

**From:** [David GAVIN](#)  
**To:** s. 47F(1); s. 47F(1)  
**Cc:** s. 47F(1); s. 47F(1); s. 47F(1); s. 47F(1); s. 47F(1); [Stephanie FOSTER](#); [Michael OULTRAM](#); [Clare SHARP](#); [Manan AGBINYA](#); [Jim FITZGERALD](#); [Sandra JEFFERY](#); [Chad HODGENS](#); [Justine JONES](#); [Tara CAVANAGH](#); [Mary BALZARY](#); [Niall KERB](#); [Steve WEBBER](#); s. 22(1)(a)(ii); s. 22(1)(a)(ii); s. 22(1)(a)(ii); [Anton BOCKWINKEL](#); s. 22(1)(a)(ii); s. 22(1)(a)(ii); s. 22(1)(a)(ii); [Diana WILK](#); s. 22(1)(a)(ii); [MO Registration](#); [DLO.Giles](#); [DLO.O'Neil](#); [Media Operations](#); [General Counsel Executive Support](#)  
**Subject:** NZYQ v Minister - S28/2023 - s. 47F(1) - indefinite detention/ Al Kateb challenge - 7/8 November hearing date [SEC=PROTECTED, ACCESS=Legal-Privilege]  
**Date:** Tuesday, 3 October 2023 6:14:28 PM  
**Attachments:** s. 42(1)  
[Lines of Effort Plan- Al-Kateb NZYQ challenge - 3 October 2023 weekly update.DOCX](#)  
[20231003 Submissions of the Defendants \(Sealed\).pdf](#)

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Dear s. 47F(1)

Please find below an update on work underway in response to the NZYQ challenge, and latest developments.

**Lines of effort**

- The Department has convened a whole of portfolio working group to anticipate and address issues possibly arising from the challenge
- The Lines of Effort document ([attached](#)) describes the streams of work underway. Immigration Policy Division is coordinating this planning activity which will be updated weekly and shared with your offices.
- Data and caseload analysis of potentially NZYQ affected cohorts is expected in the coming week. These data products will be shared with your offices for feedback and further development.

s. 33(a)(iii), s. 47F(1)

s. 42(1)

s. 42(1)

**Commonwealth submission to the High Court**

The Commonwealth’s submission in relation to the High Court proceedings were filed on 3 October 2023. Please see [attached](#) for your visibility.

s. 42(1)

**BACKGROUND**

s. 47F(1)

I hope this is of assistance

Kind Regards

David

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**Lines of Effort Plan – AI -Kateb Challenge – Weekly SES Coordination Meeting – NZYQ vs Minister –S28/2023 – Weekly update 3 October 2023**

**Matter Update**

- **Hearing Date:** Matter Listed to be heard in the High Court on 7 to 8 November 2023.
- **Third party interveners:** On 15 September 2023, the Australian Human Rights Commission, the Human Rights Law Centre and Kaldor Law Centre (jointly) filed Amicus submissions to the High Court (seeking to be heard as friends of the court *amicus curiae*) in support of NZYQ.
- **Ministerial Intervention:** On 18 September 2023, MICMA declined to intervene in NZYQ’s case under s195A and 197AB of the Migration Act.
- **The Commonwealth’s submission to proceedings, drafted by the Solicitor-General, due today 3 October 2023.**

Activity	Discussion	Next Steps/ Delivery Timeframes (indicative)	Lead
<b>Develop reform options in light of implications to the Detention Framework</b>	s. 47C(1) : – s. 42(1) – s. 47C(1)	Workshop placeholder sent out for 11 October 2023	Detention Policy Branch Home Affairs – Chad Hodgens
<b>Data Management</b>	<ul style="list-style-type: none"> <li>• Profiling the detention cohort for persons likely to be effected by a judgement outcome: for example:                             <ul style="list-style-type: none"> <li>○ s501 Character history</li> <li>○ third country removals’ case list (noting the manual effort required to update and maintain).                                     <ul style="list-style-type: none"> <li>▪ persons in detention who are confirmed stateless</li> <li>▪ persons subject to section 197C(3) - ‘protection finding’</li> </ul> </li> <li>○ cases where voluntary removal cannot be effected (not owed protection) but cannot be returned (i.e. due to conflict in country)</li> <li>○ involuntary removals – won’t cooperate</li> <li>○ average duration in detention of cohorts (available in recent Senate Estimates Briefings).</li> </ul> </li> <li>• Profiling of other long term detainees.</li> <li>• Minister’s Office requested advice on detainees with criminal histories who have parole conditions in place if released into the community (potentially a manual data extraction focussing on Tier 1 High Risk criminal cohort).</li> </ul>	Develop a Dashboard prototype for collaboration on required data sets and design with stakeholders.  First draft to be circulated to stakeholders and MOs week of 3 October 2023.	Status Resolution s. 22(1)(a)(ii) s. 22(1)(a)(ii)
<b>Community placement of affected detention cohorts</b>  s. 42(1)	s. 33(a)(i) • s. 33(a)(i) • • • Operations Plan (OPLAN) - outlining steps to be taken should the plaintiff need to be released from detention at the end of the hearing on the 7 <sup>th</sup> or 8 <sup>th</sup> of November 2023. • s. 47E(d) • s. 47C(1), s. 47E(d)	Timeframes to be confirmed   Provide draft OPLAN, by 6 October 2023 (Detention Operations) Drafting Ministerial Intervention Sub(s) for consultation.  Timeframes to be confirmed	s. 47E(d)  ABF National Detention & Removals – Sandra Jeffry Status Resolution Branch in consultation with Legal Division
	Engage with law enforcement counterparts to manage risks to the community and any conditions of release required to be imposed on certain detainees.  • s. 47C(1) • • •	To be confirmed   Timeframes to be confirmed	Status Resolution Network Status Resolution and Visa Cancellation Division – Justine Jones

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<b>Removal and Third Country Resettlement</b>	s. 42(1)	Approaches to Embassies made	International Division-supported by Legal guidance
	The approach to the Bangladeshi High Commission in Canberra on 26 September 2023, confirmed that there were no prospects for any resettlement of this nature. A Third Person Note was sent the Saudi Embassy on 27 September 2023, s. 33(a)(iii).		
<b>Communications and Media Management</b>	<p>In readiness for possible media coverage surrounding the listed hearing, prepare a communications plan and Talking Points.</p> <ul style="list-style-type: none"> <li>ABF to reach out to Media Branch on potential media points surrounding the potential release of NZYQ from detention.</li> </ul>	Timeframes to be confirmed	Media in consultation with Legal Division and ABF