



**Independent review for
the Department of Immigration and Border Protection into
the circumstances of the detention of two Australian
citizens**

Final report

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s47F

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Executive Summary

This review inquires into the circumstances of the detention of two Australian citizens. The citizens were subject to mandatory visa cancellation and subsequent detention.

The key problem was a failure by a number of DIBP officers to recognise that the individuals could be or were Australian citizens.

The review finds that:

- The evidence shows that staff involved in this case did not have the fundamental level of knowledge required to perform their duties.
- Current quality assurance processes and reporting are not effective. DIBP's executive cannot have any reasonable level of assurance that cancellation and detention decisions are compliant with the policy and legislative framework.
- On a number of occasions different DIBP officers received critical information that differed from that recorded in ICSE. No consistent attempts were made to resolve the inconsistencies or escalate the matter.
- In both cases the Australian citizens provided critical information to DIBP in the context of requests for revocation of the visa cancellations. This information was not considered by any DIBP officer, including those making detention decisions.
- The lack of quality assurance in data management means that the officers concerned and DIBP's executive can have no assurance that the best available current data is used when officers make cancellation and detention decisions.
- DIBP officers do not consistently demonstrate the requisite knowledge, understanding and skills to fairly and lawfully exercise the power to detain. In these cases, some decisions were based on erroneous assumptions, did not consider all relevant information or seek to resolve complexities. Officers did not assume personal responsibility for decisions.

The officers interviewed seemed to be performing their duties to the best of their abilities and in line with their understanding of departmental policy and priorities. The evidence pointed to resourcing issues and a focus by management on increasing throughput to address timeliness and delays rather than ensuring the quality and lawfulness of decisions.

While the current review had a narrow focus it cut across a wide range of business areas and involved a range of staff. The level of issues identified points to systemic problems. It is also quite possible that other Australian citizens have been detained or removed in similar circumstances, including in cases unrelated to cancellation on character grounds.

The review makes two recommendations at an operational level to address the lack of knowledge by staff of citizenship issues. A further recommendation endorses recommendations made in two recent reviews of detention related decision making to address systemic issues. The final recommendation seeks to enhance risk management and quality assurance in DIBP.

Background

s47F
s47F is a s47F year old citizen of New Zealand who was born in Australia. On s47F April 2010, s47F departed Australia for the first time. He returned five days later, on a New Zealand passport and was granted a Special Category (subclass 444) visa (SCV).

On s47F November 2016, while in criminal detention, s47F SCV was mandatorily cancelled under s501(3A) of the *Migration Act 1958* (the Act). On s47F December 2016, upon his release from criminal detention, s47F was detained under s189(1) of the Act on the basis that an officer had formed a reasonable suspicion that he was an unlawful non-citizen.

On several occasions between November 2016 and January 2017, s47F advised the Department that he was a citizen of Australia, that he was born in Australia or that he had lived here his whole life.

On s47F March 2017, a Status Resolution officer reviewed s47F immigration history and noted that he may have automatically acquired Australian citizenship on his 10th birthday. On the same day, the case was escalated to the Citizenship and Status Resolution Helpdesks for further advice.

On s47F March 2017, the Department confirmed that s47F was an Australian citizen and he was immediately released from immigration detention.

s47F had been held in immigration detention for a total of 97 days.

s47F
s47F is a s47F year old person who was born in the External Territory of Papua prior to Papua New Guinea (PNG) Independence Day. s47F arrived with his family as a minor in 1978 from PNG. On s47F February 1992, s47F was granted a permanent return visa. This visa converted to a transitional permanent visa on 1 September 1994 by operation of law.

This transitional permanent visa allows the holder to travel to and from Australia for a prescribed period. The travel facility ceased on s47F February 1997 but the visa remains in effect indefinitely, unless the holder departs at which time the visa ceases. There is no record of s47F departing Australia since 1992.

On s47F February 2017, while in criminal detention, s47F visa was mandatorily cancelled under s501(3A) of the Act. Documentation to support an application for revocation of his visa cancellation was submitted on s47F March 2017. The documentation included a statement that he had been born in PNG to Australian parents.

On s47F March 2017, upon his release from criminal detention, s47F was detained under s189(1) of the Act on the basis that an officer had formed a reasonable suspicion that he was an unlawful non-citizen.

s47F was identified on the day of his detention as possibly requiring citizenship screening as he was born in Papua prior to its separation from Australian territory. His details including identity documents were examined by Status Resolution officers and a referral made to the Citizenship Helpdesk on s47F March 2017. He was identified as an Australian citizen and released from detention on s47F April 2017. At the time of his release from immigration detention, s47F revocation request had not been actioned.

Advice from the DIBP Citizenship Helpdesk indicated that as s47F was born in Papua when it was still a territory of Australia he is an Australian citizen by birth. Further, under British citizenship law, s47F would have automatically acquired British citizenship by descent at the time of his birth on the basis that his father was born in Britain. As he had the citizenship of another country (Britain) on PNG Independence Day (16 September 1975), he would have retained his Australian citizenship.

s47F had been held in immigration detention for a total of 13 days.

The scope of this review

The Department engaged Dr Vivienne Thom to conduct this independent review of the circumstances of the detention of s47F and s47F. The review was to address the following questions:

1. What risk mitigation strategies are currently in place to prevent an Australian citizen from being detained?
2. Why did the risk mitigation strategies fail on these occasions?
3. What strategies need to be put in place to prevent similar incidents from happening again?

Methodology

The review team had access to the documents and records located on DIBP's systems relating to

- s47F departure from Australia
- s47F arrival in Australia and grant of SCV
- the mandatory cancellation of s47F and s47F visas
- s47F and s47F request for revocation of visa cancellation
- the Department's decision to detain to s47F and s47F
- s47F and s47F time in immigration detention.

The team interviewed 17 officers located in s47F s47F s47F and s47F who had some direct or management responsibility for the handling of the two cases, and met with staff from the Permanent Visa and Citizenship Program, the ABF College, and Status Resolution Operational Support.

All officers that were interviewed and line areas were given the opportunity to comment on the reviewer's preliminary views.

Chronologies: key actions, decisions and documents

s47F

Note: All times are in Australian Eastern Daylight Savings time.

Date	Activity	Business Area
s47F	s47F was born in s47F NSW.	
01/09/1994	s47F acquired a Special Category (subclass 444) visa (SCV) by operation of law.	
s47F	s47F reached his 10 th birthday and automatically acquired Australian citizenship by operation of law. s47F SCV ceased.	
s47F /04/2010	s47F departed Australia for New Zealand. As no record of s47F could be found on systems, a border referral was created. The referral noted that s47F New Zealand passport was issued on s47F April 2010, there were no concerns and s47F was outwards immigration cleared.	
s47F /04/2010	s47F returned to Australia on a New Zealand passport and was purportedly granted a SCV at the border. s47F answered the health and character questions on the incoming passenger card which Australian citizens are not required to answer.	
s47F /11/2010	s47F was convicted at s47F Local Court of s47F and was discharged on condition that he entered into a good behaviour bond for eight months.	
s47F /01/2011	s47F was convicted at s47F Local Court of breach of bail and was sentenced to a new bail order.	
s47F /01/2011	s47F was convicted at s47F Local Court of: <ul style="list-style-type: none"> - s47F and was sentenced to three months imprisonment suspended upon entering into a three month good behaviour bond - s47F and was sentenced to nine months imprisonment suspended upon entering into a nine month good behaviour bond with a nine month supervised probation service - s47F and was sentenced to nine months imprisonment suspended upon entering into a nine month good behaviour bond with a nine month supervised probation service - s47F and was sentenced to an 18 month good behaviour bond with an 18 month supervised probation service - s47F and was sentenced to 12 months imprisonment suspended upon entering into a 12 month good behaviour bond with a 12 month supervised probation service. 	
s47F /09/2016	s47F was convicted at s47F Local Court of s47F and was sentenced to 6 months imprisonment commencing on s47F June 2016 and concluding on s47F December 2016.	
s47F /10/2016	The NSW Department of Justice provided a NSW prison list which included s47F	NCCC
s47F /11/2016	s47F criminal history was requested from the Australian Federal Police (AFP). s47F conviction, sentences and appeals report was requested and received from the NSW Department of Justice.	NCCC
s47F /11/2016	s47F criminal history report was received from the AFP.	NCCC

Date	Activity	Business Area
s47 F /11/2016	A National Police Check for s47 F was requested.	NCCC
s47 F /11/2016	At 1327hrs, the draft mandatory cancellation decision record and notification letter in relation to s47 F was checked was cleared by the team leader.	NCCC
	At 1437hrs, s47 F TY-444 visa was mandatorily cancelled under s501 of the Act. The notification letter was sent to s47 F via the NSW Department of Justice.	
	At 1442hrs, a notification was sent to relevant departmental stakeholders advising that s47 F visa had been mandatorily cancelled.	
	At 1641hrs, the NSW Justice Department was advised that s47 F was liable for Immigration detention upon release from prison as he does not have a visa to remain in Australia.	Removal Operations s47 F
	At 1646hrs, an inmate transfer request was sent to the NSW Justice Department requesting that s47 F be transferred to s47 F to facilitate his detention upon release from prison.	
s47 F /11/2016	<p>A signed acknowledgement of receipt of cancellation notification was received.</p> <p>Several days later (exact date unknown), a call was received from a prison officer who mentioned that s47 F was an Australian citizen. The case officer advised he would escalate the matter to the team leader. The case officer escalated the Australian citizenship matter to the team leader who considered s47 F circumstances, examined a chart titled 'determining visa status of New Zealand citizens' and determined there were no issues and that s47 F was not an Australian citizen. The prison officer was advised of this outcome. A record of these discussions was not saved to s47 F client file in TRIM or noted in ICSE.</p>	NCCC
s47 F /11/2016	A brief assessment tool (BAT) notification assessment was undertaken. No concerns were identified.	Removal Operations s47 F
s47 F /11/2016	<p>s47 F request for revocation of his visa cancellation decision was received.</p> <p>In the request for revocation form, the following information was provided by s47 F</p> <ul style="list-style-type: none"> - Country of citizenship: Australia - Reasons for revocation: I was born in Australia, I have been here my whole life. I have 4 children that are Australian born. Been to New Zealand once in my life. <p>This information was not considered by the Department until s47 F release from detention in March 2017.</p>	NCCC
s47 F /12/2016	s47 F was sent an acknowledgment that his revocation request had been received. The revocation request was saved in s47 F client file in TRIM and noted in ICSE.	NCCC
s47 F /12/2016	At 0757hrs, s47 F expired New Zealand passport details were received from the New Zealand Department of Internal Affairs.	Removal Operations s47 F
	At 1247hrs, a BAT notification assessment was undertaken. No concerns were identified.	Immigration Compliance Ops s47 F
	At 1548hrs, s47 F Correctional Complex was advised that DIBP officers would attend s47 F Correctional Complex on	Immigration Compliance

Date	Activity	Business Area
	§ 4 December 2016 to officially detain § 47F under s189 of the Act and that he would be transferred to § 47F	Ops § 47F
§ 47 F /12/2016	<p>A phone interview was conducted with § 47F</p> <p>On the sentenced prisoner interview template, the following information was completed in relation to § 47F</p> <ul style="list-style-type: none"> - Country of citizenship: Australia (NZ is crossed out) - Country of birth: NZ - First arrival in Australia: claims he was born in Australia § 47F - Are you an Australian citizen or permanent resident? Yes <p>This information was not escalated or further considered by the Department until § 47F release from detention in March 2017.</p>	Removal Operations § 47F
	At 1249hrs, a detention placement assessment (DPA) was completed and sent to relevant departmental stakeholders.	
	At 1317hrs, detention placement was approved for § 47F compound in § 47F	§ 47F Detention Operations
	At 1343hrs, an email was sent to relevant departmental and service provider stakeholders advising that § 47F will be detained upon release from criminal detention and placement had been recommended for § 47F compound in § 47F	Removal Operations § 47F
	A compliance visit application in relation to a field visit to § 47F Correctional Complex was completed.	Immigration Compliance Ops § 47F
§ 47 F /12/2016	<p>At 0847hrs, a BAT notification assessment was undertaken. No concerns were identified.</p> <p>Between 1135hrs and 1140hrs, a compliance client interview (CCI) was conducted with § 47F during a field visit to § 47F Correction Complex.</p> <p>On the CCI interview template, the following information has been completed in relation to § 47F</p> <ul style="list-style-type: none"> - Country of birth: Australia - Country of citizenship: New Zealand - Does the client claim to hold Australian citizenship or Permanent Residency? Does not know <p>This information was not escalated or further considered prior to the decision to detain.</p>	Immigration Compliance Ops § 47F
	At 1136hrs, § 47F was detained under s189(1) of the Act.	
	At 1141hrs, § 47F was provided with a Very Important Notice regarding his detention.	
	At 1155hrs, Serco departed § 47F Correctional Complex with § 47F	
	At 1236hrs, relevant departmental and service provider stakeholders were advised that § 47F had been detained under s189 of the Act.	
	At 1606hrs, the sentenced prisoner interview template that was completed during the phone interview conducted with § 47F on § 4 December 2016 was saved to § 47F client file in TRIM.	Removal Operations § 47F

Date	Activity	Business Area
	At approximately 1710hrs, the MCP4 detention note was completed and the decision to detain documentation was saved in §47F client file in TRIM.	Immigration Compliance Ops §47F
§47F /12/2016	The compliance visit application, MCP 4 and compliance visit report were reviewed and signed by the team leader.	Immigration Compliance Ops §47F
	Between 1100hrs and 1110hrs, detention client interview part A was completed. On the detention client interview part A interview template the following information has been filled out in relation to §47F <ul style="list-style-type: none"> - Do you have any other identity documents available? Birth certificate Between 1110hrs and 1140hrs, detention client interview part C was conducted. On the detention client interview part C interview template the following information has been filled out in relation to §47F <ul style="list-style-type: none"> - Why did you leave your country of nationality? Does not apply. Was born in Australia to New Zealand citizen parents. A case assessment and case plan report were completed.	§47F Case Management
	At 1150hrs, a comprehensive assessment tool (CAT) notification assessment and MCP7 phase one detention review was completed. The detention review concluded that reasonable suspicion is held that §47F is an unlawful non-citizen.	Detention Review
	National police certificate received.	NCCC
§47F /12/2016	Community protection assessment tool (CPAT) was completed. The CPAT noted that §47F was a New Zealand national who was born in Australia to New Zealand citizen parents. It was also noted that §47F was raised and educated in Australia and that he spent all of his formative and adult years in Australia. Australian citizenship by birth was considered and found not to apply. Australian citizenship by operation of law on the 10 th birthday was not considered.	§47F Case Management
§47F /01/2017	The §47F detention review committee discussed the case of §47F. The only action item following discussion required the status resolution officer to update §47F barriers and record travel document details. Action item was completed.	Status Resolution Operational Support
§47F /01/2017	§47F provided a completed personal circumstances form in support of his revocation request. In the form, the following information was provided by §47F <ul style="list-style-type: none"> - Place of birth: Australia - Current citizenship(s): Australia - Date and place of your first arrival in Australia: I was born in Australia. - Do you have concerns or fears about what would happen to you on return to your country of citizenship? No, because I was born in Australia. - What do you think is the likelihood that you may re-offend now? Because I was born in Australia and you can't deport someone that was born here and been here their whole life. If you were born here you're automatically an Australian citizen. - Any other information: I am Australian born. I have been in Australia for my whole life. I've only been to New Zealand once. I have §4 children that are Australian born I was not 	NCCC

Date	Activity	Business Area
	<p>born in New Zealand as you've got it all wrong, and my birth certificate should be on the system and in my file. I've only been out of Australia once in my life. And you are trying to kick out someone that was born here. My file should show that I am Australian born. And Centrelink should have a copy of my birth certificate on my file. So please check it all up again because you have the wrong information. And if you were born in Australia you're automatically a citizen?</p> <p>The completed personal circumstances form was saved in §47F client file in TRIM and noted in ICSE. This information was not considered by the Department until §47F release from detention in March 2017.</p>	
§47 F /02/2017	§47F attended a meeting with his status resolution case officer. A case review for §47F was then completed. The case review notes that §47F revocation request remains ongoing.	§47F Case Management
§47 F /03/2017	§47F failed to attend a meeting with his status resolution officer. A case review for §47F was completed. The case review notes that §47F revocation request remains ongoing.	§47F Case Management
§47 F /03/2017	§47F was transferred from §47F to §47F	Detention Placements
§47 F /03/2017	Review of §47F case is conducted and an initial investigation into citizenship status is commenced.	§47 F Status Resolution
§47 F /03/2017	Investigation into citizenship status is resumed. At 1508hrs, §47F details were referred to the Citizenship Helpdesk for advice as to whether §47F had acquired Australian citizenship on his tenth birthday.	§47 F Status Resolution
	At 1544hrs, §47F property receipts are checked. Receipts show that §47F has a copy of his birth certificate in property.	
	At 1654hrs, a copy of §47F birth certificate is provided to relevant departmental stakeholders. The birth certificate confirmed §47F was born in Australia.	
§47 F /03/2017	At 0953hrs, it was confirmed that §47F had automatically acquired Australian citizenship by operation of law on his tenth birthday.	Citizenship Operations
	At 1343hrs, advice was sent to relevant departmental stakeholders that §47F is an Australian citizen and he needs to be released from detention as soon as practicable.	Status Resolution Operational Support
	At 1350hrs, §47F was notified that it has been determined that he is an Australian citizen and he is being released.	§47 F Status Resolution
	At 1413hrs, §47F was released from detention.	
	At 1824hrs, Comcover was advised that §47F had been held in detention while holding Australian citizenship status.	Status Resolution Operational Support
	At 2035hrs, §47F departed §47F.	Detention Operations
§47 F /03/2017	At 1245hrs, §47F arrived in §47F	
§47 F /04/2017	MCP8 inappropriate detention release decision report completed.	Detention Review

s47F

Note: All times are in Australian Eastern Daylight Savings time.

Date	Activity	Business Area
s47F	s47F was born in Port Moresby, External Territory of Papua	
16/09/1975	PNG Independence Day.	
s47F /04/1978	s47F arrived in Australia as a minor with his family.	
s47F /02/1992	s47F was granted a Permanent Return visa.	
s47F /02/1992	s47F departed Australia on a PNG passport. On his outgoing passenger card, s47F stated his country of citizenship is PNG.	
s47F /08/1992	s47F returned to Australia on his PNG passport. On his incoming passenger card, s47F states his country of citizenship is PNG.	
01/09/1994	s47F Permanent Return visa was converted to a Transitional (Permanent) visa by operation of law.	
s47F /11/2000	s47F was convicted at s47F District Court of: - s47F and was sentenced to 3 years imprisonment - s47F and was sentenced to 1 year imprisonment on each charge. All terms of imprisonment were to be served concurrently.	
s47F /12/2000	Cancellation consideration of s47F Transitional (Permanent) visa under s501 commenced.	
s47F /06/2001	A notice of intent to consider cancellation (NOICC) was issued to s47F	
s47F /07/2001	s47F response to the NOICC was received. In the response, s47F refers to himself as a Papua New Guinean national.	
s47F /08/2001	The s501 delegate made a decision to give s47F a warning and not cancel s47F visa.	
s47F /08/2001	Notification of outcome of cancellation consideration and warning was sent to s47F	
s47F /07/2010	s47F requested evidence of his residential status in Australia. As part of this process, s47F provided his birth certificate and PNG passport. Certificate of evidence of residential status was issued to s47F	
s47F /03/2016	s47F was convicted at s47F Magistrates Court of s47F and sentenced to 3 months and twelve months imprisonment, to be served concurrently.	
s47F /11/2016	Details relating to s47F imprisonment, earliest date of release, convictions and an AFP check were requested.	Complex Cancellations
s47F /11/2016	s47F sentence calculation report, location and earliest date of release was requested and received from s47F Corrective Services. s47F case was referred to the NCCC.	Detention Ops Field Compliance & Removals s47F
	Cancellation consideration of s47F Transitional (Permanent) visa under s501 recommenced.	NCCC
	s47F criminal history was received from the AFP.	Complex

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		Cancellations
s47F /12/2016	A letter was received from a Federal MP seeking assurance on behalf of a constituent (s47F), that s47F visa will be cancelled and he will be removed from Australia. A letter from s47F was attached which articulated s47F concerns that s47F	Complex Cancellations
s47F /12/2016	s47F current photo ID was requested and received from s47F Corrective Services.	Detention Ops Field Compliance & Removals s47F
s47F /12/2016	A response was sent to s47F advising that s47F concerns had been referred to the relevant area of the Department for action.	Complex Cancellations
s47F /02/2017	s47F Transitional (Permanent) visa was mandatorily cancelled under s501 of the Act. Relevant departmental stakeholders were notified of the cancellation.	NCCC
s47F /02/2017	A phone interview was conducted with s47F. During the phone interview s47F advised that he intended to seek revocation of the decision to cancel his visa and intended to remain in Australia while awaiting a decision in response to the request for revocation. Relevant departmental stakeholders were advised of s47F intentions.	Detention Ops Field Compliance & Removals s47F
	A signed acknowledgement of receipt of cancellation notification was received. s47F Corrective Services also advised that s47F had said that he wanted to return home to PNG.	NCCC
s47F /03/2017	s47F migration agent submitted documentation to support request for revocation. No actual request for revocation was, however, made. The documentation included s47F family tree, statements and birth certificates from friends and family. The documentation included the following information: - s47F was born in Papua on s47F to Australian parents - s47F father was an Australian citizen and a naturalised British citizen This information was not considered by the Department prior to the decision to detain.	NCCC
s47F /03/2017	The detention placement assessment was completed for s47F and placement approved at s47F Immigration Detention Centre (s47F)	Detention Ops Field Compliance & Removals s47F
s47F /03/2017	An acknowledgment that revocation representations had been received was sent to s47F migration agent. The email also requested that the request for revocation of a mandatory cancellation form be completed. The revocation representations provided to the Department on s47F March 2017 were saved in s47F client file in TRIM and noted in ICSE.	NCCC
s47F /03/2017	A number of planning and organisational activities were conducted to facilitate s47F transfer from prison to s47F	Detention Ops Field Compliance & Removals s47F

Date	Activity	Business Area
s47 F /03/2017	A comprehensive assessment tool (CAT) notification assessment was undertaken. No concerns were identified. The CAT was reviewed by the team leader who agreed with the outcome of the assessment that s47F was not affected by a notification error.	Detention Ops Field Compliance & Removals s47F
s47 F /03/2017	s47F Corrective Services was advised that s47F was liable for Immigration detention upon release from prison.	Detention Ops Field Compliance & Removals s47F
s47 F /03/2017	Further correspondence is received from s47F provides further information about s47F concerns that s47F	Complex Cancellations
s47 F /03/2017	s47F migration agent submitted further documentation to support s47F request for revocation.	NCCC
s47 F /03/2017	A compliance visit application in relation to a field visit to s47F Correctional Centre to conduct a CCI with s47F was completed and approved by the team leader.	Detention Ops Field Compliance & Removals s47F
s47 F /03/2017	Serco were provided with instructions and the itinerary for s47F transfer from prison to s47F	
s47 F /03/2017	Between 1005hrs and 1035hrs, a compliance client interview (CCI) was conducted with s47F at s47F Correctional Centre. On the CCI interview template, the following information was completed in relation to s47F <ul style="list-style-type: none"> - Country of birth: PNG - Date of birth: s47F - Country of citizenship: PNG - Does the client claim to hold Australian citizenship of permanent residency? No 	Detention Ops Field Compliance & Removals s47F
s47 F /03/2017	At 1014hrs, s47F was detained under s189(1) of the Act.	
s47 F /03/2017	At 1037hrs, s47F was provided with a Very Important Notice regarding his detention.	
s47 F /03/2017	At 1148hrs, the preliminary client placement recommendation report was completed.	
s47 F /03/2017	At 1207hrs, relevant departmental and service provider stakeholders were advised that s47F had been detained under s189 of the Act.	
s47 F /03/2017	At 1405hrs, the MCP4 detention note was completed and reviewed by a team leader.	
s47 F /03/2017	At 1512hrs, s47F case was identified as a case that required citizenship screening as he was born in Papua prior to PNG Independence Day. Details regarding s47F case were gathered in anticipation of referral to the Citizenship Helpdesk.	s47 F Status Resolution
s47 F /03/2017	At approximately 1540hrs, decision to detain documentation was saved in s47F client file in TRIM.	Detention Ops Field Compliance & Removals s47F
s47 F /03/2017	The compliance visit report in relation to the field visit to s47F Correctional Centre was completed and reviewed by the team leader.	Detention Ops Field Compliance & Removals s47F
s47 F /03/2017	Between 1230hrs and 1250hrs, detention client interview part A and detention client interview part C were completed.	s47 F Status Resolution

Date	Activity	Business Area
	At 1500hrs, a CAT notification assessment and MCP7 phase one detention review was completed. The detention review noted that §47F did not claim to be an Australian citizen or permanent resident and concluded that reasonable suspicion was held that §47F was an unlawful non-citizen.	Detention Review
§47 F /03/2017	At 1533hrs, §47F case was referred to the Citizenship Helpdesk for confirmation that he was not an Australian citizen.	§47 F Status Resolution
§47 F /03/2017	Further information was requested in order to confirm that §47F was not an Australian citizen. The information required related to the birthplace of his grandparents, whether he had ever travelled to Australia prior to 16 September 1975 and whether he had citizenship of any other country (other than Australia) on 16 September 1975.	Citizenship Operations
§47 F /03/2017	§47F was interviewed and the requested information was provided. §47F advised, among other things, that he believed he had Australian citizenship on 16/09/1975 and that his father was a UK and Australian citizen.	§47 F Status Resolution
	Following analysis of the information provided, further information was requested in relation to §47F mother.	Citizenship Operations
§47 F /03/2017	§47F request for revocation of a mandatory visa cancellation form was formally received.	NCCC
	§47F was again interviewed and further requested information was provided. Meanwhile, additional research was being undertaken in relation to §47F case, particularly in relation to the identity and citizenship status of his deceased father. Once again, further information was requested from §47F this time, in relation to his father. The required information was provided.	§47 F Status Resolution Citizenship Operations
§47 F /04/2017	At 1458hrs, it was determined that §47F was an Australian citizen. As §47F was born in Papua when it was still a territory of Australia, he was an Australian citizen at birth. Further, under British citizenship law, §47F would have automatically acquired British citizenship by descent at the time of his birth on the basis that his father was born in Britain. As he had the citizenship of another country (Britain) on PNG Independence Day, he retained his Australian citizenship.	Citizenship Operations
	At 1608hrs, advice was sent to relevant departmental stakeholders that §47F was an Australian citizen and needed to be released from detention as soon as practicable.	Status Resolution Operational Support
	At 1802hrs, §47F was notified that the Department had completed an investigation of his immigration history and determined that he was an Australian Citizen. §47F was released from detention.	§47 F Status Resolution
	Comcover was advised that §47F had been held in detention while holding Australian citizenship status.	Status Resolution Operational Support
§47 F /04/2017	MCP7 phase two detention review was completed.	Detention Review
	§47F Police were advised that §47F had returned to §47F	Detention Ops Field Compliance & Removals §47F

Date	Activity	Business Area
547 F /04/2017	MCP8 inappropriate detention release decision report completed.	Detention Review

What relevant risk mitigation strategies are currently in place?

Mandatory visa cancellation

On 11 December 2014, the Migration Act was amended by the *Migration Amendment (Character and General Visa Cancellation) Act 2014* to introduce mandatory visa cancellations for certain non-citizens who do not pass the character test.

Unlike the discretionary visa cancellation provisions, mandatory visa cancellation does not provide an opportunity for a person to present their case prior to cancellation, or allow consideration of a person's particular circumstances, because natural justice provisions do not apply.

The introduction of mandatory visa cancellations, among other factors, has seen a significant rise in the number of visas cancelled on character grounds and the vast majority of s501 cancellations are currently taking place under the mandatory cancellation provisions. In order to manage this caseload increase, as well as respond to pressure to process cases quickly to minimise the length of time a person is held in immigration detention, the National Character Consideration Centre (NCCC) has recently recruited new staff and doubled in size.

At the same time, the NCCC has undergone a number of key changes to business processes including the move to a paperless office, the introduction of the mandatory cancellation pilot programme as well as the surge project, all of which have resulted in significant changes for staff who have been required to learn new processes, tasks and adapt established work practices. The review was informed that the drivers for these changes were to create efficiencies to manage with a reduced FTE.

Move to a paperless office – The NCCC moved to being a paperless office on 14 November 2016 in accordance with the Department's digital services strategy. As part of this transition, all processes, procedures and supporting materials that existed in paper form were to move to an electronic format. However, it appears that the use of supporting materials, for example, a checklist officers used to assist them in their work, was inadvertently discontinued until March 2017 when the issue was identified.¹

Mandatory cancellation pilot programme – The decision to cancel the visa of s47F was made as part of the mandatory cancellation pilot programme. The pilot programme was designed to trial a new process and structure which could potentially lead to more timely and efficient processing of mandatory cancellation decisions. The pilot commenced on 14 November 2016 with a team of five officers and concluded on 31 January 2017. The pilot programme was measured in terms of productivity, quality and staff satisfaction. Overall, the programme was deemed to be a success and was implemented more broadly from 13 March 2017.

Surge project – The decision to cancel the visa of s47F was made as part of the surge project. This project was designed to increase the time between a decision to mandatorily cancel a visa and the person's earliest date of release in order to minimise time spent in immigration detention. The project took place from 1 February 2017 to 7 February 2017 and included 100 mandatory cancellation decisions made by a small number of officers from the NCCC who had volunteered to assist.

Strong checks and controls are always required in the exercise of coercive powers. The changes to and pressures on s501 mandatory cancellation decisions have only increased the importance of robust risk mitigation strategies.

Risk mitigation strategies in place for the mandatory visa cancellation are currently limited to:

- **Policy and procedural advice** - including higher level policy and procedural documents and a range of supporting materials currently owned and maintained by the NCCC.
- **Checks by supervisors or team leaders** – the level of supervisory oversight has varied over recent months. Previously, the mandatory cancellation process involved two levels of supervisor checks on all cases. Mandatory cancellation processes from 13 March 2017, following on from the mandatory cancellation pilot programme, has involved one level of supervisor checks on all cases while the surge project included only a partial supervisory check.
- **Training** - the NCCC runs a two week induction training programme for all new starters which includes a formal session on citizenship. Refresher training is

¹ In any event, this checklist did not contain any information that would have flagged the relevant citizenship status issues

conducted on an ad hoc basis. Training for officers who participated in the mandatory cancellation pilot programme consisted of one-on-one mentoring while officers who volunteered for the surge project were given a briefing at the beginning of the project.

Detention related decision making

The Palmer and Comrie Reports were published in 2005 following investigation into the wrongful detention of an Australian permanent resident and the wrongful detention and removal of an Australian citizen (see Appendix B). The recommendations made in these reports led to the Department implementing significant changes.

Of particular relevance is the control framework for detention related decision making (DRDM) which has been designed to mitigate the risk of a person being detained unlawfully, being kept in an inappropriate place of detention, being detained for longer than necessary or not being managed to a timely immigration outcome.

The control framework consists of ten mandatory control points (MCP) at decision points that represent a significant level of risk to decision makers, clients and the Department. To further mitigate risks associated with DRDM, the control framework is accompanied by additional control points, policy and procedural advice, case law assessment tools, supervisory checks, case escalation pathways, committees, and training.

Status resolution is an essential part of the control framework so that a person can be efficiently and effectively managed to an immigration outcome. Following on from the detention capability review, the management initiated review of status resolution and the empowered status resolution officer concept, the Department is currently implementing a new holistic status resolution operating model to promote effective and timely status resolution, to achieve more broadly nationally consistent practices, improved governance and escalation points and the creation of the chief status resolution officer function.

An overview of the control framework for detention related decision making is included at Appendix A. The parts of the control framework of particular relevance to the cases of s47F and/or s47F include:

- **Compliance visit application** – Completed prior to undertaking a field visit to ensure that information known about a person prior to their location is analysed and assessed to ensure the person's immigration status is understood. Approved at the EL1 level.
- **Compliance Client interview** – Interview conducted with the person at the point of location to explore and record the person's identity, immigration status, intentions, impediments to status resolution and inform the decision to detain or to grant a visa.
- **Preliminary Client Placement Recommendation** – Documents the risks and need of a client about to be detained to ensure persons in detention are accommodated appropriately within the network.

- **MCP4: Detention note** – Documents the reasons for forming the reasonable suspicion which lead to detention under s189. The detention note is approved, and also utilised by the detention review manager (DRM).
- **Maintaining reasonable suspicion** – The detaining officer has responsibility for establishing and maintaining reasonable suspicion until this responsibility is transferred to a removals officer (if the person is identity met) or to a status resolution officer (if the person is not identity met).
- **Case management stream** – Referral to assist to reduce or eliminate status resolution impediments for persons who have cases that are unlikely to be resolved quickly.
- **MCP7: DRM review** – Documented review of the decision to detain for persons who are referred to the case management stream. Takes place within a 24-48 hour period following detention under s189.
- **MCP17: Case plan** – Documented plan focusing on actions that need to be taken to substantively resolve the person's immigration status. Developed within 21 days of detention for all persons who have a case management approach of either maintained or actively managed. Approved by a Compliance Manager (APS6 or EL1 level).
- **Case plan review** – Case review conducted every month, or where circumstances change and/or new information is available.
- **Detention Review Committee** – Monthly management review of all persons in detention. DRC outcomes are then reflected in the case plan.
- **Quality assurance** – Internal audits of the control framework and DRDM processes are conducted by the Department's contracted internal reviewer.
- **Training** - In order to be job ready, it is expected that removals, compliance, status resolution and detention review officers complete the Visa Compliance Essentials training course, followed by role specific course(s).

Previous reviews

There have been a significant number of reviews of the operations of the Department over the last 12 years that are relevant to this review. This includes the independent review conducted by Mr Mick Palmer into the detention of Ms Cornelia Rau, a number of inquiries conducted by the Commonwealth Ombudsman including the cases 247 individuals referred to the Ombudsman who, when released from detention, were described as 'not unlawful', reports of the Auditor-General, and Departmental internal audit reports. The most pertinent of these reports are listed at Appendix B.

It is clear that this is well-trodden ground. There are a number of common themes and overlaps between the findings and recommendations in these reviews conducted over the last 12 years.

Why did the risk mitigation strategies fail?

Policies and procedures

Legislation and policy provide the framework for administering the functions and services of government. Staff administering legislation and government policy should be supported by clearly defined roles and responsibilities, appropriate training and current guidance materials.

The review found that the corporate Procedures Advice Manuals (PAMS) and information on LEGEND² were generally described as being useful and accurate at a high level. This procedural guidance was supplemented by local guides for staff. While it is understandable that local guides are developed where corporate material is deficient, there is a risk that they are not correctly used, are overlooked or can contain incorrect or outdated information. The following two documents provided to the review illustrate this:

- A hard copy flowchart titled *Chart A Determining visa status of New Zealand citizens* – this document was of unknown provenance and did not include any information about New Zealand citizens born in Australia. It had been used by NCCC staff to assess s47F possible Australian citizenship with an incorrect outcome.
- A NCCC badged document titled *Australian citizenship* – a limited review indicates that this document is factually correct but, as it addresses a subject that is essential to many parts of DIBP, it is not clear why there is not an appropriate corporate guide that can be managed and updated centrally. In any event, the version provided to the review, marked as being last updated on 5 October 2015, contains the footnote: *'Departmental systems may show the client holding a visa, for example a TY-444 or Resident Return Visa, which was granted on their other citizenship's passport. This does not mean they are not an Australian citizen.'* It seems that, despite NCCC staff having access to this document, this correct information was not accessed or considered relevant by staff.

Knowledge and training

Officers must have the requisite knowledge, understanding and skills to fairly and lawfully exercise their powers. The evidence shows that staff involved in this case did not have the base level of knowledge required to perform their duties.

These two cases illustrate some of the complexities that need to be considered when determining whether a person is an Australian citizen. It is not expected that a DIBP officer would be able to reach a final determination on all citizenship issues – there is a highly-regarded Citizenship Helpdesk to provide advice – but all DIBP officers who need to consider status issues must be able to identify the small number (apparently about six) sets of discrete circumstances where citizenship issues warrant further consideration or escalation.

These circumstances include when a person born in Australia has been ordinarily resident in Australia until their tenth birthday (the 'ten year rule'), and the situation where a person was born in Papua New Guinea prior to independence in 1975. Officers should be aware of these circumstances after their basic citizenship training. The review was advised that all

² LEGEND is the Department's online database for information on migration and citizenship legislation, policy and operational material

staff should have participated in at least one hour of citizenship training: clearly this is not sufficient.

The following examples illustrate this:

- The officer who cancelled ^{s47F} purported visa as part of the pilot project at the NCCC had been in the Department for about ^{s47F} months. He described his training as initially being 'buddied up' with a person at the same level. He had little formal training and cannot recall any training on citizenship. The officer had no knowledge of the ten year rule. When he joined the pilot mandatory cancellation project he sat with someone for a day and went through some of the correspondence, systems and notifications. He was then given cases to cancel. ^{s47F} case was his second cancellation. He was assured that the supervisor would provide quality assurance but in his view this seemed to be ^{s47F}.³
- The officer who cancelled ^{s47F} purported visa as part of the surge project at the NCCC was a long-term employee in the Department. He was working as a case manager in ^{s47F} at the time but volunteered to cancel visas for two or three days in the surge project. He was given an hour or so training on how to cancel a visa, for example, the systems required and how to prepare a decision record. He was allocated six cases which he completed in three days. He had not participated in citizenship training for some time and did not know that someone born in PNG could be an Australian citizen in particular circumstances.
- The removals officer for ^{s47F} in ^{s47F} was a long-term employee. In late 2016 she had participated in removals training but does not recall citizenship being discussed.
- The detaining officer for ^{s47F} in ^{s47F} was a long-term employee. She obtained a ^{s47F} in late 2015. She did not recall receiving citizenship training and did not recognise any issue in this case. She said that even if she had taken down a detailed immigration history she would not have recognised that ^{s47F} could have been an Australian citizen.
- The detaining officer for ^{s47F} in ^{s47F} was a long-term employee. He had received citizenship training a few years previously. He said that the information he had regard to about ^{s47F} did not trigger any concerns about citizenship issues. He 'could not say' that he would have recognised any particular complexity about the citizenship status of any person born in Papua New Guinea.
- The case manager for ^{s47F} at ^{s47F} was a long-term employee. He could not recall any training in the last twelve months and could not remember whether he had ever received citizenship training. He did have knowledge of the ten year rule but did not recognise it as applying in this case.

There is no reason to believe that these knowledge gaps are limited to the staff that handled these cases, or that these deficiencies are limited to the handling of 501 visa cancellations cases. The knowledge gap was observed across a number of business areas in

³ The review was informed that the supervisor also checks that the decision notice and notification are lawfully correct including proper notification, correct visa cited and prison sentence correctly identified.

three states and points to a systemic issue that poses a significant risk to DIBP and its clients.

Quality assurance and supervision

It was suggested by staff that mandatory visa cancellation and subsequent detention decisions are low risk because of the initial documentation that is gathered and the absence of discretion in the cancellation decision.

The most significant power held by DIBP officers is to deny a person liberty by placing them in immigration detention. The exercise of the power to cancel a visa and the power to detain a person has serious consequences: there is profound impact on a client, and the unlawful use of these powers could cause serious reputational damage and legal risk for DIBP. Even before the current review commenced, a number of the previous reviews cited in Appendix B expressed significant concerns about an ongoing lack of knowledge by officers across the Department and a lack of effective controls. The problems already apparent to the Department before the current two cases were discovered made it not unlikely that an unlawful decision would be made. The risk was exacerbated when the initial mandatory cancellation decision occurred without any engagement with a client. This should have meant that officers had a greater responsibility to undertake thorough checks and/or escalate.

The review was also advised that two further controls had been discontinued:

- **Senior officer reviews** - Senior officer reviews were previously part of the control framework but this control point has been discontinued. Senior officer reviews consisted of a traffic light report identifying any concerns with the management of a case and made recommendations in relation to case progress where necessary. Senior officer reviews were conducted when a person had been in detention for three months, followed by ongoing reviews every six months thereafter.
- **Quality assurance** – Several years ago, the Department was undertaking DRDM quality assurance activities on a bi-annual basis. However, it appears this assurance no longer occurs. In addition, internal audits of the control framework and DRDM processes previously occurred on an annual basis, and although these internal audits still occur, they are currently being conducted on a less regular basis.

In these circumstances the risk rating for an unlawful detention decision should have been assessed as 'high', even before these two cases were uncovered. In such circumstances a robust and comprehensive quality management system is essential.

A rigorous quality assurance process should have identified the systemic failure to resolve discrepancies in information, such as occurred in the handling of ^{s47F} case, and the lack of knowledge of citizenship complexities in all areas. Remediation of these systemic issues should have made it more likely that individual citizenship complexities would have been identified and resolved and prevented the detention of two Australian citizens.

This reviewer was not advised of any current quality management policy or framework that applied in the business areas involved in these two cases. There was no evidence of any systematic quality assurance of decision-making involving, for example, a thorough review

of sampled cases to collect information to identify key or emerging issues involving operational procedures, staff training, systems, or management. The control framework outlined above for detention related decision making failed to identify problems in these two cases.

What was described by staff as 'quality assurance' in the cancellation process seemed to consist mainly of real-time quality control checks by supervisors. For example, the review was advised that in the cancellations area there had been two 'quality assurance' points or reviews by more senior officers that had been removed in the more streamlined processes. Even when these checks were in place, they would not have constituted an adequate quality assurance process.

At the time the review was conducted, the DIBP intranet provided the following information about quality management:

Business owners are required to meet quality standards in accordance with the Quality Management Framework. This means undertaking design and implementation of quality controls and quality assurance (QA) and reporting of QA results to ensure compliance with required levels.

The Quality Management Framework is under development. In the interim, business owners should contact the Quality Management Office for advice and assistance.

The review was advised that this information was no longer current and that DIBP did not currently propose to proceed with a full enterprise quality management framework.

In the absence of an adequate assurance processes and reporting it is difficult to see how the Department's executive can have any reasonable level of assurance that cancellation and detention decisions are compliant with the policy and legislative framework.

Recordkeeping and data management

Data must be accurate, comprehensive and accessible to support good decision making. This was not the case for ^{s47F} records.

The Integrated Client Services Environment (ICSE) is DIBP's primary database and should provide a single reference point for all records about individual clients. It supports processing for a number of DIBP's functions including citizenship, visas and compliance.

- Until March 2017 ICSE records relating to ^{s47F} noted his country of birth as 'unknown' and his citizenship as 'New Zealand'.
- On ^{s47F} November 2016 ^{s47F} requested revocation of the visa cancellation decision. He gave his country of birth as 'Australia' and his citizenship as 'Australian'. This data was not viewed or entered on any system until some months later (after his release from detention in March 2017).
- On ^{s47F} December 2016, removals operations conducted an interview with ^{s47F}. The completed form notes the country of birth as 'New Zealand' and his citizenship as 'Australian'. The record shows that he said he was 'an Australian citizen or permanent resident'.

- On ^{s47F} December 2016 a compliance operations officer noted ^{s47F} country of birth as 'Australia' and his citizenship as 'New Zealand'. The records shows that he 'does not know' whether he was 'an Australian citizen or permanent resident'.
- On ^{s47F} December 2016, a case management officer recorded that ^{s47F} had a birth certificate available. It was not viewed by DIBP officers to verify any data. The birth certificate recorded that he was born in Australia of New Zealand parents.
- On ^{s47F} January 2017 ^{s47F} provide personal information relating to his revocation request: he said he was born in Australia and was an Australian citizen. The form was saved in his personal file in TRIM and noted in ICSE.
- Until ^{s47F} was released in March 2017 his ICSE records still showed his country of birth as 'unknown' and his citizenship as 'New Zealand'.

The evidence shows that on a number of occasions different DIBP officers received critical information that differed from that recorded in ICSE. No consistent attempts were made to resolve the inconsistencies or escalate the matter. The problem was exacerbated because the data collected by these officers was either captured from a hand-written document in image form, or in an electronic form with free text fields that are not linked to the corresponding data fields in ICSE. DIBP also received important information about ^{s47F} in connection with his revocation request that was captured as an image in TRIM but was not viewed.

The evidence demonstrates that a range of DIBP officers did not recognise any responsibility to resolve data discrepancies. There are also no system controls in place to pick discrepancies as they occur, or to review new data in a timely way when it is provided to DIBP. The lack of quality assurance in data management means that the officers concerned and DIBP executive can have no assurance that the best available current data is used when officers make cancellation and detention decisions.

Decision making

Previous reviews (see Appendix B) have pointed to the importance of the following considerations in decision making:

- recognising personal responsibility
- considering all relevant information
- guarding against erroneous assumptions
- recognising and escalating complexities.

These characteristics were not consistently present in the decisions made relating to ^{s47F} or to ^{s47F}

^{s47F} left Australia temporarily on a New Zealand passport in 2010. When he returned it was not recognised that he was an Australian citizen and he was purportedly granted a visa at the border.

While ^{s47F} should not have received a visa, he did have a right to enter and remain in Australia. The grant of the visa had no immediate adverse consequences.

Border processing is rapid and DIBP advise that it is not feasible to ask people at the border whether or not they are Australian citizens and that there are currently no checks in place at the border that would have picked up ^{s47F} citizenship.

The consideration of the mandatory cancellation of his visa on character grounds had far more serious consequences and a risk-based approach would have ensured a high level of scrutiny. Despite clear information that ^{s47F} could have been an Australian citizen, and which should have pointed to a possible error in the grant of the visa, cancellation officers did not properly review their original assumption that the grant of the visa had been valid. Despite a number of telephone conversations with prison officers, which the cancellation officer raised and discussed with his supervisor, the relevant officers maintained their belief.

This error and assumption carried on through to the detention decision:

- The compliance officer who made the decision to detain said that ^{s47F} had said he did not know whether he was a citizen or not and she did not explore further. She did not access his application for revocation of the visa cancellation. The officer described the compliance team as being the 'operational arm' implementing a decision that had already been made to detain ^{s47F}. She said that all of the work had been done already on the case including criminal and immigration histories. For s 501 cases, compliance officers were not expected to compile immigration histories or conduct any further checks.
- Her supervisor noted that because the case had been through the NCCC it would be considered to be low risk.
- The case manager advised that ^{s47F} had not claimed to be an Australian citizen. Although the officer was aware of the ten year rule, his assumptions about the 444 visa 'threw him'.

Although the circumstance around ^{s47F} Australian citizenship are more complex, the same themes emerge in the handling of his case:

- The officer who had cancelled ^{s47F} visa said cases were prepared and presented to him ready for cancellation. His responsibility was to check whether the person was still in prison and, if they were, to cancel the visa. He did not recognize or consider any complexities around the citizenship of a person born in PNG. He believed that the person who had prepared the case would have done all the necessary checks. He said that as ^{s47F} had made no claims of citizenship at the time there was nothing further to consider.
- The compliance officer who detained ^{s47F} explained that prison releases are different from detentions in the field. For these cases their work was as a 'conduit' for decisions already made. For these cases he based his 'reasonable suspicion' on the background work done by the NCCC. He thought that the revocation request would be 'irrelevant' to his decision. Any issues should have been identified and resolved prior to him being given the case.

A critical deficiency in the decision making processes was the failure to consider all relevant information. In ^{s47F} case his revocation request had been received by DIBP on ^{s47F} November 2016 and entered on DIBP's systems on ^{s47F} December 2016. In this request he stated his citizenship as 'Australian'. While his claim did not provide proof of his citizenship,

in the context of the other information it should have raised a serious question that needed to be resolved as a priority. It is unacceptable that this information was not read or reviewed by any of the DIBP officers who subsequently handled his case. In particular, it is difficult to see how any officer could properly have made a lawful decision to form a 'reasonable suspicion' that ^{s47F} [REDACTED] was an unlawful non-citizen without considering this information.

It would not be fair to apportion all responsibility to individual officers for these deficiencies in decision making. Officers interviewed seemed to be performing their duties to the best of their abilities and in line with their understanding of departmental policy. It seems that their conduct was largely in line with the expectations of their supervisors. The business processes and the language used as the cases were passed on reinforced the belief that the decisions had been made and there was no expectation that officers would exercise personal responsibility and judgement. For example, the compliance officer in ^{s47F} [REDACTED] had little time to interview ^{s47F} [REDACTED] in the prison before he had to be transferred to the flight to ^{s47F} [REDACTED]. The flight had already been arranged with the airline and security escorts arranged. There was little practical opportunity for the officer to consider anything ^{s47F} [REDACTED] said at the time of detention as the decision had, in effect, already been made.

In 2005 Mr Mick Palmer wrote:

... the forming of a 'reasonable suspicion [under section 189(1) of the Migration Act] is an exercise of personal judgement. Exercise of this power places an obligation on officers who detain a person ... to justify the reasonableness of their suspicion before they make the decision to detain. Indeed, a properly based exercise of discretion in the determination of a 'reasonable suspicion' provides, for a person facing possible immigration detention, the only protection against indefinite arbitrary detention.

And recommended that the Department:

... design, implement and accredit for all compliance officers and other staff who might reasonably be expected to exercise the power to detain a person under s 189(1) of the Migration Act 1958 a legislative training package that provides the officers with the requisite knowledge, understanding and skills to fairly and lawfully exercise their power

... restrict the authority to exercise the power to detain a person under S 189(1) to staff who have satisfactorily completed the training program and who are considered to be otherwise sufficiently experienced to exercise that power.

This review has shown that DIBP staff still do not consistently demonstrate the requisite knowledge, understanding and skills to fairly and lawfully exercise these powers.

In response to a draft of this report a senior executive officer observed:

I think some of this speaks to culture; a culture of working in your 'lane' and not having a broader view or appreciating the context. To some extent this shouldn't matter if each officer did form their own reasonable suspicion (correctly), but I can't help but think there is something about the collectiveness of this behavior that says our staff aren't being professionally curious (might be driven by change fatigue, lack of engagement, poor training etc).

The reviewer agrees with this observation.

Change management

Prior to the December 2014 legislative amendments, s 501 cancellations on character grounds involved a balancing of various factors and required interaction with the client. The change in legislation meant that the cancellation was mandatory if certain conditions were met. There is no direct interaction with the client to gather any information prior to cancellation in these cases. The actual workload far exceeded the predicted workload. The pilot and surge projects further decreased the amount of checking done on these cases. The review of the pilot project points to increased efficiencies and throughput at a lower level of staff. Although the maintenance of the 'quality control check' by the team leader was a requirement of the trial, there was no independent assessment of quality.

This change to s 501 also had downstream effects: officers who handle the cases subsequently mistakenly believed that all aspects of the case were still reviewed thoroughly in the NCCC.

The reviewer has not viewed any document prepared prior to implementation that sets out an analysis of the risks associated with the implementation of these legislative changes or how any risks were to be managed. Staff were not able to point to any involvement in the design of new end-to-end business processes to manage these risks or any consideration of downstream effects.

It is also not clear whether there has been any post-implementation review of the change, consulting with the business areas involved to see whether there have been any unforeseen or unintended consequences.

Workloads and resourcing

Most officers pointed to an increased workload and decreased resourcing as a reason for decreased scrutiny of individual cases. The evidence pointed to resourcing issues and a focus by management on increasing throughput to address timeliness and delays rather than ensuring the quality and lawfulness of decisions. This review has not conducted a comprehensive analysis of resourcing but notes that it is generally accepted that the volume of these cancellations was far higher than predicted and that there is reduced staffing in many areas.

Are these problems systemic?

The report by the Commonwealth Ombudsman, *Lessons for public administration: Ombudsman investigation of referred immigration cases*, sets out as lesson 10:

Check for warning signs of bigger problems. *All agencies experience problems in decision making. Sometimes the problems are one-off and exceptional, but more often a problematic case is not unique and points to a recurring difficulty in the agency.*

A number of interviewees pointed to the complexities of these cases and the particular circumstances of the character cancellation cohort as constituting exceptional circumstances that indicate that the detention of these Australian citizens were one-off incidents.

The reviewer does not agree with this assertion. While the current review had a narrow focus it cut across a wide range of business areas and involved a range of staff. The level of issues identified points to systemic problems. In particular:

- Most front-line staff who were interviewed could not correctly identify fundamental citizenship issues that needed to be escalated or resolved. These issues are not limited to the s 501 cohort.
- Systems data was deficient and a number of officers who should have noticed discrepancies did not seek to resolve them. These systems do not support good decision making.
- There is no systematic end-to-end quality assurance in place.
- Staff did not consider all relevant information when making decisions and did not take personal responsibility for decisions.

The consequences of these problems could be far-reaching. By way of example, officers in s47F advised that field detentions of PNG citizens were not uncommon. It is quite possible that there could have been little or no consideration of complex citizenship issues by DIBP officers in the detention or removal of such individuals, particularly if officers rely on individuals to raise citizenship claims themselves. As the citizenship of these individuals can be determined only by obtaining information about their parents and grandparents, there is a significant and ongoing risk that other Australian citizens could have been, or will be, detained or removed. In any event, it will not be possible to identify all such cases conclusively by using only DIBP databases.

Actions already taken by DIBP following the incidents

The review was informed that the following actions have been taken to improve the cancellation function:

- *The NCCC has reviewed caseloads with similar characteristics. About 156 cases with country of birth "unknown" in ICSE were reviewed and the country of birth established and data updated. None were born in Australia. We have included instructions to staff that they must update country of birth if they come across this data shortcoming. Ten cases of clients born in PNG with dates of birth before the relevant date in 1975 were identified and investigated. All had had citizenship assessments conducted on them by the Citizenship Helpdesk prior to the visa cancellation. As new cases are received records will be checked and updated. The Network advice released on 16 March has been incorporated into NCCC procedures.*
- *The mandatory cancellation checklist has been revised in electronic format and will be used both by the decision maker and their supervisor to work through all of the elements with the greatest risks – citizenship, visa held, sentence, location, transitional arrangements and notification.*
- *In addition, we have revisited the decisions that were made during the surge project to ensure that all are legally sound; we are looking at the citizenship training we can offer to staff and officers; and we have been developing a QA framework for the branch and the VCSG is looking at QA processes across the group.*

In respect to the status resolution function:

- *Network advice was released on 16 March 2017 to Regional Directors, Regional Commanders, Directors (Status Resolution), Superintendents (Compliance and Removals). The advice raises issues pertinent to the case of ^{s47F} and identifies the types of issues officers should be taking into consideration as part of any assessment of whether a person is an Australian citizen. Officers were also provided references to further advice and contact information for the relevant Helpdesks. The advice was also provided to teams responsible for training and policy.*
- *Status Resolution officers have reviewed the entire held detention population (not limited to NCCC caseload) to ensure that Citizenship related records are accurate and clearly documented. A number of cases have been escalated to the Citizenship Helpdesk, which has put in place mechanisms to ensure any cases in held detention are prioritised. These cases continue to be followed up by Status Resolution officers.*
- *All cases in cohorts with a high risk of citizenship issues have been specifically discussed at Detention Review Committees to confirm citizenship status and that it has been recorded clearly.*

In respect of training:

- *The two ^{s47F} based Detention Review officers participated in Notifications and Immigration Status Training on 27 and 28 April 2017; all five Detention Review officers have completed the online Citizenship training; the Detention Review officers are also scheduled to participate in face-to-face training in Sydney and Melbourne in May; the three ^{s47F} based Detention Review officers are scheduled to participate in Notifications training on 17 May 2017; one of the ^{s47F} based Detention Review officers is participating in VCE Essentials training 1-12 May 2017.*

What strategies need to be put in place to prevent similar incidents from happening again?

This review follows on from a number of previous reviews which have raised similar concerns. The Department has been in a state of constant review and reform in the last twelve years.

In July 2012 the Australian Government conducted a capability review into the then DIAC. The review focused on leadership, strategy and delivery capabilities. The report noted:

While dealing with external pressures, events and crises, DIAC 's internal focus in recent years has been on making the necessary changes in response to the findings in the 2005 Palmer report Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau and the 2005 Comrie report Inquiry into the Circumstances of the Vivian Alvarez Matter about failures of process. This has involved repeated structural changes, changes to process, changes to senior personnel, changes to ICT and other systems, and a sustained effort to change culture. However, in the review team's view, the Department has been only partially successful in developing control mechanisms to reduce the risk of future failures of process.

This review has found that DIBP's control mechanisms are still not functioning effectively.

Identification of citizenship issues

A number of strategies at the operational level can be identified to prevent the detention of Australian citizens in circumstance similar to those discussed in this review.

The poor identification of citizenship issues can be addressed partly by enhanced immigration status resolution training, including training with scenarios about complex citizenship issues. Any such training needs to be assessed and refresher training conducted.

Recommendation 1

DIBP should enhance immigration status resolution training. The training should be assessed and regular refresher training should be required.

Currently, a Detention Review officer generally uses a form titled *Notification Assessment Comprehensive Assessment Tool Assessment Record* to ensure that notifications meet legal requirements.⁴ The form requires a thorough assessment against the legislation and relevant case law. At certain points in the form the officer is advised to contact the Status Resolution Helpdesk if in doubt. If used correctly, this form is a significant control to ensure that the complex issues relating to notifications are identified and resolved.

In principle, complex citizenship issues should be easier to identify than notification issues. They are discrete, better defined and do not change as often. A fairly short tool using a checklist of about six sets of defining circumstances could be drafted. Any cancellation or detention case meeting certain criteria could then be referred to the citizenship helpdesk to resolve.

It would be important for consistency and ongoing accuracy that any checklist or tool is included in corporate procedural documentation - preferably in an online form - and not developed as a local help sheet.

Recommendation 2

DIBP should develop a tool to ensure that, when making a visa cancellation or detention decision, an officer explicitly identifies and resolves citizenship issues.

Systemic issues: detention related decision making

Recommendations 1 and 2 will resolve only the immediate problems and not the underlying systemic issues.

An analysis of the recent review reports listed in Appendix B shows that the systemic issues identified in this review align with the findings and recommendations of previous reports.

Further high-level recommendations for the department to address the integrity of decision-making processes, systems, training and quality assurance could divert or diffuse the Department's change agenda.

If implemented effectively, the recommendations in two recent reports accepted by DIBP should largely address the deficiencies identified in this review relating to the use of powers

⁴ This is usually truncated to a brief assessment process for individuals subject to mandatory cancellation process.

by border force staff, and detention related decision making. This review endorses these recommendations.

The reviewer has been advised that the progress of the implementation of these recommendations is reported to, and monitored by the department's Audit Committee and suggests that this report should be provided to the Committee so that they can ensure that any changes made will address the systemic risks identified in this report.

Recommendation 3:

DIBP should explicitly address the findings of this review in the implementation of the recommendations accepted from previous reviews as set out below. This report should be provided to the Department's Audit Committee so that it can provide assurance that the strategies implemented address the systemic deficiencies and risks identified in this report. The relevant recommendations are:

The Australian Border Force's use of statutory powers, Australian National Audit Office, February 2017:

1. *The Department develops and disseminates a separate enterprise risk profile relating to the risk of officers exercising powers unlawfully or inappropriately due to inadequate guidelines, training or supervision.*
2. *The Department:*
 - a. *urgently upload all operational instructions, guidance, delegations and authorisations to the Document Control Register.*
3. *The Department ensure:*
 - a. *certification and training records relating to statutory powers are entered into the Learning Management System; and*
 - b. *officers exercising coercive powers have current pre-requisite qualifications*

Detention-related decision-making, EY, DIBP internal audit report, 2015/16:

1. *Internal Audit recommends that the Department should establish a formal governance framework over the end-to-end detention continuum ..., with a view to: clarifying the procedural guidance and accountabilities for key decisions; providing the executive with oversight and assurance that operational activities are compliant with the policy and legislative framework; consistently analysing and reporting issues that are detected; and implementing control improvements where required.*

In establishing this framework, the Department should:

- *develop a formal terms of reference outlining information on the mandate and expectations of the governance framework;*
- *outline the roles and responsibilities of key stakeholders at all levels of the DRDM process;*
- *review and update the DRDM policy framework including PAMs and the Control Framework for DRDM to clearly articulate the mandatory requirements that must be complied with during operational activities;*
- *establish comprehensive reporting to provide key stakeholders such as Regional Commanders and governance and assurance committees such as the Tactical Tasking Coordination Group, Strategic Tasking Coordination Group and Departmental Audit Committee with oversight of key issues;*
- *dedicate sufficient resources to undertake quality assurance, monitoring and oversight functions with a view to identifying key issues and emerging risks;*
- *establish formal feedback mechanisms whereby lessons learned from the national network of DRDM activities (such as advice provided by the legal and compliance*

- helpdesks and Inappropriate Detention Reports) can improve, on an on-going basis, operational procedures, staff training and competencies; and*
- undertake regular reviews to assess the implementation success of continuous improvement strategies.*
2. *The Department should review the key controls over DRDM with a view to improving the control design having regard to:*
- clarifying the purpose of the control and risks it is addressing;*
 - the minimum evidentiary requirements that must be met when executing the control and how supporting evidence must be stored and made available to delegates approving the control;*
 - the structure and process undertaken when executing these controls so as to enable compliance with legislative requirements; and*
 - ensuring review processes are effective in providing assurance that the execution of operational activities complies with legislative requirements.*
3. *[recommendation noted not accepted]*
4. *Recognising the limitations of current systems which do not always accurately identify a client's immigration status i.e. clients may have a lawful immigration status even if systems indicate they are unlawful because they may have been incorrectly notified of a visa refusal/cancellation, or they may have multiple identification numbers associated with expired visas, the Department should implement compensating controls whereby decisions to detain are made after officers have considered all relevant information (i.e. on Departmental systems as well as, hard copy files) prior to exercising the decision to detain.*
5. *The Department should:*
- a. revise the tools and templates such as the those used for case law and notification assessments and client interviews to appropriately address the key risks these tools are designed for. In revising the templates, they should also be made easy to use and facilitate the consideration of all relevant information required for forming and supporting lawful and appropriate detention decisions; and*
 - b. [recommendation not accepted]*

Visa cancellation processes

The two reports cited in Recommendation 3 do not explicitly address the cancellation process (although some of the proposed improvements will mitigate some of the risks in those processes). In particular, Recommendation 3 does not address the lack of any effective quality assurance in the visa cancellation process. The actions already taken by DIBP (outlined above) in response to these incidents, are appropriate and necessary but may not address the fundamental causes.

In March 2017, the Department's adopted an approach to assurance using a Three Lines of Assurance model which sets out the responsibilities of:

- management assurance
- risk oversight and compliance functions
- independent assurance.

The assurance policy documents provided to the review are at a high level and, without further details, it is not possible to say whether the implementation of this model will address the systemic quality assurance problems set out in this report.

Recommendation 4

As a matter of urgency, DIBP should ensure that its assurance processes address the

systemic deficiencies set out in this report. In particular, the processes should ensure that:

- There is clear and single-source procedural guidance for key decisions.
- There is continuous analysis and reporting of issues that are detected.
- Control improvements are implemented where required, including adjustments to training, operational procedures, systems and management.
- The Executive is provided with assurance, including independent external assurance, that operational activities are compliant with the policy and legislative framework.

Appendix A: Control framework for detention related decision making

Control Framework for Detention Related Decision Making - Key Elements		
Pre-location	① MCP1 - Application for Search Warrant	
Location	○ Compliance Client Interview (Streaming Decision)	
Post-location	② MCP 2 - Report on the use of Search Warrant	
Detention	④ MCP4 - Detention Note	
	⑦ MCP7 - Detention Manager Review (Phases 1 and 2)	
	⑧ MCP 8 – Inappropriate Detention Release	
Detainee management, resolution and review	Rapid Removal Stream	Case Management Stream
	○ Detention Client Interview ⑩ MCP10 - Removal Availability Assessment ⑫ MCP12 - Removal - Waiver of 48 Hours' Notice ○ Automatic referral to Case Management after 28 days	○ Detention Client Interview ⑰ MCP17 - Case Plan Review ○ Case Review ○ Detention Review Committee ○ Senior Officer Review ○ Ombudsman Review
Character (section 501)	⑭ MCP14 – Cancellation – section 501 Issues Paper Checklist ⑮ MCP15 – Refusal – section 501 Issues Paper Checklist	

Appendix B: Summary of previous reviews

Report of inquiry into the circumstances of the immigration detention of Cornelia Rau, Mr Mick Palmer, July 2005

This inquiry dealt with the detention of an Australian resident who was in poor mental health during her detention. Ms Rau was detained in 2004 as a suspected unlawful non-citizen. She was detained for a total of ten months.

The report was critical of numerous failures by the then Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) officers and of DIMIA processes that adversely affected Ms Rau. These included the failure by DIMIA officers to properly identify Ms Rau and the ongoing failure to review her detention. The report also identified cultural problems within DIMIA's compliance and detention sections and a lack of training for the powers DIMIA officers are authorised to exercise.

The report made comments about the exercise of powers under s 189(1) of the Migration Act that are relevant to the current review. It emphasised that exercising the power to deprive someone of their liberty brings with it significant responsibilities:

... the forming of a 'reasonable suspicion [under section 189(1) of the Migration Act] is an exercise of personal judgement. Exercise of this power places an obligation on officers who detain a person ... to justify the reasonableness of their suspicion before they make the decision to detain. Indeed, a properly based exercise of discretion in the determination of a 'reasonable suspicion' provides, for a person facing possible immigration detention, the only protection against indefinite arbitrary detention.

The report also noted the importance of the obligation on officers to keep a person's circumstances under review. The officer must be able to demonstrate at any particular time that the suspicion persists and that it is reasonably held in the light of any new information.

The report recommended that the Department:

... design, implement and accredit for all compliance officers and other staff who might reasonably be expected to exercise the power to detain a person under s 189(1) of the Migration Act 1958 a legislative training package that provides the officers with the requisite knowledge, understanding and skills to fairly and lawfully exercise their power

... restrict the authority to exercise the power to detain a person under S 189(1) to staff who have satisfactorily completed the training program and who are considered to be otherwise sufficiently experienced to exercise that power.

Inquiry into the circumstances of the Vivian Alvarez matter, Commonwealth Ombudsman report into an inquiry undertaken by Mr Neil Comrie, September 2005

This report related to an Australian citizen who was detained by DIMIA officers as a suspected unlawful non-citizen, and removed from Australia in 2001. This report identified failures in DIMIA's processes including failures by officers to properly identify the Australian citizen, the decision to detain her under the Migration Act and the subsequent decision to remove her from Australia.

The inquiry concluded;

The inquiries made in an attempt to identify [the citizen] were ad hoc and symptomatic of a situation in which DIMIA officers had been inadequately trained for their role as compliance officers, particularly in relation to the interrogation of IT systems and databases.

... it is the Inquiry's view that the decision to detain [the citizen] under s. 189 of the Migration Act was not based on a reasonable suspicion: the relevant inquiries were neither timely nor thorough and there was a lack of rigorous analysis of the available information. Accordingly, this action was unreasonable and therefore, by implication, unlawful.

The inquiry recommended:

The Inquiry recommends that the formal interview of detainees be constructed in such a way as to require that, where necessary, responses from a detainee be further investigated. The interview process should be dynamic and designed to elicit information useful to the making of decisions about detention and removal.

... The Inquiry recommends that in the training program for compliance and investigations officers there be a focus on objectivity in decision making and a strong warning that false assumptions will contribute to poor decisions.

After the Palmer and Comrie Reports were published, DIAC established the College of Immigration to provide accredited training to all field operations staff who exercise powers to detain people.

Reports on referred immigration cases, Commonwealth Ombudsman, reports 4/2006, 6-8/2006, 7-10/2007

The Australian Government referred 247 immigration detention cases to the Commonwealth Ombudsman following the two earlier reports discussed above. In each of these cases, a person who had been taken into detention by the then Department of Immigration and Citizenship (DIAC) was later released and their computer record marked with the descriptor 'not unlawful'. This descriptor meant that the person either was not an unlawful non- citizen and should not have been detained, or was now recognised as being lawful and could no longer be detained. For example, in some cases the person was an Australian citizen; in others the person either held a visa that entitled them to live in the community or something had occurred (such as a court case) which meant they should no longer be detained. The core issue in each investigation was whether all or any part of the person's detention was unlawful or wrongful.

The issues arising from the investigation of the 247 cases formed the basis of six consolidated public reports and two reports on individual cases by the Ombudsman. The reports highlighted errors made in many but not all of the 247 cases, and pointed to systemic failures in immigration administration.

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The reports are comprehensive and identify and address a range of issues. The following two extracts are particularly relevant to this review:

1. From 'Report into referred immigration cases: Data problems':

DIAC's data recording practices were flawed... officers failed to check and collect reliable data. In most of the cases in this report the detention of a person was inexcusable: the Department already held sufficient information that established a person's lawful status. These failings in Departmental administration partly stemmed from insufficient training and policy guidance on the detention provisions of the Migration Act, the bridging visa regime, and the procedures for compliance checks of client files and other data. Many of the detentions may not have occurred or could have been resolved more quickly had a proper quality assurance approach to data management been in place.

2. From 'Report into referred immigration cases: children in detention':

It is indisputable that [DIAC] officers involved in compliance must clearly understand Australian citizenship law. The opposite appears to be true of the cases examined in this report...

There is firstly the issue of how a person's citizenship comes to be recognised under s 10(2)(b) of the Citizenship Act. The section provides that a child born in Australia after 1986, who remains ordinarily resident in Australia, acquires citizenship at age 10. Two documents, MSI 329: Unlawful Non-Citizens and the Australian Citizenship Instructions, correctly provide guidance on the application of s 10(2)(b). It is noted that no application is required for a grant of citizenship under that section, and that a child does not need to be in Australia on the date they turn 10. The Instructions set out the steps that should be taken for an assessment against this section and gives guidance on what the test of 'ordinarily resident' will entail. Importantly, the Instructions indicate that an assessment under s 10(2)(b) is usually made only once a person seeks a Certificate of Evidence of Australian Citizenship.

In some of the cases in this report, it seems that a contrary approach was adopted, whereby [DIAC] was of the view that a person effectively had to claim their citizenship.

There is also evidence ... of confusion among some [DIAC] officers and a lack of understanding of the implications of the Citizenship Act.

Administrative, legislative, policy and system-based changes that were recommended in the reports were accepted by DIAC and addressed in a significant reform program that commenced in 2005. The Department noted in its response to these reports that it had invested heavily in a new program, *Systems for People*, which had deployed new business processes, quality control, record keeping, reporting and decision support for compliance and case management services. The Department also established the College of Immigration to strengthen training and instruction, particularly for compliance staff administering s189 of the *Migration Act 1958*.

Lessons for public administration: Ombudsman investigation of referred immigration cases, Commonwealth Ombudsman, August 2007

The purpose of this report was to draw together the ten lessons for public administration that arose out of the investigation of the 247 cases referred to the Ombudsman in 2005 and 2006. In this report the Ombudsman noted:

At the end of every administrative process is a person who can be affected, beneficially or adversely. It is therefore important in all areas of government administration that the exercise of significant powers is underpinned by high quality internal systems, rigorous decision making, clear policy guidance, effective training, active oversight and quality assurance, and efficient internal and external information exchange.'

The following lessons are particularly relevant to this review:⁵

Lesson 1 – Maintain accurate, comprehensive and accessible records. *An error as simple as misspelling someone's name, misstating their date of birth or arrival in Australia, or misfiling their visa or review application, can result in the person later showing up as an unlawful non-citizen and being taken into detention.*

Lesson 2 – Place adequate controls on the exercise of coercive powers. *Powers to detain, to confiscate, to summon, to demand and to penalise are often exercised by staff at low-ranking levels, in offices spread across Australia. The officers will make mistakes unless they are adequately trained, supported by clear manuals and policies, and their work is constantly supervised and monitored.*

Lesson 3 – Actively manage unresolved and difficult cases. *Difficult cases will arise that are beyond the skill of the case officer assigned to the case, but can be managed with help from elsewhere in the agency. Agencies should therefore move matters around, consult other officers, escalate difficult cases, and monitor the risk areas in agency decision making.*

Lesson 4 – Heed the limitations of information technology systems. *We trust in technology, but automated systems are in fact no better or more reliable than the data entered on the system. Officers must not assume that a person is an unlawful non-citizen because the computer screen says they are.*

Lesson 5 – Guard against erroneous assumptions. *For example, in the immigration context, do not assume that a child has the same citizenship status as its parents.*

Lesson 8 – Promote effective communication in your own agency. *The ability of staff to make good decisions will be undermined if administrative manuals are out-of-date, if there are different data management systems that are not integrated and that give incorrect answers, or if staff are not informed of important court decisions.*

Lesson 9 – Manage complexity in decision making. *Immigration law and administration is a microcosm of the complexity that now permeates government. Many of the errors that occurred in these 247 cases were a product of that complexity. Officials, who were both competent and well-intentioned, made factual and legal mistakes because they were out of their depth.*

Lesson 10 – Check for warning signs of bigger problems. *All agencies experience problems in decision making. Sometimes the problems are one-off and exceptional, but more often a problematic case is not unique and points to a recurring difficulty in the agency.*

Administering the Character Requirements of the Australian Citizenship Act 2007, Australian National Audit Office, June 2011

The objective of this audit was to assess the effectiveness of DIAC's administration of the character requirements of the Citizenship Act.

The ANAO found that DIAC had established an appropriate framework for administering the character requirements of the Citizenship Act and to conclude that an applicant is of good

⁵ Lessons for public administration: the Ombudsman Investigation of Referred Immigration Cases, John McMillan, presentation to IPAA seminar, 7 August 2007.

character. This framework includes clear roles and responsibilities that are understood by all stakeholders, comprehensive training for decision-makers about the character requirements and sound processes for recording citizenship decisions. DIAC also has satisfactory processes for identifying applicants of potential character concern.

However, there are aspects of the implementation of this framework that reduced its effectiveness. These included:

- variability in the application of processes for decision-making by DIAC case officers;
- the term 'good character' is not defined, for administrative purposes, in DIAC's policy and guidance materials; and
- limited interaction between the areas within DIAC that administer the character requirements of the Migration Act and the Citizenship Act in relation to the processing and referral of cases concerning the same client.

It noted that the guidance available to decision makers is general and, in some cases, out of date. While citizenship training was comprehensive, it was not mandatory for all decision-makers and attendance had been variable. Input or review of decision making by senior officers also varied, but was generally minimal.

Administering the Character Requirements of the Australian Migration Act 1958, Australian National Audit Office, June 2011

The objective of this audit was to assess the effectiveness of DIAC's administration of the character requirements of the Migration Act.

The report found that overall, DIAC has established a sound framework for identifying and processing visa applicants and holders of potential character concern. DIAC provided extensive guidance to its staff about the character requirements, and established processes to identify and assess visa applicants and holders with criminal histories. The Department's then relatively new centralised s501 decision-making unit, the NCCC, had also implemented adequate arrangements to manage the assessment of s501 cases that have been referred to it by visa processing centres.

The report noted:

To support the administration of the character requirements, DIAC has developed operational guidance for all staff administering the character requirements. However, this guidance does not reflect DIAC's more recent administrative changes. Other NCCC resource documents and the Character Helpdesk also provide assistance to staff administering s501 of the Act.

Section 501 induction and training for staff administering the character requirements is generally developed and delivered on an ad hoc basis. DIAC does not have a consistent national approach for the delivery of induction and training, except for overseas posted staff. DIAC is currently re-designing its training curriculum, including a role specific course for s501 administrators.

... The NCCC generally delivers induction through a buddy system. The buddy system involves experienced officers mentoring new staff for up to three weeks, after which

time they learn on-the-job through managers and informal staff networks. There is generally no guidance provided to officers performing the buddy role and different induction programs have been developed by individual officers. There would be benefit in DIAC reviewing the documents currently used to induct staff and consolidating them into a formal package to guide the induction process.

The administration of section 501 of the Migration Act 1958, Commonwealth Ombudsman, December 2016

The Ombudsman conducted this investigation because of concerns about the administration of s 501 following the amendments of December 2014.

The report notes that the Department had failed to achieve its stated aim of cancelling well before the estimated date of release where possible, so that any revocation processes could be finalised while the person is still in prison. It concludes that the delays and backlog stem from the increase in visa cancellations following the introduction of the s 501(3A) mandatory cancellation provision combined with the large number of persons seeking revocation of their visa cancellation.

This review was advised that it was this Ombudsman report that prompted the surge project in the NCCC.

Detention-related decision-making, EY, DIBP internal audit report, Engagement 32 2015/16

This internal audit report reviewed whether appropriate governance arrangements were in place to support detention-related decision-making (DRDM) and whether decisions to detain and not to detain are lawful and consistent.

It found overall that governance arrangements were not appropriate. A review of case files indicated that control design weaknesses in the end-to-end framework for DRMR and that key controls are not operating effectively. Of relevance to this review, the following factors were found to impact the effectiveness of controls:

- officers do not adequately record client responses to interview questions or their reason for detention related decisions
- officers may not always make reasonable enquiries into the circumstances of the client when making the decision to detain, and
- officers do not have ready access to all client information electronically when making detention decisions.

The report noted that the deficiencies were similar to those raised previously by the Ombudsman in *Lessons for public administration: investigation of referred immigration cases* (see above).

The Australian Border Force's use of statutory powers, Australian National Audit Office, February 2017

The objective of the audit was to assess the establishment and administration of the Australian Border Force's framework to ensure the lawful exercise of powers in accordance with applicable legislation. It concluded that the Department has made progress towards establishing a framework to ensure Border Force officers exercise coercive powers lawfully and appropriately. However, it found that significantly more work needs to be done to gain

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assurance that controls are effective. The Border Force had established an integrated operational quality assurance team, which at the time of the audit had not yet finalised any reports. Delegations and authorisations for coercive powers were complete and in place but not all instruments were accessible to officers.

The ANAO found instances of potentially unlawful actions which indicate current internal controls for mitigating the risk of unlawful or inappropriate use of coercive powers are inadequate:

The Department has not provided adequate instructions and guidance for officers exercising coercive powers. There is currently no single source of instructions and guidance material for Border Force officers, and much of the guidance material available is out of date and inaccurate. While positive foundational work has commenced on integrating the former Customs and Immigration training regimes, officers have been exercising significant coercive powers without having undertaken pre-requisite training.

Many of the instructions that are provided to Border Force officers on the Department's intranet are out of date, incomplete, inaccurate and are not accessible to all officers. A project to remedy this situation was endorsed by the Department's executive in December 2015 and has to date delivered only a very small number of operational instructions for Border Force officers.

Not all officers exercising coercive powers under the Migration Act and Customs Act have received pre-requisite training.