



Australian Government  
Department of Home Affairs

**Submission**

For decision  
PDMS Ref. Number: MS23-001295  
Date of Clearance: 27/08/2023

**To** Minister for Immigration, Citizenship and Multicultural Affairs  
**Subject** Possible Ministerial Intervention under sections 195A and 197AB of the *Migration Act 1958* in relation to s. 47F(1) )

**Timing** The Department seeks a decision no later than 30 September 2023. s. 47F(1) is in held detention and has an ongoing High Court matter that may be listed for a final hearing in November 2023. s. 42(1) )

Should the Minister wish to intervene, please arrange a suitable time with the Department for the signing to take place, **at the latest before 2pm on a week day**, so that s. 47F(1) can be released on the same day the decision is made to avoid a circumstance of inappropriate detention.

**Recommendations**

That you:

- note the case summary at s. 47F(1)
- s. 42(1), s. 47F(1)  
s. 42(1)
- indicate whether you wish to intervene under section 195A of the *Migration Act 1958* (the Act) to grant s. 47F(1) a Humanitarian Stay (Temporary) (subclass 449) visa (HSTV) valid for seven days and a Bridging E (subclass 050) visa (BVE);
  - if you wish to grant a BVE, please indicate the time period applicable for the grant;
  - if you agree to exercise your power, please sign the section 195A documentation at s. 22(1)(a)(ii)

AND

- indicate whether you wish to exercise your power under subsection 46A(2) of the Act to lift the subsection 46A(1) bar for an indefinite period to allow s. 47F(1) to lodge BVE applications;
  - if you agree to exercise your power, please sign the section 195A documentation at s. 22(1)(a)(ii)

OR

noted/ please discuss  
noted/ please discuss

intervene /  
decline to intervene

six months / 12 months /  
other \_\_\_\_\_  
(please specify)  
signed / not signed

intervene /  
decline to intervene  
signed / not signed

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5. indicate whether you wish to intervene under section 195A of the Act to grant s. 47F(1) a Bridging (Removal Pending) (subclass 070) visa (BVR);

intervene /  
decline to intervene

- if you agree to exercise your power, please sign the section 195A decision documentation at s. 22(1)(a)(ii)

signed / not signed

- if you agree to grant a BVR, please specify a timeframe for reviewing s. 47F(1) case;

one year / two years /

other

(please specify)

- if you agree to grant a BVR, please specify the discretionary conditions to be imposed, by circling the relevant conditions in s. 22(1)(a)(ii)

specified / not specified

AND

6. indicate whether you wish to have s. 47F(1) referred to you for consideration to lift the sections 46A and 48B statutory bars to allow a further protection visa application;

refer / not refer

OR

7. indicate whether you wish to consider intervening under section 197AB of the Act to make a residence determination to allow s. 47F(1) to reside in the community at a specified address;

consider / not consider

- if agreed to consider intervening under section 197AB of the Act, the Department of Home Affairs (the Department) will refer a submission for your final decision;

8. should you decide to grant s. 47F(1) a visa or make a residence determination, indicate whether you wish for the Department to inform s. 47F(1) of your expectation that he should make every effort to engage in rehabilitation, including attending his sex offender's rehabilitation program;

yes / no

9. s. 42(1), s. 47F(1)

noted / please discuss

Minister for Immigration, Citizenship and Multicultural Affairs

Signature.....

Date: 12/9/2023

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Minister's Comments

## Key Issues

1. On 14 November 2022, you signed MS22-002407 – *Detention Status Resolution Review*, agreeing to the Department of Home Affairs (the Department) referring detainees in identified cohorts for your consideration under sections 195A or 197AB of the Act.
2. On 7 February 2023, you declined to consider intervening under sections 195A and 197AB of the Act with respect to s. 47F(1) (MS22-002200 refers).
3. The purpose of this submission is to present you with new information regarding this case, which is detailed below. This submission also attaches expert opinions regarding s. 47F(1) risk to others (community protection risk) - s. 47F(1) s. 47F(1).
4. Since your decision of 7 February 2023, the Detention Health Services provider, International Health and Medical Services (IHMS), has arranged s. 47F(1) participation in sex offender rehabilitation treatment. s. 47C(1), s. 47F(1) s. 47C(1), s. 47F(1).
5. [Redacted]

## Litigation

6. s. 47F(1) has commenced a proceeding in the original jurisdiction of the High Court seeking his release from immigration detention. He also seeks a declaration from the Court to the effect that the provisions of the Act do not authorise the lawful detention of a person in circumstances where the person:
  - (a) at present, cannot be removed from Australia; and
  - (b) as a matter of reasonable practicability is unlikely to be removed in the foreseeable future (or there is no real likelihood or prospect of the person being removed in the reasonably foreseeable future).
7. In addition to the declaration related to the lawfulness of his detention, s. 47F(1) seeks a declaration that, where the factual circumstances at paragraph 6 exist, the provisions of the Act which require and authorise his detention are invalid.

8. The matter is to be set down for hearing at a time *not before* the November 2023 High Court sittings. To grant these orders, <sup>s. 47F(1)</sup> [redacted] will ask the High Court to overrule its past decision in *Al-Kateb v Godwin* (2004) 219 CLR 562 (*Al-Kateb*). By a 4:3 majority, the High Court in *Al-Kateb* held that detention of an individual under the Act remains lawful, even where their removal from Australia is not reasonably practicable at the present time, and there is no real likelihood or prospect of removal in the reasonably foreseeable future. In addition, at the level of constitutional validity, the majority held that the detention of an unlawful non-citizen for the purpose of removal remained consistent with Australia's system of government, even if that purpose of removal was not, and not likely to become, reasonably practicable in the foreseeable future.

9. <sup>s. 42(1), s. 47F(1)</sup> [redacted]

10. [redacted]

11. <sup>s. 42(1), s. 47F(1)</sup> [redacted]

*Ongoing detention and removal prospects*

12. <sup>s. 47F(1)</sup> [redacted] was convicted of one child sex offence and served three years and four months full-time custodial imprisonment (from a total five years sentence).<sup>s</sup> [redacted]  
<sup>s. 47C(1), s. 47F(1)</sup> [redacted]

13. <sup>s. 47C(1), s. 47F(1)</sup> [redacted]

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s. 42(1), s. 47F(1)



## Background

28. s. 47F(1) is a stateless person who arrived as a UMA and was detained under subsection 189(3) of the Act. He was released from held immigration detention on 6 July 2013 following a residence determination made under section 197AB of the Act by the then Minister. On 18 September 2014, s. 47F(1) was granted a BVE and released from immigration detention.
29. On 9 January 2015, s. 47F(1) was arrested and charged with one count of *sexual intercourse with a person aged between 10 and 14 years*, contrary to subsection 66C(1) of the *Crimes Act 1900* (NSW). One week later, s. 47F(1) BVE was cancelled pursuant to subsection 116(1)(g) of the Act and regulation 2.43(1)(p)(ii) of the *Migration Regulations 1994*. Upon his release from criminal custody on 8 May 2018, s. 47F(1) was detained under subsection 189(1) of the Act and has remained in held immigration detention since.
30. The Department has summarised aspects of opinions given by clinical and forensic psychologists, which address s. 47F(1) prospects of rehabilitation and recidivism at s. 47F(1)
31. Further, details regarding s. 47F(1) including immigration history, character, incidents in detention, health, identity, security, family/community links and removal availability is provided in the case summary at s. 47F(1)

## Options for future management

s. 47C(1), s. 47F(1)





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60. s. 42(1), s. 47F(1)



61. s. 42(1), s. 47F(1)



**Consultation – internal/external**

62. Status Resolution Network, Detention Operations, National Removals, Humanitarian Program Operations, Migration and Citizenship Litigation, Migration and Citizenship Law and Compliance and Community Protection Policy.

**Consultation – Secretary/Associate Secretary/ABF Commissioner**

63. The Secretary was not consulted on this submission.

64. The Associate Secretary was not consulted on this submission.

65. The ABF Commissioner was not consulted on this submission.

**Client service implications**

66. There are no client service implications.

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## Sensitivities

67. The information contained in this submission is classified and should not be publicly released without the authority of the Department of Home Affairs. In accordance with our long standing practices, should you wish for unclassified media lines to be prepared in relation to this issue please contact the Home Affairs Media Coordination team – [media@homeaffairs.gov.au](mailto:media@homeaffairs.gov.au).

## Financial/systems/legislation/deregulation/media implications

68. The Department is unable to provide specific details regarding the financial implications of managing an individual, either in the community or in detention. The Department notes that the costs will be highly dependent on the individual circumstances, including the level of support required. However, in the 2021-22 financial year, the average cost of managing a person:
- in held detention was \$421,674
  - in Residence Determination was \$59,565
  - on a Bridging E visa in the community was \$2,585.

## Attachments

s. 47F(1)

s. 22(1)(a)(ii)

s. 47F(1)

### Authorising Officer

Cleared by:

s. 22(1)(a)(ii)

A/g Assistant Secretary  
Status Resolution Branch

Date: 27/08/2023

Ph: s. 22(1)(a)(ii)

Contact Officer s. 22(1)(a)(ii), A/g Assistant Secretary, Status Resolution Branch, Ph: s. 22(1)(a)(ii)

CC Minister for Home Affairs, Minister for Cyber Security  
Secretary  
Associate Secretary  
Assistant Commissioner, Detention and National Removals  
First Assistant Secretary, Immigration Policy  
First Assistant Secretary, Status Resolution and Visa Cancellation  
Commander, National Immigration Detention  
Assistant Secretary, Humanitarian Program Operations Branch  
Assistant Secretary, Migration and Citizenship Litigation Branch  
Assistant Secretary, Detention Policy  
Senior Director, Status Resolution Network  
Director, Status Resolution NSW  
Superintendent, Detention Health  
Director, Detention Litigation Section  
Director, Status Resolution Support Programs Section  
Status Resolution Officers in NSW

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