



Migration Practice Note - Removal from Australia of Immigration Detainees who have Proceedings before the Court (MIG-2)

**ACLHR National Practice Area
NPA Sub-Area Practice Note**

1 Practice Note

- 1.1 In accordance with and subject to this Practice Note, to facilitate the efficient administration of justice, a person in immigration detention (including community detention) ('detainee') with proceedings currently before the Court should advise the Court of any arrangements being contemplated or made for their removal from Australia, irrespective of whether the proposed removal is voluntary or involuntary.
- 1.2 Detainees to whom this Practice Note applies should not be removed from Australia, whether voluntarily or involuntarily, unless the Commonwealth and its officers, whether through the respondent Minister in a particular proceeding or otherwise, are able to demonstrate that the detainee has been:
- properly informed of the contents of this Practice Note in a way which is intelligible to the detainee concerned, including (if necessary) by translation or interpretation of the Practice Note; and
 - given a reasonable and practicable opportunity to communicate with the Court, whether the docket Judge, the Duty Judge, the National Migration Registrar or the Court's Migration Team, about their proposed removal and what they wish to occur in relation to the proceedings before the Court, and if so desired to move the Court to restrain their removal.
- 1.3 The Court will not consider that such an opportunity has been given unless the detainee has been informed that the communication should be made to one or more of such persons. Communication should NOT be made to a generic Court or Registry address.

2 What detainees must do

- 2.1 The Court expects detainees to inform the Court as soon as possible if they request or agree to removal from Australia before the Court has finalised their case.
- 2.2 Detainees should inform the Court of whether or not they wish to continue their proceeding after they have been removed, and what their contact details will be in the country to which they are removed.
- 2.3 Detainees should be aware that the Court may only be able to restrain any action taken to remove them from Australia **involuntarily** if the detainee makes an application to the Court by filing a [Form 35 Interlocutory Application](#) promptly and prior to the proposed involuntary removal.
- 2.4 Detainees should seek independent legal advice about the consequences of removal on their Court proceedings, including any costs implications should they elect to discontinue the proceedings and whether they may pursue the proceedings from overseas. Contact details for some community legal organisations which may be able to provide such advice are [listed on the Court's website](#).

3 What the Minister must do

- 3.1 The Court expects the Minister to conduct matters before the Court involving detainees in a way that:
- a. facilitates the fair administration of justice including by co-operating in the finalisation of proceedings in a cost effective and efficient manner while detainees remain in Australia, including detainees who may either be self-represented or have pro bono representation;
 - b. facilitates the fair administration of justice where detainees are voluntarily removed from Australia, but seek to continue their proceedings from outside Australia, by ensuring that appropriate contact details for detainees are available to the parties and the Court and that detainees have been properly informed about the contents of this Practice Note;
 - c. ensures timely and appropriate communication between the Minister's legal representatives and those within the Commonwealth executive and relevant Departments who are responsible for any proposed removals from Australia of detainees covered by this Practice Note; and
 - d. protects all officers and employees involved in the administration of the system of immigration detention under the Migration Act from possible (individual) charges of contempt of Court.
- 3.2 In the case of **involuntary** removal, the Court expects that, before any removal occurs, a full, reasonable and practicable opportunity is given by the Minister to the person in detention for the making of an application to prevent their removal. What constitutes a reasonable and practicable opportunity depends on the particular case. Affording a reasonable and practicable opportunity would generally include informing a detainee who is not aware of the right to make an application to prevent their removal of that right. Affording a reasonable and practicable opportunity will always require giving the detainee a reasonable time and appropriate facilities to seek advice if the detainee wishes and to make any application for injunctive relief.
- 3.3 In the case of **voluntary** removal, the Court expects that no arrangements will be made to remove a person until after the detainee had advised the Court of the removal request, and the future progress of their Federal Court matter has been determined.
- 3.4 The Court expects that the Minister will facilitate a reasonable opportunity for a detainee to approach the Court in a way which takes into account the person's background, language, capacity, state of health, and the facilities available to them while in immigration detention.
- 3.5 Commonwealth officers should be in a position to demonstrate with clarity that the particular person to be removed has been afforded a full, reasonable and practicable opportunity to inform the Court of their voluntary removal, or to file an application with the Court in relation to their involuntary removal.

4 What the Court may do

- 4.1 Where the Court has been informed of voluntary removal, the Court will consider whether a case management hearing is required to determine the future conduct of the matter.
- 4.2 Where a detainee has filed an application in relation to involuntary removal, this will be allocated to a Judge for determination in the ordinary course. Any urgent applications, that require the Court's consideration within a few days of filing, should be brought promptly to the attention of the Duty Judge in accordance with the [Court's guidance on urgent \(Duty\) matters](#).

J L B ALLSOP

Chief Justice

7 March 2022