 501(3A) of the Migration Act 1958 before commencement day, whose removal from Australia has not been completed, and who satisfies item 2.

2 Eligibility for transitional proportionality reconsideration

A person is an eligible existing person if the person was a permanent visa holder immediately before the cancellation, had ordinarily and lawfully resided in Australia for at least 10 years, the cancellation was based on a substantial-criminal-record ground and not on a sexually based offence involving a child, the relevant offending was non-violent and non-sexual, the person has not been convicted of a priority community protection offence, and the person is in Australia on commencement day. A person is not ineligible merely because an earlier request for revocation was refused, an earlier merits review was unsuccessful, or a judicial review proceeding has concluded.

3 Application period

An eligible existing person may apply to the Minister for transitional proportionality reconsideration within 90 days after commencement day. The Minister may accept a late application if satisfied that exceptional circumstances prevented a timely application. Age, disability, detention or want of legal advice may amount to exceptional circumstances.

4 Effect of timely application on removal

Subject to a personal Ministerial certificate of an immediate and unacceptable risk of serious violent or sexual harm or a national-security risk, an officer must not remove a person from Australia under section 198 while a timely reconsideration application remains undecided.

5 Decision on reconsideration

A reconsideration application must be decided by a person occupying a Senior Executive Service position, or by the Minister personally. A delegate who made the original non-revocation decision must not decide the reconsideration application. The decision-maker must apply sections 501Q, 501R, 501S, 501SA, 501SB, 501RC, 501SD and 501SE as if the reconsideration were a decision under subsection 501CA(4). If section 501R applies and its presumption is not displaced, the decision-maker must revoke the original cancellation. The decision-maker must refuse to allow removal if section 501SA applies.

6 Effect of revocation

If the original cancellation is revoked under item 5, the cancellation is taken not to have been made, subject to any consequential visa-status rules prescribed by regulation.

7 Review

A decision by a delegate under item 5 not to revoke is reviewable by the Administrative Review Tribunal so far as practicable as a delegate’s subsection 501CA(4) non-revocation. Nothing in this Schedule limits judicial review under section 75(v) of the Constitution.

8 Replacement Ministerial direction

Within 60 days after commencement day the Minister must issue a section 499 direction consistent with Division 2A. Until then an existing direction applies only to the extent it is not inconsistent with the amended Act.

9 First priority audit

Within 120 days the Secretary must audit unresolved priority community protection cases, coded by legal or practical obstacle including a restriction under section 501SA, and use the audit to establish the first serious offender removal priority list under section 197F.