



**Australian Government**  
**Department of Home Affairs**

## Status Resolution – Network Advice

<b>AUTHORISED BY:</b>	s. 22(1)(a)(ii) – A/g Director, Status Resolution Program Management and Capability
<b>ACTION REQUIRED:</b>	<b>For attention of Detention Review Managers and Status Resolution Officers</b> – Please disseminate amongst your local networks to ensure awareness and required action.
<b>MESSAGE:</b>	<p>Dear Colleagues,</p> <p>The purpose of this guidance is to support detaining officers in the Detention Review Manager (DRM) and Status Resolution officer (SRO) role, in identifying cases in immigration detention that may be affected by the recent <i>NZYQ</i> High Court judgment and to ensure these cases are monitored and/or escalated as necessary.</p> <p>You may be aware, the judgment imposes a new obligation on the Department to start considering, from the point section 198 of the Act is engaged, whether there is a real prospect of removal becoming practicable in the reasonably foreseeable future. This is because a person’s detention under section 189 will not be valid where section 198 is engaged but there is no real prospect of removal becoming practicable in the reasonably foreseeable future.</p> <p><b>Action taken</b></p> <p>To assist detaining officers to address all the relevant considerations they should turn their mind to, in determining whether a person is appropriately detained (including whether there is no real prospect of removal becoming practicable in the reasonably foreseeable future), amendments have been made to Mandatory Control Point 7 (MCP 7) - ADD2024/374635.</p> <p>We are also working on a CCMD enhancement to the MCP 7 to include the new sections to the portal form and will provide an update once that is complete.</p>

The purpose of the additional MCP 7 questions is to identify potentially affected cases at any point of that person's detention. This includes cases where:

- section 198 is not (yet) engaged so they may be closely monitored;
- there are no present legal barriers to s198, so that removal prospects may be considered (whether or not the case is also referred to Removals).

**Please note:** the MCP 7 questions will allow a detaining officer to monitor resolution of a pending matter that poses a barrier to s198 being enlivened, but these questions are not otherwise intended to establish definitively that a s198 power is engaged.

#### **Action required**

The above changes to the MCP 7 include the addition of two new parts to the tool, which must be completed:

- by the DRM for all new detentions, and subsequently reviewed and updated by any SRO detaining officer thereafter; or
- by the SRO detaining officer for any current detention decisions at the time of the detainee's next case review.

Until the CCMD enhancement to the MCP 7 portal form is made, the additional questions should be completed and recorded in TRIM, with a reference to that document to be included in the "Other Issues" section of the MCP 7 portal form.

A copy of the additional MCP 7 questions can be located at TRIM: ADD2024/374635 while explanatory notes to assist in the completion of the additional questions can be found at TRIM: ADD2021/2220957.

Pending changes to the CAT, guidance in assisting officers to assess effectiveness of certain s501 notifications (where this is indicated by the MCP 7) can be found at TRIM: ADD2024/374486.

#### **Escalation points**

If officers have any questions about completing the form, and/or notification assessments that may be required please send these to Status Resolution Helpdesk using our referral form (TRIM: ADD2023/5379866).

Where the MCP 7 notes indicate a case may be potentially affected, these should be escalated to Operational Coordination using their NZYQ referral form (TRIM: ADD2023/6707708). Operational Coordination will liaise with stakeholders to seek options to resolve the matter and follow up on additional lines of enquiries about removability, identity or visa procedures as needed. SROs may be requested to assist further in these efforts.

<b>EFFECTIVE DATE or DATE DUE</b>	Immediate
<b>POINT OF CONTACT:</b>	<p>s. 22(1)(a)(ii) [REDACTED] <a href="mailto:homeaffairs.gov.au">@homeaffairs.gov.au</a> – Escalation of NZYQ cases</p> <p>s. 22(1)(a)(ii) [REDACTED] <a href="mailto:border.gov.au">@border.gov.au</a> – Escalation of MCP 7 and/or notification assessment questions</p>
<b>ATTACHMENT/ TRIM REFERENCE:</b>	<ul style="list-style-type: none"> <li>▪ ADD2024/374635 – Additional MCP 7 questions</li> <li>▪ ADD2021/2220957 – Explanatory notes for the additional MCP 7 questions</li> <li>▪ ADD2024/374486 – Interim guidance to assess certain s501 notifications (as relevant to the MCP 7)</li> <li>▪ ADD2023/5379866 – SRHD Referral Form</li> <li>▪ ADD2023/6707708 – NZYQ Referral Form</li> </ul>
<b>RELATED POLICY/PROCEDURAL DOCUMENTS</b>	