

Key Brief Number: IG-09

**Home Affairs Portfolio
Department of Home Affairs
Additional Estimates Hearing – February 2025**

KEY BRIEF**Topic: PNG independent management arrangement****Responsible Deputy:** Mr Michael Thomas, Group Manager Immigration Compliance**Key Top Lines**

- The Papua New Guinea (PNG) Government is solely responsible for the management of the former regional processing caseload in PNG.
- PNG and Australia agreed a package of further capacity building support in July 2024 to assist PNG's ongoing independent management and resolution of the caseload.
- The Minister for Home Affairs **agreed to a claim of Public Interest Immunity (PII)** on 3 February 2025, confirming the current funding arrangement details as confidential between the Australian and PNG Governments.
 - This PII extends to the contents of the arrangement and the financial value of the arrangement.

Handling Notes:

- Mr Michael Thomas, Group Manager Immigration Compliance and Mr Jaycob McMahon, First Assistant Secretary Character, Cancellation and Case Resolution Division will lead this topic.
- The PNG Government is solely responsible for the management of the former regional processing caseload.

Key Points

- Australia ended its regional processing association with Papua New Guinea (PNG) on **31 December 2021** – under the Regional Resettlement Arrangement (RRA) – with **105** individuals staying in PNG.
- From **1 January 2022**, the PNG Government assumed full and independent management of individuals in PNG providing ongoing support and assistance to remain permanently as they build their new lives, or to remain temporarily as they pursue other third country migration outcomes or voluntarily return home.
 - Australia agreed a confidential bilateral arrangement with the PNG Immigration and Citizenship Services Authority (PNG ICSA) in **December 2021**, the '*Funding Arrangement Supporting Papua New Guinea's Independent Management of the Residual Regional Processing Caseload*'.
 - Details of the funding arrangement **remain confidential** as agreed to between the Governments of PNG and Australia.
- Management of the former RRA caseload is a matter for PNG and there are no plans to transfer any person to Australia.

Key Brief Number: IG-09**Current engagement with PNG and further support**

- PNG is committed to resolving the former RRA caseload through permanent migration outcomes including settlement in PNG, third country resettlement and voluntary returns.
 - As at **31 December 2024**, the Department understands **approximately 40** individuals remain in PNG.
- Further support was agreed between PNG and Australia in **July 2024** and a varied funding arrangement executed in **August 2024**.
 - The further support will assist PNG deliver a sustainable settlement framework through a community integration model, focused on building independence and supporting individuals achieve permanent migration outcomes.
 - The program provides enhanced case and status resolution management support.
 - The varied funding arrangement includes robust financial controls. As per these controls, expenditure on community integration support commenced in **December 2024**.
- The Department does not have any role in the ongoing management of, or service delivery arrangements for, individuals remaining in PNG.
- The terms of the arrangement **remain confidential**. It is usual practice for Australia to maintain the confidentiality of arrangements agreed with another country as it builds trust and good relations. Action to the contrary could be damaging for Australia's relations with PNG.

PNG management of the cohort

- PNG has confirmed to the Department that individuals continue to have access to accommodation and, if required, transitional accommodation while they are supported to identify sustainable community-based accommodation.
- PNG has confirmed to the Department that it has commenced enhanced case management support to the caseload, focusing on supporting individuals transition to independent living and to effectively engage in durable migration options.
- PNG is registering cohort members to receive a regular finite living allowance to support their community integration.
 - The allowance has been determined by PNG, in line with cost of living in Port Moresby.
- PNG has indicated to the Department that individuals will have continued access to health services. Individuals are eligible for a comprehensive health assessment service to support their transition to community health arrangements. Health service expenses are expected to be met from the living allowance.

Consultation

Ms Clare Sharp, Deputy Secretary Legal Group has cleared this brief.

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KEY BRIEF**Topic: Administrative Review Tribunal (ART) set-asides****Responsible Deputy:** Dr Emma Cassar PSM, Associate Secretary Immigration**Key Top Lines**

- The Department has reviewed **all** Administrative Review Tribunal (ART) – including the former Administrative Appeals Tribunal (AAT) – losses under Ministerial Directions (MD) 65, 79, 90, 99 and 110.
- **Since May 2024, and as at 31 January 2025, 271 cases** had been identified for consideration of the Ministerial powers to set aside a non-adverse ART decision.
- Of the **271 cases** identified within the ART set aside caseload, **as at 31 January 2025**, the following action had been taken:
 - **177 cases** had submissions developed for Ministerial consideration.
 - **118 visas** were cancelled or refused by a Minister.
 - **59 of these cases** had lodged Judicial Review.
 - In **16 cases**, the decision was non-adverse.
 - In **33 cases**, the Minister directed that the person should be afforded natural justice prior to making their decision (currently in progress).
 - **10 submissions** were pending initial Ministerial decision.
 - There were **85 cases** in various stages of development ahead of Ministerial consideration.
 - **71 of these cases** relate to decisions made under MDs 65, 79, 90 and 99.
 - **14 of these cases** relate to decisions made under MD110.
 - **Nine cases** were otherwise finalised (visa had already expired, person offshore, etc – including the two cases that had progressed to the Minister but where a decision had not yet been made).
- The new MD110 was signed on **7 June 2024** and commenced on **21 June 2024**, prioritising and strengthening the principles of community safety in the making of visa cancellation decisions for both departmental delegates and the ART. This replaced MD99.
- **Since 7 June 2024, as at 31 January 2025**, the ART has made **184 decisions** and of those, **58 were set aside** (an ART set aside or ‘loss’ rate of approximately **31.52 percent**).
- **All ART set asides under MD110** were raised with Ministers’ offices **on average within 24 hours**. All cases will be considered by Ministers, if not already – noting delays with receiving written reasons from the ART to allow the development of a submission.

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Handling Notes:

- Mr Michael Thomas, Group Manager Immigration Compliance and Mr Jaycob McMahon, First Assistant Secretary Character, Cancellation and Case Resolution Division will lead this topic.
- Since the May 2024 Senate Estimates hearing, the Department has worked closely with Ministers to review the ART set-aside caseload and the relevant Ministerial Directions.

Key Points

- The *Migration Act 1958* (the Migration Act) provides for the refusal or cancellation of a non-citizen's visa if they engage in criminal behaviour or serious conduct that poses a risk to the safety of the Australian community.
- Non-citizens can seek merits review of visa cancellation or refusal decisions at the ART.
 - The ART provides independent merits review of decisions made under Commonwealth law, and must comply with relevant ministerial directions.
- Portfolio Ministers have existing powers under the Migration Act to set-aside decisions made by the ART and to cancel or refuse a person's visa if the Minister is satisfied that the person does not pass the character test and the Minister considers it is in the *national interest* to cancel the visa.

Ministerial Direction 110

- On **21 June 2024**, Ministerial Direction 110 (MD110) – *Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA* – commenced, replacing Ministerial Direction 99 (MD99). The new MD110 prioritises and strengthens the principles of community safety.

Escalation thresholds

- On **6 September 2024**, the Minister for Home Affairs verbally directed the Department to use a revised threshold to refer cases to Ministers – following an ART decision to set aside a character refusal or cancellation – for visa cancellation consideration using their personal, non-delegable powers, in the national interest.
 - The referral thresholds will ensure that cases that pose a **serious** ongoing level of risk to the community or an individual, or that are **inconsistent with community expectations**, such that the 'national interest' may be invoked, are referred to a Minister for consideration of their personal, non-delegable powers.
 - These thresholds were formally agreed to and finalised on **22 October 2024**.
- Key changes to the threshold assessments include:
 - Reverting to referring cases when there is a **serious risk** to the Australian community **or an individual** from **very serious ongoing risk** to the community.
 - Referrals to the Minister where the offending is inconsistent with community expectations.
 - Primarily be on the basis of objective criteria including serious violent offending, particularly against women or children, a substantial criminal record, violent or repeated family violence, and serious historic offending.
 - Consideration of matters considered to be exceptional, including significant media interest, high profile matters and serious identity or fraud concerns.

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- The Department has now implemented a process that notifies the Minister's office when the ART overturns a visa cancellation or refusal decision **on average within 24 hours** of the decision being handed down.
- As has always been the case, departmental delegates can refer any case to the Minister if the circumstances of the case indicate that the Minister should consider using their personal powers.
 - Additionally, the Minister may personally request the Department to prepare a submission for their consideration.

Consultation

- The Chief Data Officer, or their delegate undertaking the Data Clearance function, has cleared the statistics contained within this brief.
- Group Manager Legal has cleared the legal information contained within this brief.

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under the Freedom of Information Act 1982

Key Brief Number: IG-11

**Home Affairs Portfolio
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KEY BRIEF**Topic: Migration Act Bills - Operations****Responsible Deputy:** Dr Emma Cassar, Associate Secretary, Immigration**Key Top Lines**

- The *Migration Amendment Act 2024* and the *Migration Amendment (Removal and Other Measures) Act 2024* (the ROM Act) were passed by Parliament in November 2024. Both Bills received Royal Assent on 4 December 2024 and commenced on 5 December 2024.
- The Acts amended the *Migration Act 1958* to introduce a range of powers to assist in the removal of unlawful non-citizens who do not have a legal basis to remain in Australia.
- In particular, the Migration Amendment Act provides more effective administration of the Bridging (Removal Pending) visa (BVR) scheme that was established to manage the NZYQ-affected cohort – among other measures in the Bill.
- The ROM Act provides new levers to increase removals from Australia, including provisions to issue directions to ‘removal pathway non-citizens’ (unlawful non-citizens and certain visa holders) requiring them to cooperate with Government processes.
- These amendments do not change Australia’s commitment to our international *non-refoulement* obligations.
- An unlawful non-citizen will not be issued a direction to cooperate with their removal where it would be in contravention of the Australia’s *non-refoulement* obligations.
- While some of the new powers – direction to cooperate and removal concern countries – have yet to be executed, they are actively considered and provide additional levers to progress the removal of people who do not have permission to remain in Australia, where all other options have been exhausted.
- Action has commenced on progressing the third-country resettlement of certain people within the NZYQ-affected cohort.

Handling Notes:**Lead SES:** Mr Michael Thomas, Group Manager, Immigration Compliance**Key Points***ROM Act – Direction to cooperate with removal from Australia*

- The ROM Act has amended the *Migration Act 1958* to make it clear the Government expects people who do not have permission to remain in Australia, including those who have had their substantive visa cancelled on character grounds, to cooperate with their removal.

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- The Migration Act now includes powers the Minister or delegate to issue directions to 'removal pathway non-citizens' requiring their cooperation with the Government's efforts to remove them.
- The Department has not yet issued a removal direction, though steps are being taken to review and progress removal cases in accordance with the new provisions.
- It is our priority to ensure this process is introduced in a concerted manner with consideration to the non-citizen's right to natural justice and access to independent legal advice.
- The Department does not take lightly the consequences of the introduced powers and will only issue a direction where all other avenues to progress a removal have been exhausted.
- The impact of these changes will be realised over a period, noting this only one part of a robust system that supports the removal of an unlawful non-citizen from Australia.

ROM Act – Removal Concern Country

- Through the ROM Act and under the Migration Act, the Minister – in consultation with the Prime Minister and Foreign Affairs Minister – is also be able to designate foreign countries as a 'removal concern country' if the Minister thinks it is in the national interest to do so.
- This measure is aimed at countries that are not cooperating with removals, and would complement the power to issue directions to individuals to do things to facilitate their removal.
- This designation would have the effect of barring most new visa applications by nationals of the designated country who are outside Australia, while the designation remains in force.
- The Minister has not yet used this power.

ROM Act – Ministerial Intervention

- The amendments also make it clear that a request for Ministerial intervention does not suspend the duty to remove a person from Australia under section 198 unless and until the Minister decides to consider whether to exercise a Ministerial intervention power.
- Under the amendments, the duty to remove a non-citizen will be temporarily suspended, should the Minister decide to consider whether or not to exercise the power in relation to an unlawful non-citizen. Where the Minister decides to consider whether to exercise a personal Ministerial intervention power, removal of an unlawful non-citizen under section 198 cannot be actioned.
- The amendments also provide for how long a temporary suspension of the duty to remove remains in place, should the Minister decide to consider whether to exercise a Ministerial intervention power.
- In general terms, the period of suspension is up to 6 months starting on the day the Minister decides to consider whether to exercise the Ministerial intervention power in relation to the unlawful non-citizen.

Key Brief Number: IG-11*ROM Act – reassessment of protection finding*

- The ROM Act amended the existing power under section 197D to allow for the reassessment of a protection finding previously made in relation to a non-citizen who is now on a removal pathway (previously limited to use in relation to unlawful non-citizens), to determine whether or not the person continues to engage Australia's *non-refoulement* obligations or could now be removed to their country of origin without breaching those obligations.
- Non-citizens who have a protection finding that was made in the course of considering a protection visa application cannot be removed to the country to which the protection finding relates.
- The ROM Act does not change that.
- To date, no decision has been made by the Minister or a delegate of the Minister under subsection 197D(2) of the Act.
- The Department is actively progressing a number of cases for non-citizens where the power is enlivened.

Migration Amendment Act – Third Country Arrangements

- The Migration Amendment Act enables the Government to enter into arrangements with foreign countries (i.e. third countries) for the removal of non-citizens to those countries, where it is not possible for the non-citizens to be returned home.
- Australia's commitment to its international obligations has not changed – we do not return individuals to countries in respect of which they have been found to engage Australia's international *non-refoulement* obligations.

Consultation: Legal Group