Australian BORDER FORCE

Key Brief Number: ABF-09
PDR Number: SB25-000923

Supplementary Estimates Hearing – December 2025

Topic: Operation Sovereign Borders
Group: National Operations
Division: Maritime Border Command / Joint Agency Task Force Operation Sovereign Borders

Key Top Lines:

- The OSB mission is to deny any irregular maritime pathway to permanent settlement in Australia.
- Unauthorised Maritime Arrivals (UMAs) who cannot be returned to their country of origin or departure, will be safely transferred to a Regional Processing Country (RPC).
- The success of the mission is evidenced by the fact that there have been no successful ventures or known deaths at sea since December 2013.

Handling Notes:

- Rear Admiral Brett Sonter, Royal Australian Navy, is the Commander of the Joint agency Task Force (JATF) Operation Sovereign Borders (OSB) and will be the lead witness at the hearing on the topics contained in this brief.
- The brief contains statistics for the following date ranges:

Statistics date range	
Since last hearing	1 February 2025 – 31 October 2025
Since OSB Establishment	18 September 2013 – 31 October 2025

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Key Statistics

OSB Activity	18 September 2013 – 31 October 2025	1 February – 31 October 2025
Maritime people smuggling ventures resolved (ventures)	103	15
Successful[1] ventures	22	0
Ventures confirmed to have reached the Australian mainland[2]	10	4
Ventures confirmed to have reached Australian Territories[3]	8	2
Total Potential Irregular Immigrants (PII)	2,518	139
PII turned back to country of departure	693	21
PII taken back to country of origin	700	93
Transfers to a RPC	1,125 people	25 people
Ventures disrupted in source and transit countries	138	21
PII disruptions by foreign law enforcement partners[4]	3,976 in source and transit countries	272 in source and transit countries

Source: *JATF OSB and AFP, as of 31 October 2025 (per publicly released data).*

Consultation

Area	Clearing Officer – Position/Role	Date
Data Clearance	The Chief Data Officer or their delegate undertaking the data clearance function has cleared the statistics contained within this brief	11 September 2025
Chief Finance Officer	N/A – brief does not contain financials.	
Legal Group	The Legal Group Manager has cleared the legal information contained within this brief.	11 September 2025

[1] 'Successful' maritime people smuggling ventures are defined in this brief as those not disrupted, turned back, returned, or transferred to a regional processing country (RPC).
[2] **Mainland** refers to a continent or the main part of a continent as distinguished from an offshore island or sometimes from a cape or peninsula, as defined by Merriam-Webster.
[3] **Australian Territory** is any geographic area subject to sovereignty, control or jurisdiction of an Australian governmental authority that is not included in the mainland definition as an Australian Territory.
[4] Disruption statistics are provided by AFP posts, based on advice provided by foreign law enforcement, and are indicative only as they are subject to a range of factors that may affect accuracy and quality. Post experience is that results are typically under-reported because arrests in regional locations are occasionally not reported.

- On 5 April 2019, CJATF directed that only ventures targeting Australia were to be included in statistics. This is to be effective from 1 March 2019. Previous statistics also included ventures destined for NZ given the high likelihood of them ending up as unintentional arrivals to Australia.
- From 1 January 2023 statistics include offshore disruptions of human trafficking ventures with a suspected maritime nexus.

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Australian Federal Police	**Detective A/Superintendent** s. 22(1)(a)(ii) Joint Agency Taskforce - Operation Sovereign Borders Crime Command	22 August 2025
Department of Prime Minister and Cabinet	s. 22(1)(a)(ii) A/g Director, Border, Law Enforcement and Violent Extremism Section – National Security Division.	26 August 2025
Department of Home Affairs	Offshore Program Operations and Strategy Branch	11 September 2025

Clearance

Cleared through	s. 22(1)(a)(ii) A/g Deputy Commander JATF OSB, ABF Commander – 14 November 2025
Final	RADM Brett Sonter, RAN Commander JATF OSB – 14 November 2025

Home Affairs Portfolio
Department of Home Affairs
Supplementary Estimates Hearing – October 2025

KEY BRIEF

Topic: Net Overseas Migration

Responsible Deputy: Mr Michael Willard, Immigration Programs Group

Key Top Lines

- Australian Bureau of Statistics (ABS) data published on 18 September 2025 shows NOM is continuing to decline:
  - Over the 12 months to 31 March 2025, NOM was 316,000 – a decrease of 178,000 (36 per cent) compared to the previous year and a decrease of 240,000 (43 per cent) from when annual NOM peaked at 556,000 in the 12 months to September 2023.
  - For the March quarter 2025, NOM was 110,000, the lowest March quarter post-COVID and 14 per cent (19,000) fewer than the March quarter 2024 figure of 129,000.
  - Student NOM arrivals in the March quarter 2025 (62,000) are 5,000 less than the March quarter 2024 (67,000) and are approaching pre-pandemic levels (57,000 in the March quarter 2018).
  - In the 12 months to 31 March 2025, migrant departure figures increased by 22 per cent, reaching 262,000 compared to 216,000 in the year to 31 March 2024. This remains below the pre-pandemic average of 280,000 departures per year during the five years prior to COVID–19.
- In the 2025–26 Budget, NOM was forecast to be 335,000 in 2024–25. NOM is forecast to fall to 260,000 in 2025–26 before settling at 225,000 in 2026–27, 2027–28 and 2028–29.
- The Government's implementation of various migration measures helps migration deliver for the nation and return NOM to near pre-pandemic levels.
  - Student visa lodgements decreased by 26 per cent in 2024-25 program year compared with 2023-24.
  - Temporary Graduate visa lodgements decreased by 31 per cent in that same period.

Handling Notes:

- Lead witness is Michael Willard, Deputy Secretary Immigration Programs.
- The Australian Bureau of Statistics (ABS) is responsible for preparing and publishing preliminary quarterly NOM estimates, revisions to quarterly NOM estimates and final outcomes of NOM. The ABS uses data provided by the Department of Home Affairs. Official data on NOM, however, is subject to long lags and significant revisions.
- Treasury produces NOM forecasts and projections as an input into the Budget and MYEFO and publishes further NOM forecast detail in the Population Statement.

Clearing Officer: Michael Willard, Deputy Secretary Immigration Programs

Key Points

- Migration Strategy actions continue to support the return to pre-pandemic levels:
  - Strengthening integrity and lifting the standards in international education by increasing minimum English language requirements for student and graduate visas, a new genuine student requirement, and new powers to suspend high-risk education providers from recruiting international students.
  - Preventing Visitor visa and Temporary Graduate visa holders from applying for Student visas onshore.
  - Closing COVID concessions, including through ending the Pandemic Event visa and uncapped working hours for international students.
- Many of those who arrived on temporary visas after travel restrictions were lifted, such as international students, are now starting to leave in larger numbers.
  - Student NOM departures were higher in the March 2025 quarter (9,000) than the March 2024 quarter (7,000) and are approaching pre-pandemic figures compared with March quarters (averaging 10,000 for March quarters in the five years prior to COVID).
  - WHM departures increased from 4,000 in the March 2024 quarter to 7,000 in the March 2025 quarter and increased by 157 per cent in the 12 months to 31 March 2025 (22,000) compared to the same period last year (8,000).

If asked 'Why aren't migrants leaving faster?'

People on temporary visas are motivated to remain in Australia, which reflects our relatively strong labour market and high living standards, and strong ties to Australia developed during border closures.

Temporary visa holders are typically able to apply for a subsequent visa onshore. When this occurs, the visa applicant is provided a Bridging visa to remain in Australia while the new visa is assessed.

Onshore visa applications typically reflect a reasonable progression through different visas, such as from a temporary skilled visa to a permanent skilled visa.

Key Data and Statistics

Table 1: Net Overseas Migration arrivals, departures and totals by financial year

NOM by FY	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24	31/03/24-31/03/25
NOM arrivals	550,401	506,852	145,999	423,909	738,414	660,874	578,364*
NOM departures	309,063	314,157	230,934	215,997	200,073	232,209	262,439*
NOM total	241,338	192,695	-84,935	207,912	538,341	428,665	315,925*

Source: ABS data, National, state and territory population report (published 18 September 2025).

**These figures are preliminary estimates and are subject to future revisions.*

Table 2: Net Overseas Migration forecasts for financial years 2023–24 to 2028–29

	2023–24	2024–25	2025–26	2026–27	2027–28	2028–29
Treasury NOM forecast	435,000	335,000	260,000	225,000	225,000	225,000

Source: 2025-26 Budget, Budget Paper 1 (page 43). Note these are rounded to the nearest 5,000. Arrivals and departures are published separately.

Table 3: Net Overseas Migration by visa type, 12 months to 31 March 2019-2025

Visa type	2019	2020	2021	2022	2023	2024	2025
International Students	107,255	22,469	-62,138	72,916	245,716	209,757	112,407
Temporary Work (WHM)	25,358	25,794	-9,072	4,021	66,100	72,472	56,816
Temporary Skilled	15,910	13,864	-3,682	9,021	40,167	42,750	36,693
Temporary Visitors	65,540	114,717	-6,053	8,018	88,561	78,169	41,096
Other Temporary	-18,879	-22,121	-38,555	-14,071	8,799	7,782	-20,748
Permanent visa holders	62,975	61,506	12,685	44,219	55,378	71,775	72,435
Australian Citizens	-11,295	27,493	19,141	109	-30,393	-25,186	-21,130
NZ Citizens	9,469	3,856	-4,297	6,858	21,506	36,304	38,356
N/A[1]	-5,664	-8,333	-2,368	-73	0	0	0
TOTAL	250,669	239,245	-94,339	131,018	495,833	493,823	315,925

Source: ABS data, National, state and territory population (published on 18 September 2025).

Consultation

- Migration, Citizenship and Humanitarian Policy Division, Chief Economist.
- The Treasury

Additional Information

- In the 2024 Population Statement, the Centre for Population stated that *The Government's Migration Strategy is helping to ensure our migration system works in the national interest. Net overseas migration is expected to return to around pre-pandemic levels over the next couple of years as arrivals stabilise and departures pick up.*

[1] Non-visaed movements have been excluded from ABS NOM reporting from September quarter 2021 onwards. Any questions on ABS NOM calculation methodology should be referred to the ABS.

Clearing Officer: Michael Willard, Deputy Secretary Immigration Programs

Home Affairs Portfolio
Department of Home Affairs
Supplementary Estimates Hearing – October 2025

KEY BRIEF

Topic: International Students

Responsible Deputy: Mr Michael Willard, Immigration Programs Group

Key Top Lines

- The Department of Home Affairs is supporting the Government's commitment to manage the international education sector at sustainable levels, while continuing to improve the quality and integrity in the sector.
- On 4 August 2025, the National Planning Level (NPL) of 295,000 international student places for 2026 was announced, providing certainty and stability for the sector. The 2026 NPL includes 25,000 additional places compared to 2025.
- Ministerial Direction 111 *Order for considering and disposing of offshore Subclass 500 (Student) visa applications* was introduced on 19 December 2024 to support a more balanced distribution of international students across providers through a new prioritisation process. MD111 will be replaced with a new Ministerial Direction to support the application of the 2026 NPL.
- In the Financial Year (FY) 2024-25 there were 427,131 Student visa lodgements. This is a reduction from 2022-23 (590,304) and 2023-24 (580,193). Visa lodgements are now more reflective of application volumes seen prior to the pandemic (473,415 in 2018-19).
- On 1 July 2025, the Visa Application Charge (VAC) was increased for primary Student visa applicants to $2,000 (up from $1,600) in line with the Government's election commitment to new savings measures.
- The Department continues to work with the Attorney General's Department and the Administrative Review Tribunal (ART) to manage the numbers of student visa refusal appeals to the ART more efficiently.

Handling Notes:

- Mr Andrew Kiley, First Assistant Secretary Migration, Citizenship and Humanitarian Policy Division, will lead on questions relating to Student visa policy. Ms Tiali Goodchild, First Assistant Secretary Skilled and Temporary Visa and Capability Division, will lead on existing program settings (such as the operation of MD111) and questions about program delivery.
- The Department of Education is the lead agency on non-visa matters related to international education, covering:
  - Administration and compliance with the *Education Services for Overseas Students* legislation and framework; the Commonwealth Register of Institutions and Courses for Oversees Students (CRICOS), and Tuition Protection Service; and
  - Indicative annual allocations for higher education new overseas student commencements and VET new overseas student commencements under NPL.

Clearing Officer: Michael Willard, Deputy Secretary Immigration Programs

Key Points

Ministerial Direction 111 (refer **Attachment A**)

- Under Ministerial Direction 111 (MD111), high priority processing applies to offshore Student visa applications associated with a provider in the higher education and vocational education and training sectors who have not yet reached their prioritisation threshold - as indicated in the Department of Education system, PRISMS (Provider Registration and International Student Management System).
- The high priority prioritisation threshold for each provider is 80 per cent of the indicative allocation of new overseas student commencements, as advised by the Department of Education and recorded in PRISMS.
- A range of cohorts are given high priority outside of a prioritisation threshold, in recognition of their importance to Australia's strategic interests.

If asked: Progress report on MD111. How many providers have reached the allocation level?

- Reporting on progress of allocation level threshold, including those education providers who have reached/exceeded the threshold is a matter for the Department of Education.

If asked: Processing arrangements/update for providers who have reached their allocation levels.

- Providers who have reached their allocation level will be processed as "Priority 2 – standard" as outlined in MD111. Priority 2 - Standard applications take longer to process than Priority 1 – High applications.
- On 31 August 2025, there were 12,038 student visa applications on hand for the providers who at 29 August 2025 had exceeded their allocation level.

Student VAC increases

- The 1 July 2025 increase in Student and Student Guardian VAC to $2,000, followed an earlier, 1 July 2024, increase of the VAC from $710 to $1,600.
- Following the Student VAC increases in 2024 and 2025, concerns have been raised in media and with the Department about the impact of the increased VAC on shorter-term courses, in particular Independent English Language Intensive Courses for Overseas Students (ELICOS) and non-award sector courses.
- The Department has engaged on the issue with stakeholders, including through the Education Visa Consultative Committee (EVCC) meetings.
- Any change to Student visa VAC is a matter for government.

Stakeholder Engagement

- Along with the Department of Education, the Department engages extensively with the international education sector on changes in the Student visa program and broader issues affecting the sector.
- EVCC meets quarterly, with out of session meetings scheduled as required to discuss topical and time sensitive issues.
- In October 2024, Assistant Minister Hill established a body to provide expert technical advice and perspectives to the Department of Home Affairs regarding the delivery of the Student visa program - now named the Student Visa Processing Technical Reference Group (TRG).

Clearing Officer: Michael Willard, Deputy Secretary Immigration Programs

  - The TRG includes representatives Higher Education and Vocational Education sectors and Commonwealth Departments.
  - It has provided feedback on implementation of MD111 and other practical issues in the management of the international education sector from an expert practitioner perspective.

- In addition, the Department undertook 112 sessions (between July 2024 and end of July 2025, with education providers and stakeholders, reaching a combined audience of approximately 11,400 persons.

Key Data and Statistics – Student visa activity summary

Tiali Goodchild, First Assistant Secretary Skilled and Temporary Visa Capability Division.

- During FY 2024-25 to 30 June 2025:
  - 427,131 student visa applications were lodged, which is down 9.8 per cent compared to 2018-19 over the same period and down 26.4 per cent compared to the same period in 2023-24.
  - 473,632 applications have been finalised, which is 3.6 per cent more compared to the same period in 2018-19 and 2.4 per cent less compared to the same period in 2023-24.
  - 371,564 of these finalisations were visa grants – reflecting a refusal rate of 17.3 per cent.
    - The Student visa grant rate of 78.5 per cent during this period is the second lowest (77.7 per cent grant rate over the same period in 2023-24 was the lowest) since 2005-06 when the Department commenced reporting these indicators.
- On 30 June 2025, there were:
  - 104,111 on-hand student visa applications; of which 29,158 were for applications lodged outside Australia and 74,953 were applications lodged in Australia; and
  - 592,326 student visa holders in Australia.
- The median (50th percentile) processing time for all student primary visa applications decided in June 2025 was 25 days.
  - In June 2025, median processing times for student visa applications lodged outside Australia was 21 days; and for those lodged in Australia was 183 days.

Consultation

- The Chief Data Officer has cleared the statistics contained within this brief.
- This brief was drafted in collaboration with Student Visa Program management.

Attachments

- **Attachment A** – Ministerial Direction 111
- **Attachment B** – PIE article
- **Attachment C** – ABC article – International students have not driven rents and inflation substantially higher

Clearing Officer: Michael Willard, Deputy Secretary Immigration Programs

Home Affairs Portfolio
Department of Home Affairs
Supplementary Estimates Hearing – October 2025

KEY BRIEF

Topic: Community Protection

Responsible Deputy: Michael Thomas, Deputy Secretary, Immigration Compliance

Key Top Lines

- Following the High Court ruling in 'NZYQ' – which set a new test on the ability to detain non-citizens in immigration detention – people who have no real prospect of removal from Australia becoming practical in the reasonably foreseeable future cannot be held in immigration detention.
- The majority of these people do not meet the character requirements to be granted a visa to live in the Australian community and cannot currently be removed to their home country for a number of reasons – for example, because they are owed protection or are stateless.
- The proper management and support of these people – who are on a departure pathway from Australia, but who cannot be placed in immigration detention and may present a risk to the protection of the Australian community – is critical to ensuring both the safety of the Australian community and the integrity of Australia's migration system.

Handling Notes:

- Immigration Compliance Group – including both Department and Australian Border Force (ABF) functions – are responsible for the management of NZYQ-affected people on a Bridging (Removal Pending) visa (BVR) in the Australian community, including through Operations AEGIS.
- The Australian Federal Police (AFP) and state and territory law enforcement are responsible for criminal matters in their jurisdiction.

Key Points

- On 8 November 2023, the High Court made orders in the matter of *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs & the Commonwealth* (NZYQ). The High Court delivered a unanimous judgment finding that unlawful non-citizens cannot continue to be kept in immigration detention for the purpose of their removal from Australia once there is **no real prospect of their removal becoming practicable in the reasonably foreseeable future**.
- In order to manage potential risks to the Australian community from the actions or behaviours of the NZYQ-affected cohort – who are now in the community on a Bridging (Removal Pending) visa (BVR) – the Department has implemented a range of mechanisms and functions to support the cohort in the Australian community and ensure compliance with visa conditions.
- On 10 November 2023, Operation AEGIS was established as a joint ABF and AFP operation to monitor and enforce compliance of the NZYQ-affected BVR cohort with their visa conditions.

Clearing Officer: Michael Burke, Acting Deputy Secretary Immigration Compliance

- A Law Enforcement Coordination Group, attended by Commonwealth, state and territory law enforcement agencies, was also established to facilitate whole-of-government coordination and information sharing in support of Operation AEGIS.
- A Community Protection Board was established to provide informed, impartial and evidence-based recommendations to the Minister or delegate, which support the management of individuals who may pose risks to the safety and security of the Australian community.
- On 29 August 2025, the Australian Government entered into a Third Country Reception Arrangement with the Government of Nauru, which enables Australia to remove to Nauru, individuals who have no legal right to remain in Australia and who cannot be returned to a country where they hold citizenship.

Management of the BVR cohort

- The Department, ABF and Status Resolution Support Services (SRSS) providers work collaboratively to address complex needs of BVR holders and risks to the community.
- The Department has continued to strengthen its case management model in respect of BVR holders. Enhancements include regular and ongoing assessment of recidivism risk, and identification of potential interventions that increase the likelihood of positive outcomes (improved community safety) using tools and methods validated in the community corrections services environment.
- These case management functions are undertaken by a dedicated team within the Department and activities are coordinated closely with Operation AEGIS officers. This cooperation, which is supported by individualised case plans based on assessment findings, enables the Department and ABF to better monitor changes in risk levels and apply targeted interventions to attempt to mitigate risk or escalating behaviour.
- Individuals released from immigration detention are eligible for enhanced SRSS support services for up to 12 months. Assistance includes intensive case management, transitional accommodation and support to identify longer-term options, employment support, and connecting individuals to community services and programs, such as offender targeted rehabilitation and adjustment programs.
- Any threat to the safety of the community or individuals, and any likely breach of conditions that would result in a criminal offence, is immediately referred to the relevant State/Territory law enforcement authority.

YBFZ High Court outcome

- The High Court ruling in YBFZ on 6 November 2024 found that the imposition of electronic monitoring and curfew conditions infringed on Chapter III of the Constitution and were invalid in the current form.
- Following the YBFZ outcome, new regulations were put in place on 7 November 2024 to establish a new community safety test for when electronic monitoring and curfew can be imposed.

Clearing Officer: Michael Burke, Acting Deputy Secretary Immigration Compliance

Key Data and Statistics

- As at 31 August 2025, 358 people were considered to be affected by the NZYQ High Court ruling and in the community on a BVR.
- As at 31 August 2025, of the 358 people:
  - 264 were on a BVR with no discretionary conditions.
  - 92 were on a BVR with the electronic monitoring condition.
  - 45 were on a BVR with the curfew condition.
- As at 31 August 2025, there were 156 individuals who had been charged with either state and territory offences by state and territory police, Commonwealth offences by the AFP, or both and were either remanded in custody or in the community.
- As at 31 August 2025, 131 individuals had chosen to engage with SRSS support.
- As at 31 August 2025, 7 victims or families of victims of crime had contacted the Department, with the Department responding to all contact.

Consultation

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

Clearing Officer: Michael Burke, Acting Deputy Secretary Immigration Compliance

Home Affairs Portfolio
Department of Home Affairs
Supplementary Estimates Hearing – October 2025

KEY BRIEF

Topic: Visa Response to Crises

Responsible Deputy: Mr Michael Willard, Deputy Secretary Immigration Programs

Key Top Lines

- All non-citizens who wish to travel to, enter or remain in Australia must satisfy the requirements of the *Migration Act 1958* and the *Migration Regulations 1994*. This includes identity, health, character and security requirements.
  - The same criteria applies to all non-citizens applying for an Australian visa, regardless of nationality or location.
- The Australian Government is committed to protecting the safety of all Australians and has security checking procedures in place.
  - The Department of Home Affairs (the Department) assesses all visa applicants against security criteria in line with guidance from security agencies.
  - Checks are repeated more than once along a person's journey to Australia, including at the time of visa grant, while they hold a visa outside Australia, and once they arrive in Australia.
- The Australian Government is making available, on a case-by-case basis, a temporary humanitarian visa pathway for people impacted by the Hamas-Israel conflict and Russia's invasion of Ukraine.

Handling Notes:

- Mr Michael Willard, Deputy Secretary Immigration Programs, is the lead witness on the visa response to crisis, including questions relating to the temporary humanitarian visa pathway.
- Mr Michael Thomas, Deputy Secretary Immigration Compliance, is the lead witness if questions relate to cancellation activity.

Key Points

- The Department and the Australian Border Force support the whole of government response to crisis led by the Department of Foreign Affairs and Trade.
- The same eligibility criteria applies to all applicants for an Australian visa, regardless of nationality. Each visa applicant is assessed on their individual circumstances.

Security concerns

- The Department screens all visa applicants in line with guidance from security agencies, drawing on information provided by these agencies in relation to individuals, documents and characteristics of concern.

Clearing Officer: Michael Willard, Deputy Secretary Immigration Programs Group

- Setting out full details of the security checking procedures could jeopardise the effectiveness of the process and our ability to obtain information in the future.

Cancellations

- To be granted a visa, a person must have met all criteria, including health, character and security checks. However, circumstances can change, and the Department routinely cancels visas where the Department has additional information about the person that was not available when the visa was granted.
- The decision to cancel a visa is not made lightly, a delegate considers the individual circumstances of the person.

Visa pathways

- Holding an Australian visa does not mean that the person will choose to, or be able to, travel to Australia. The Department is aware that some visa holders, or former visa holders, in Gaza have been unable to travel while their visa was valid.
- The Australian Government is making available a temporary humanitarian stay visa pathway to Palestinians and Israelis impacted by the Hamas-Israel conflict on a case-by-case basis.
- The Australian Government is also making a new temporary humanitarian stay pathway available to Ukrainians, who arrived in Australia before 31 July 2023 and did not take up the original offer in 2022.
    - The temporary humanitarian stay pathway is by invitation from the Australian Government – individuals cannot apply for this visa without an invitation.
    - To be granted a visa, individuals must meet all visa legal requirements, including health, character and security criteria - the same as any other visa applicant.

Key Data and Statistics

Michael Willard – Deputy Secretary Immigration Programs

Palestinian

- As at 31 August 2025, there were 2,238 Palestinian visa holders in Australia of which 383 held a permanent visa.
    - There are more Palestinian visa holders in Australia now than before the conflict (955 visa holders in Australia at the end of October 2023).
    - There were 645 Palestinian visa holders outside of Australia – not all in Gaza.
- Between 7 October 2023 and 31 August 2025, the Department granted **6,375** visas to Palestinians who met all requirements. A Palestinian may have been granted more than one visa during this period.
- Between 7 October 2023 and 31 August 2025, the Department refused **8,875** visa applications from Palestinians as they did not demonstrate they met all requirements.
- Between 7 October 2023 and 31 August 2025, the Department cancelled **53** visas of Palestinians, on a range of grounds, while the person was outside Australia. Many (**28**) of these cancellations were later revoked.

Clearing Officer: Michael Willard, Deputy Secretary Immigration Programs Group

Israeli

- Between 7 October 2023 and 31 August 2025, the Department granted **22,771** visas to Israelis who met all requirements and refused those who didn't meet all requirements (**641**).
- Between 7 October 2023 and 31 August 2025, the Department cancelled **86** visas held by Israeli citizens, on a range of grounds. 29 visas were cancelled when the person was onshore and 57 were cancelled when the person was offshore.

Consultation

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

Clearing Officer: Michael Willard, Deputy Secretary Immigration Programs Group

Home Affairs Portfolio
Department of Home Affairs
Supplementary Estimates Hearing – October 2025

KEY BRIEF

Topic: NZYQ related litigation

Responsible Deputy: Ms Brooke Hartigan, Deputy Secretary Legal

Key Top Lines

- Following the Commonwealth wins in *ASF17* and *CZA19*, there are no longer any cases on foot seeking to significantly extend the NZYQ constitutional limit.
- The Department continues to manage several ongoing challenges to the Subclass 070 Bridging (Removal Pending) visas (BVRs) scheme and individual BVR decisions. The lead case, EGH19, will be heard by the High Court on 15 October 2025.
- In the November sittings, the High Court will also hear a test case (*Abdel-Hady v Minister for Home Affairs*) on whether the Commonwealth and its officers have a common law defence of lawful justification to claims for damages for false imprisonment for periods of time prior to the judgment in *NZYQ*.
- The Department is also managing several challenges brought by individuals subject to the interim third country reception arrangement with Nauru.

Handling Notes:

Brooke Hartigan, Deputy Secretary Legal, is the lead witness for matters related to the Department's litigation caseload.

Managing the Department's litigation caseload may include involvement with other Commonwealth agencies, including the Attorney-General's Department, particularly in regards to the handling of claims or the conduct of litigation.

Key Points

- In *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37 (NZYQ), the High Court held that detention of an unlawful non-citizen for the purpose of removal will cease to be constitutionally permissible when there is no real prospect of their removal from Australia becoming practicable within the reasonably foreseeable future.

- In *ASF17 v Commonwealth of Australia* [2024] HCA 19 the High Court clarified this limit will not be met where the sole reason a person cannot be removed is that they are not cooperating with steps necessary to carry out removal.

- In *CZA19 v Commonwealth of Australia, DBD24 v Minister for Immigration and Multicultural Affairs* [2025] HCA 8 the High Court found that *NZYQ* only applies to persons being detained for the purpose of removal from Australia, not for visa purposes.
    - In other words, where unlawful non-citizens have ongoing visa processes that mean they are not liable for removal under s 198 of the *Migration Act 1958* their detention will be lawful.

Clearing Officer: Peter Frank, Assistant Secretary, Migration & Citizenship Litigation

- There are no cases presently on foot with the potential to significantly impact or extend the constitutional limit found in *NZYQ*.

- That said, in the November 2025 sittings the High Court will hear a test case (*Abdel-Hady v Minister for Home Affairs*) on whether the Commonwealth and its officers have a common law defence of lawful justification to claims for damages for false imprisonment for periods of time prior to the result in NZYQ. The Commonwealth will argue it should not be held liable for applying the law as it was understood to be prior to NZYQ, which required those persons to be detained.

BVR challenges

For NZYQ BVR Cohort see IG-05.

- To manage non-citizens released from detention because of the decision in *NZYQ*, the Minister has considered granting those people BVRs.
    - BVRs are a temporary visa subject to a range of conditions that may diminish the risk of a non-citizen causing harm to the community, including the electronic monitoring and curfew conditions.
- In *YBFZ v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] HCA 40, the High Court held invalid regulations that required the electronic monitoring and curfew conditions to be imposed on a BVR unless the Minister was satisfied that it was not reasonably necessary to impose those conditions for the protection of any part of the Australian community. The Court found that the power to impose those conditions was punitive and so Chapter III of the Constitution precluded that power being reposed in the Minister.
- Following *YBFZ*, the *Migration Regulations* were amended to require the electronic monitoring and curfew conditions to be imposed on a BVR if the Minister is satisfied that the non-citizen poses a substantial risk of seriously harming any part of the Australian community by committing a serious offence; and is satisfied that those conditions are reasonably necessary, and reasonably appropriate and adapted to protecting the community from that risk.
- As at 22 September 2025, there are 9 constitutional challenges to the imposition of various conditions under the *Regulations* and 6 ongoing administrative law proceedings that challenge decisions to grant or impose conditions on BVRs (with some matters raising both).
- The lead cases are as follows:
    - *EGH19* (High Court of Australia). EGH19 is a citizen of Papua New Guinea who was released from detention in April 2025. EGH19 has a significant criminal history including murder and domestic violence. He challenges the constitutionality of the amended *Regulations* and the validity of the curfew and electronic monitoring conditions imposed on his BVR. The matter has been listed for hearing on 15 October 2025.
    - *DVRL* (Federal Circuit and Family Court). DVRL is a citizen of Indonesia who was released from detention in September 2024 after his application for a protection visa was refused. He was granted a BVR subject to the electronic monitoring and curfew conditions in November 2024, with the curfew condition recently removed. He also challenges elements of the BVR framework, including provisions enabling BVRs to be granted whilst a

s76E process is ongoing (the mechanism by which a BVR holder requests the removal of discretionary conditions). DVRL's criminal history includes a conviction for manslaughter, for which he was sentenced to 7 years imprisonment. DVRL bludgeoned his de facto spouse with a child's bicycle, and she died from resultant injuries. He was granted a BVR subject to the electronic monitoring and curfew conditions in November 2024 and a BVR subject only to monitoring in May 2025. On 19 September 2025, the Court found both decisions were affected by error. The decisions did not demonstrate the delegate's satisfaction that the conditions could reasonably reduce the substantial risk of reoffending.

- *DPS25* (Federal Court). DPS25 is a citizen of Eritrea who was released from detention in November 2023. He was granted a BVR subject to the Minor or Other Vulnerable Person (MOVP) conditions as a result of his violent offending. DPS25 challenges the constitutionality of these conditions, in particular condition 8623 which operates to prevent him approaching within 200 metres of a school, child care or day care centre. DPS25 argues the MOVP conditions are punitive and inconsistent with Chapter III of the Constitution. The matter has been listed for hearing on 13 and 15 October 2025.
- *PLQF* (Federal Circuit and Family Court). PLQF is a citizen of Bhutan who was released from detention in August 2024. As a result of his violent offending against his wife, PLQF is subject to condition 8624 which prevents him from contacting her or their children. PLQF argues condition 8624 should not apply in relation to his family as his offending did not involve violence towards his wife. He also challenges the constitutional validity of the condition on the basis it is punitive and inconsistent with Chapter III of the Constitution. The matter is yet to be listed for hearing.

Interim Third Country Reception Arrangement (TCRA) challenges

- The 3 individuals subject to the interim TCRA have brought 2 challenges apiece – one to the TCRA processes themselves, and one challenging decisions relating to the cancellation of their substantive Australian visas.

Challenges to the TCRA and related processes

- *TCXM* (Full Federal Court):
  - On 26 May 2025, the Federal Court dismissed TCXM's originating application in which TCXM contended that procedural fairness obligations attached to both the Commonwealth entering into the interim third country reception arrangement with Nauru, and to applying for a Nauruan Long Term Stay visa on his behalf. The Federal Court also dismissed his arguments that his removal was not 'reasonably practicable' due to his medical condition and the inadequacy of medical facilities on Nauru.
  - On 14 June 2025, TCXM filed a Notice of Appeal in the Federal Court seeking to re-agitate each ground in his originating application. On 11 August 2025, the Attorney-General agreed to exercise her power pursuant to section 40 of the *Judiciary Act 1903* to apply for the removal of TCXM's Full Federal Court appeal to the High Court. On 18 August 2025, the removal application was filed in the High Court. At the High Court's request, an amended application outlining the special circumstances of the proceeding was filed on 22 August. Due to the

introduction of the *Home Affairs Legislation Amendment (2025 Measures No 1) Bill 2025* (HAL Bill), a request was made to adjourn the removal application.

  - On 19 September 2025, TCXM's representatives provided the Minister with an amended notice of appeal, withdrawing the procedural fairness ground relating to the Nauruan visa application. However, TCXM has retained his other two grounds relating to whether procedural fairness attaches to the establishment of the TCRA as well as whether the medical facilities on Nauru are relevant to the question of whether his removal is reasonably practicable. He has also raised a new constitutional ground which seeks to argue that although entering into an interim TCRA may be valid, that does not mean entry into an interim TCRA will necessarily be treated as *lawful*. On 19 September 2025, the Minister consented to TCXM's amended notice of appeal. On 22 September 2025, the Solicitor-General accepted the brief to appear for the Commonwealth.
  - The High Court is yet to grant the removal application. However, once granted, the matter is expected to be heard during the December sitting period.

- *CYB25* (Federal Court). On 28 March 2025, CYB25 (also known as Plaintiff S22) filed an application in the Federal Circuit and Family Court, challenging the Nauru-related decisions. CYB25's application raises similar arguments to those of TCXM. On 5 June 2025, the matter was transferred to the Federal Court. The application is yet to be listed for hearing.
- *CDC25* (Federal Court). CDC25 also filed an application in the Federal Circuit and Family Court. He contends the decision of the Minister or his delegate to apply for a Nauruan Long Term Stay visa is a 'migration decision' under the Act that attracted procedural fairness obligations, which he was denied. It is further argued that the grant of the visa under Nauruan law was in any event invalid. As a consequence, CDC25 argues the BVR cessation provisions (s 76AAA of the Act) were not engaged, and his BVR was not validly ceased. On 14 March 2025, this proceeding was transferred to the Federal Court. The application has not been listed for hearing.

Challenges to visa cancellation decisions

- *Plaintiff S22* (High Court). On 3 September 2025, the High Court (3 Justices) unanimously dismissed Plaintiff S22's application which sought to challenge the delegate's decision not to revoke the mandatory cancellation of his Temporary Protection visa. The High Court rejected Plaintiff S22's arguments that the delegate misunderstood the legal consequences of their decision, misapplied the expectations of the Australian community consideration, and improperly relied on legally privileged material the Plaintiff had mistakenly provided to the Department.
- *TCXM* (Federal Court). TCXM has also filed a Notice of Appeal seeking leave to appeal out of time to challenge a May 2024 decision of the Federal Court. The Federal Court dismissed TCXM's challenge to an AAT decision affirming the decision not to revoke the mandatory cancellation of his Protection visa. The application is listed for hearing on 11 November 2025.
- *CDC25* (Federal Court). CDC25 argued that the Federal Court should grant an extension of time to allow him to challenge an August 2023 decision of the AAT to affirm a delegate's decision not to revoke the mandatory cancellation of his

Protection visa. He relied on the Full Federal Court decision in *AJN23 v Minister for Immigration, Citizenship and Multicultural Affairs* (2024) 304 FCR 586 to argue that the AAT erred in its consideration of the 'legal consequences' of not revoking the cancellation of his Protection visa, namely that he would be indefinitely detained. On 17 April 2025, the Minister conceded the matter was affected by error as the AAT failed to consider facts, materials, and arguments related to CDC25's parole. The matter was remitted to the ART for reconsideration according to law and has not yet been listed for hearing.

Criteria applied to identify the cohort of impacted detainees

The Department applies the following criteria in determining whether a person is affected by the *NZYQ* judgment:

- whether the obligation to remove under section 198 of the Act is engaged; and
- if so, whether there is a real prospect of removal becoming practicable in the reasonably foreseeable future.

<u>If pressed</u>

This includes consideration of the below factors:

- Whether there is an identified country to which the person can be removed. This will generally not be the case where the person is stateless or there is a 'protection finding' within the meaning of the Act in respect of the person's country of nationality, citizenship or long-term residence, unless there is a third country to which the person can be removed.
- Whether there are other barriers to removal of the person, e.g.:
  - a serious health condition that prevents removal in the foreseeable future;
  - no travel documents and there is no pathway to obtaining one; or
  - the country to which the person could be returned is physically inaccessible.

Clearing Officer: Peter Frank, Assistant Secretary, Migration & Citizenship Litigation

Home Affairs Portfolio
Department of Home Affairs
Supplementary Estimates Hearing – October 2025

KEY BRIEF

Topic: Community Safety Order Scheme

Responsible Deputy: Ms Brooke Hartigan, Deputy Secretary Legal

Key Top Lines

- The Community Safety Order (CSO) Scheme in Division 395 of the Criminal Code (introduced by Government as one of the measures to address the implications of the High Court judgment in *NZYQ*) empowers the Minister to apply to a state or territory Supreme Court for a supervision or detention order in relation to a 'serious violent or sexual offender'.
- The Department continues to assess eligible *NZYQ*-affected non-citizens for the purpose of potential Community Safety Order (CSO) applications. The assessment of each case is complex, resource-intensive, and requires gathering and considering very large amounts of information from different sources against the legislative thresholds to ensure they can be met on the basis of admissible evidence.
- A very high threshold applies to the making of detention orders under the scheme. This threshold was modelled on the existing Commonwealth continuing detention order framework for high-risk terrorist offenders that has been upheld by the High Court, and state preventative detention schemes.
- No applications have yet been made for a CSO under Division 395. Several cases were progressed for potential CSO applications, including to the stages of obtaining expert risk assessment reports, and preparation of evidence in support of cases close to being application ready.
- There are several reasons why the preparation of a CSO application, even a well advanced one, may be paused or no longer able or suitable to be progressed. Further, under the *Legal Services Directions 2017*, any application for a CSO requires legal advice confirming there are reasonable grounds to make that application and assessment of prospects.

Handling Notes:

- Brooke Hartigan, Deputy Secretary Legal, is the lead witness for matters concerning the conduct of the CSO Taskforce in implementing the CSO Scheme.
- Administration of the CSO Scheme involves other Commonwealth agencies, including through Operation AEGIS (Australian Border Force and Australian Federal Police), the Attorney-General's Department (legal assistance funding and responsibility for the *Criminal Code)* and those subject to requests for information.

Key Points

- There are two types of CSOs available under Division 395:

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  - A Community Safety Detention Order (CSDO) – the effect of which is to detain the person in a prison for the period the order is in force; or
  - A Community Safety Supervision Order (CSSO) – the effect of which is to impose conditions on the person for the period the order is in force.
- Since its inception on 8 December 2023, the CSO Taskforce has:
  - issued Requests for Information (RFIs) in respect of 36 individuals to Commonwealth, state, and territory agencies
  - obtained 17 expert assessment reports relating to 12 individuals.

- Although no applications for CSOs (detention or supervision) have been made, several cases have progressed to an advanced stage of preparation. There are several reasons why the preparation of a CSO application, even a well advanced one, may be paused or no longer able or suitable to be progressed.
- As at 1 September 2025, over 85,721 documents, consisting of approximately 715,216 pages received (from 162 sources) in response to RFIs (including internal holdings) have been uploaded to the document management database and reviewed.

Eligibility for a CSO

- Under the CSO scheme, the Minister for Immigration may apply to a state or territory Supreme Court for a CSO in respect of non-citizens where:
  - the person has been convicted of a 'serious violent or sexual offence' or a 'serious foreign violent or sexual offence' being an offence punishable by imprisonment for life or for a period, or maximum period, of at least 7 years; and
  - there is no real prospect of the person's removal from Australia becoming practicable in the reasonably foreseeable future; and
  - the person is detained in custody in a prison serving a sentence of imprisonment for a serious violent or sexual offence or a sentence of imprisonment for another offence; or
  - the person is in the community; or
  - the person is subject to a community safety detention order.
- The person must be at least 18 years old at the time the Court makes a CSO.
- Not all members of the NZYQ cohort are eligible offenders under the CSO Scheme.

Thresholds for making a CSO

- A court may make a CSDO if satisfied to a high degree of probability, on the basis of admissible evidence, that the offender poses an unacceptable risk of seriously harming the community by committing a serious violent or sexual offence, and
  - that there is no other less restrictive measure available under Division 395 (such as a CSSO) that would be effective in protecting the community from serious harm by addressing the unacceptable risk; and
  - where the offender is a holder of a visa under the Migration Act that is subject to conditions, the court is satisfied that the conditions imposed would

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not be effective in protecting the community from serious harm by addressing the unacceptable risk.

- A court may make a CSSO if satisfied on the balance of probabilities, on the basis of admissible evidence, that the offender poses an unacceptable risk of seriously harming the community by committing a serious violent or sexual offence; and
  - where the offender is a holder of a visa under the Migration Act that is subject to conditions, the court is satisfied that the conditions would not be effective in protecting the community from serious harm by addressing the unacceptable risk; and
  - the Court is satisfied on the balance of probabilities that each of the conditions and the combined effect of all of the conditions to be imposed on the offender is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from serious harm by addressing the unacceptable risk.
- A Court may not make a CSO for a period of more than 3 years and any CSO must be reviewed by the court annually or earlier upon application by the offender or Minister.
- The Minister may make subsequent CSO applications for the same offender.

Preparation of CSO application - Minister's disclosure obligation

- The Immigration Minister must ensure that reasonable inquiries are made to ascertain any facts known to any Commonwealth law enforcement officer that would reasonably be regarded as supporting a finding that an application for a CSDO or a CSSO should not be made in relation to an offender.
- In addition, a CSO application must include a copy of any material in the possession of the Minister and statement of any facts that the Minister is aware of, that would reasonably be regarded as supporting a finding that the order should not be made, except any information, material or facts that are likely to be protected by public interest immunity.
- These are key safeguards to ensure there are appropriate checks and balances in the CSO scheme. The Minister discharges these obligations by requesting information from relevant agencies, making reasonable inquiries of Commonwealth law enforcement agencies, reviewing the material provided for relevance with the Minister's obligation, and including a copy of material in the Minister's possession and a statement of facts, as required, in any CSO application.

Preparation of CSO application - Factors that can delay an advanced CSO application or mean the application does not proceed

- The *Legal Services Directions 2017* provide that legal proceedings, including a CSO application, may only be filed if there is legal advice that there are reasonable grounds to do so.
- Factors that can delay or prevent a potential CSO application may become apparent as work on a case is underway, or arise due to a change of circumstances relevant to the eligibility or thresholds under the CSO Scheme. These factors include:

1. BVR conditions: compliance and time in the community

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- A non-citizen may be subject to discretionary conditions under their visa, such as electronic monitoring and curfew, imposed to address community safety risks.
- In applying for a CSO the Minister must establish, based on admissible evidence, that an offender poses an unacceptable risk of seriously harming the community through further serious violent or sexual offences, and that, the conditions of a visa would not be effective in protecting the community from this risk.
    - Compliance with those conditions, and no further offending has occurred during the time the potential CSO application has been under consideration may impact on the progress of a CSO application.
- This threshold applies even where an application for a CSSO is aimed at imposing largely therapeutic conditions, further to any conditions imposed by the visa. Therapeutic conditions cannot currently be imposed by way of a visa.

2. Non-citizen serious offender is not currently 'in the community' or 'in prison'

- This situation can arise if the person is remanded in custody awaiting the progress of criminal proceedings or is receiving residential treatment pursuant to a mental health order.
- Although an application can be filed, the order itself cannot be made where an offender is in custody on remand.
    - In these circumstances, any preparation of a CSO application may be paused, pending the outcome of this other offending.
- Similarly, applications may be delayed where a non-citizen is receiving residential treatment pursuant to a mental health order. In light of the dynamic circumstances, a further expert assessment may be needed to determine the impact of the change of circumstances in the assessment of risk.

3. Changes in circumstances that may allow steps toward removal

- Information about an individual's circumstances may come to light, or change, resulting in the Department being able to progress steps that could result in removal being practicable in the foreseeable future.

If and once those circumstances no longer present, further work is required to incorporate facts and evidence into case preparation.

- Once the relevant factor/s impacting the progress of a case are resolved in a way that permits the preparation of an application to continue, the facts and material relevant to those factors need to be incorporated into the case preparation, as well as in the assessment of appropriate conditions and the evidence in support of any application.
- The result of this is that steps already taken in the preparation are often required again, including the obtaining of legal advice, a further expert assessment, development of different proposed conditions, and further consultations with key stakeholders.

Consultation

- Deputy Secretary Legal has cleared the legal information contained within this brief.
- Immigration Compliance Group has been consulted on this brief.

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