



Department of Home Affairs supplementary submission to the Review into the Migration Amendment (Clarifying International Obligations for Removal) Act 2021

The Parliamentary Joint Committee on Intelligence and Security

2 March 2026

Supplementary submission

The Department of Home Affairs (the Department) welcomes the opportunity to provide a supplementary submission to the Parliamentary Joint Committee on Intelligence and Security's (the Committee) review of the *Migration Amendment (Clarifying International Obligations for Removal) Act 2021* (the CIOR Act).

The Department thanks the Committee for the request for updated information and provides the responses below:

1. *The Committee requests that the Department of Home Affairs provide the following information in relation to each instance in which the Minister, or their delegate, has made a decision under subsection 197D(2) of the Migration Act 1958 (the Act) in relation to an individual:*

As at 20 February 2026, a decision under subsection 197D(2) of the Act, finding that the person is no longer a person in respect of whom any protection finding within the meaning of subsection 197C(4), (5), (6) or (7) would be made, has been made in relation to eight persons. Due to the relatively small number of decisions, some of the questions cannot be answered individually as providing that level of information may lead to the person being identifiable in breach of the *Privacy Act*.

- a) *Details of the individual concerned, including age and nationality*

The eight persons who have had a decision made under subsection 197D(2) of the Act range in age from 35 to 50 years of age and are nationals of Iran, Pakistan, Sri Lanka, Tonga and Zimbabwe.

- b) *The year in which the individual arrived in Australia*

The eight persons first arrived in Australia between December 2007 and July 2012.

- c) *The country in relation to which a protection finding was previously made regarding the individual*

The eight persons previous protection findings were made against Iran, Pakistan, Sri Lanka, Tonga and Zimbabwe.

- d) *Whether a protection visa has been refused, granted and/or cancelled in relation to the individual*

The eight persons either had their Protection visa refused under section 501 of the Act or were granted a Protection visa that was subsequently cancelled under section 109 or 501 of the Act.

- e) *The circumstances which led to the individual being placed in immigration detention (if applicable)*

These eight persons spent time in immigration detention under section 189 of the Act as they were unlawful non-citizens either having been refused a visa or having a visa cancelled.

- f) *The amount of time that the individual has spent in immigration detention (if applicable)*

These eight persons spent from 421 to 3467 days in immigration detention under section 189 of the Act.

- g) *Details of the circumstances leading to the decision being made under subsection 197D(2) of the Migration Act 1958 that the individual is no longer a person in respect of whom any protection finding would be made*

For a subsection 197D(2) assessment to commence, the person must:

- either be an unlawful non-citizen or a removal pathway non-citizen as per paragraph (b), (c) or (d) of the definition of that expression in subsection 5(1) of the Act; and
- have made a valid application for a protection visa that has been finally determined; and
- in the course of consideration the application, a protection finding was made within the meaning of subsection 197C(4), (5), (6) or (7) of the Act with respect to a country.

h) Whether the decision was made personally by the Minister, or by a delegate within the Department

All eight decisions made under subsection 197D(2) of the Act were made by a delegate of the Minister.

i) The extent to which the individual was afforded procedural fairness prior to the decision being made, including whether the individual was given notice ahead of the potential decision and an opportunity to respond to the information on which the potential decision was to be made

Where a delegate is considering making a decision under subsection 197D(2) of the Act, the person will be issued with a 'Notice of Intention to Commence a Section 197D Assessment'. This provides the person with an opportunity to provide any new information or claims they wish to have considered. The delegate will also consider protection claims raised through all previous processes, including but not limited to previous Protection visa application process, ministerial intervention process, International Treaties Obligations Assessments, cancellation processes, revocation processes and detention client interviews.

All adverse information is put to the person through procedural fairness providing them an opportunity to respond. Mostly, procedural fairness is done in writing, however, in some circumstances, a person may be asked to attend an interview with the delegate.

j) Details of any subsequent reviews of the decision in the Administrative Review Tribunal or Administrative Appeals Tribunal, or any judicial review by a court

Of the eight persons who have had a decision made under subsection 197D(2) of the Act, six have sought merits review of these decisions at the Administrative Review Tribunal (ART) and these reviews remain ongoing.

k) The current status of the individual, including whether they remain in the Australian community or in immigration detention, or have been removed or voluntarily departed to their country of origin or to a third country.

In relation to the current status of the eight persons where a subsection 197D(2) decision was made, six remain in the community as the holders of a Bridging (Removal Pending) (subclass 070) visa whilst their merits review process with the ART is ongoing. The remaining two persons are no longer in Australia.