

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE

Joint Standing Committee on Foreign Affairs Defence and Trade
Foreign Affairs and Aid Subcommittee
Inquiry into certain aspects of the Department of Foreign Affairs and Trade Annual
Report 2019-20 - Myanmar

QoN Number: 03

Subject: Ministerial discretion within the Migration Act

Asked by: Dave Sharma

Question:

CHAIR: I see. Is there, then, ministerial discretion to look at these issues through a foreign policy lens or Australia's Foreign Affairs? I know these are in terms of denials of visa applications but, in terms of people who already possess a visa, is there scope under the Migration Act or other provisions for the minister to take those things into account?

Mr Wilden: The minister has many entitlements under the act. I'd need to take on notice the exact extent as they might apply to this situation. It's in a different part of the department, that looks after that particular part of the Migration Act. I'll come back on notice.

Answer:

In cases of concern where a person holds a visa they can be considered for visa cancellation or refusal under section 501 of the *Migration Act 1958* (the Migration Act).

Where Australia's foreign policy interests may be involved, cases are referred to the Department of Foreign Affairs and Trade (DFAT) for consideration. DFAT's assessment will include consideration of whether to refer the case to the Minister for Foreign Affairs to issue a determination under Public Interest Criterion (PIC) 4003(a). The Minister for Foreign Affairs will issue a determination if satisfied that the person's presence in Australia is or would be contrary to Australia's foreign policy interests. PIC 4003(a) assists the Australian Government in determining when citizens of a foreign country should have their travel to, transit of or entry into Australia regulated.

If the grant of a visa to a non-citizen is found by DFAT to be contrary to Australia's foreign policy interests, the visa application will be mandatorily refused. If a visa has already been granted, and in the case of a temporary visa, the visa must be cancelled under section 116(1)(a), Regulation 2.43(1)(a)(i)(A) of the Migration Act.

Under the Autonomous Sanctions Regulations 2011, the Minister for Foreign Affairs may, by legislative instrument, 'declare' a person for the purpose of preventing the person from travelling to, entering or remaining in Australia.

For the visas for which PIC 4003(c) is prescribed as a criterion for visa grant, failure to meet PIC 4003(c) will result in mandatory refusal of the visa or mandatory cancellation in the case of a temporary visa holder.

There is no legislative basis to refuse or cancel a visa where there is no evidence that the person has engaged in, or will engage in, any conduct of concern.