



AIDE MEMOIRE

Independent Review of Immigration New Zealand's Resident Deportation Liability processes

Date:	2 October 2019	Priority:	High
Security classification:	In Confidence	Tracking number:	0953 19-20

Information for Minister(s)

Hon Iain Lees-Galloway
Minister of Immigration

Hon Poto Williams
Associate Minister of Immigration

Contact for telephone discussion (if required)

Name	Position	Telephone		1st contact
Carolyn Tremain	Chief Executive	04 901 1357	021 681 715	✓
Greg Patchell	Deputy Chief Executive - Immigration	04 896 5171	027 200 6495	
Fay Holdom	Director Business Management	04 901 1302	027 508 8930	

The following departments/agencies have been consulted

--

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



AIDE MEMOIRE

Independent Review of Immigration New Zealand's Resident Deportation Liability processes

Date:	2 October 2019	Priority:	High
Security classification:	In Confidence	Tracking number:	

Purpose

This aide memoire provides you with a summary of the Independent Review of Immigration New Zealand's Resident Deportation Liability processes undertaken by Mike Heron QC and provides you with details of MBIEs release of this.

Carolyn Tremain
Chief Executive
MBIE

..2.. / ..10.. / .2019

Background

1. In November 2018, the Chief Executive of the Ministry of Business, Innovation and Employment (MBIE), Carolyn Tremain, commissioned Mike Heron QC to carry out an independent review of the process by which INZ compiles and presents a file to decision makers who make residence deportation decisions. Specifically the independent review was to examine whether the process for preparation of a residence deportation case file, which contains the information provided to decision makers, is fit-for-purpose for decision making and to identify whether process improvements could be made.
2. The review was initiated in response to the Minister of Immigration making a decision in September 2018 to cancel the deportation liability of Karel Sroubek (also known as Jan Antolik) following consideration of the information contained in a case file prepared by Immigration New Zealand (INZ), which is part of MBIE.
3. Mr Heron examined 30 case files, including the Sroubek case file, to:
 - Consider how case files are prepared, what information is included (at the point in time in which the decision is being made), and how information is presented to decision makers
 - Determine whether residence deportation case file information provided to decision makers (whether the Minister of Immigration or Delegated Decision Makers) is sufficient to allow decisions to be made, noting any applicable restrictions that may be required,

such as the provisions and principles of natural justice, and subsequent grounds of appeal and review.

Report Summary

4. The Independent Reviewers report was delivered to MBIE on 25 September 2019. A copy of the Independent Reviewers report is attached at Annex One.
5. The reviewer found that he is ‘... generally of the view that INZ’s processes are robust and consistent with their legislative and Ministerial mandate.’ He also reiterated that the public can have confidence in the INZ Resolution function’s processes and procedures for the preparation and presentation of residence deportation liability files for decision makers.
6. Specifically, the reviewer found that:
 - the processes and operational practices employed by INZ are generally sound (in the current settings),
 - INZ’s staff, and its Resolutions team, are well placed to consider and appropriately decide issues regarding residence deportation liability,
 - INZ collects the information necessary to enable decision-makers to make informed decisions, and
 - INZ presents that information to decision-makers appropriately and professionally.
7. While the reviewer found there is scope for additional decision-making powers to be delegated by the Minister to DDMs, and for Resolutions to conduct further investigation in certain instances, he generally viewed INZ’s processes as robust and consistent with their legislative and Ministerial mandate.

Report Findings and Management Response

8. However, a number of recommendations for policy and operational change were made. A summary of the recommendations for strengthening those processes are as follows:
 - i. **Recommendation One:** Where a decision is to be made by the Minister (rather than a DDM) which has factual or legal complexities, or is unusual or novel, the Minister should request and receive advice from INZ (as and when the Minister considers necessary). INZ should consider and develop further guidance for the Minister on the types of cases warranting specific advice from officials.
 - ii. **Recommendation Two:** INZ’s Resolutions team should have capability for a limited inquiry function that will enable it to check or corroborate the veracity of information provided to INZ if this is considered necessary by the decision-maker.
 - iii. **Recommendation Three:** A simplified, two-stage process could be applied to criminal cases where the relevant offence is relatively minor (for example a first driving offence without any other impact). A potential process is detailed in Appendix B of the Report. Given Parliament has created “automatic” grounds for liability, before such a process was adopted, it is recommended

that the Minister review existing policy settings to ensure that they are fit for purpose.

- iv. **Recommendation Four:** Consideration should be given to shifting the DDM process in automatic liability cases (involving more serious offending) to after the IPT appeal option has been exercised (or lapsed). It is acknowledged that any such change would be subject to policy and resourcing considerations of INZ, the IPT and the Ministry of Justice.
 - v. **Recommendation Five:** Other process changes could be made, including sending copies of relevant evidence to a client who faces deportation, obtaining a final Summary of Facts in relation to all criminal cases, and streamlining certain administrative processes (noted in the discussion below).
9. The reviewer also made further recommendations relating to the choice of decision-maker and whether the process would benefit from greater delegation from the Minister to DDMs.
 10. A summary of the recommendations and the responses from INZ are outlined in Annex Two.
 11. In line with some of the recommendations, The Minister of Immigration has directed MBIE to undertake a policy review of the framework for the exercise of ministerial discretion in 2020.

Proposed Release

12. A media pack including the final report will be released by MBIE at 9am on Wednesday, 9 October, under embargo until 2pm. Myself, Greg Patchell and Mike Heron QC will be available to speak to media about the findings.

Annexes

Annex One: Independent Review of Immigration New Zealand's Resident Deportation Liability processes

Annex Two: Management response to the findings of: Independent Review of Immigration New Zealand's Resident Deportation Liability processes

Annex One: Independent Review of Immigration New Zealand's Resident Deportation Liability processes



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI



Annex Two: Management response to the findings of: Independent Review of Immigration New Zealand's Resident Deportation Liability processes
