

Preventing the immigration detention of Australian citizens

INVESTIGATION INTO THE DEPARTMENT OF HOME AFFAIRS'
IMPLEMENTATION OF THE RECOMMENDATIONS OF THE
THOM REVIEW

December 2018

Report by the Commonwealth Ombudsman,
Michael Manthorpe, under the *Ombudsman Act 1976*

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EXECUTIVE SUMMARY

In March and April 2017, the now Department of Home Affairs (the department) identified it was holding two Australian citizens in immigration detention. The department commissioned Dr Vivienne Thom AM to conduct an independent review (the Thom Review) into the circumstances that led to the detention of these Australian citizens. The Thom Review considered the risk mitigation strategies that were in place to prevent an Australian citizen being detained, the failure of these strategies and what could be put in place to prevent similar incidents happening again.

The Thom Review was provided to the department in June 2017. It contained four recommendations which the department accepted in full. In February 2018, the Office of the Commonwealth Ombudsman (the Office) commenced an own motion investigation to examine whether the department had effectively implemented the recommendations of the Thom Review.

In this investigation we looked at the implementation of the recommendations at a selection of critical points across the immigration detention process, spanning visa cancellation to release from detention, that were identified in the Thom Review as critical points of process failure that contributed to the detention of the Australian citizens. At each of these points we examined the department's progress against four themes—training, tools and processes, quality assurance and personal responsibility, to assess whether necessary changes have occurred to prevent the detention of Australian citizens in the future.

We acknowledge the department's efforts to implement the recommendations of the Thom Review, and consider that the department has made progress in this regard, particularly in relation to training and the development of new procedures to document expectations around which officers are expected to hold reasonable suspicion, how they do this, and the points at which it transfers to the next officer. We also note that at the time of our investigation, many of the department's planned implementation activities were still underway. We found that while sound reforms had been implemented in some business areas, often these were not replicated across the department and the Australian Border Force (ABF).

We also acknowledge the challenges the department faces in relation to citizenship, including accessing historical information which impacts on a person's citizenship status. A large volume of historical information is recorded in a number of different media, including paper-based registers, reels and fiches rather than in online systems. As a result, officers may make decisions to detain when they only have access to online information and not historic information which is still not captured online. That said, these problems are not new. Similar problems were highlighted over a decade ago in the context of the detention of Cornelia Rau and Vivian Alvarez, yet the detention of Australian citizens can still occur. This remains an unsatisfactory position.

During this investigation we conducted fieldwork with a broad range of business areas from across the department and the ABF, to examine the department's implementation of the recommendations of the Thom Review at an operational level. This fieldwork enabled us to identify gaps, where in practice the department's implementation activities had not entirely met its intent or the intent of the relevant recommendation the activity was designed to address. We offered suggestions for rectifying these gaps to business areas during our fieldwork, and the department was responsive, with many business areas beginning work to address these issues immediately.

While acknowledging the department's progress, we consider that further improvements are necessary at critical points in the immigration detention process to safeguard against the detention of Australian citizens and lawful non-citizens in future. This was highlighted in September 2018, when the department identified that it had detained another Australian citizen.

In our view, the department and the ABF need to take further steps to ensure that all relevant officers are adequately trained in the acquisition of Australian citizenship, that tools and processes support officers to lawfully perform their roles and that quality assurance processes at these points are robust. In this report we make 15 recommendations to the department that offer specific guidance on ways it can ensure it has implemented the recommendations of the Thom Review effectively, to prevent the detention of Australian citizens and lawful non-citizens in future.

Recommendations

The Office makes the following recommendations for action by the department:

Training

1. The department should ensure that all officers who are required to cancel visas, assess immigration status and/or detain or remove unlawful non-citizens are adequately trained in the identification of Australian citizenship. To facilitate this:
 - a) Citizenship training, within the context of determining immigration status, should be a mandatory prerequisite for these officers and this should be documented in the relevant professional development pathways.
 - b) Refresher training should also be delivered where necessary to update staff on legislative or policy changes, or in response to knowledge gaps identified by quality assurance processes.
 - c) In light of the Thom Review's findings, officers performing these functions who have not received refresher training covering citizenship since March 2017 should be identified, and training should be delivered to these officers as a priority.

Tools and procedures

2. In relation to the Citizenship Tool:
 - a) The department should develop or if already developed, endorse a short citizenship triage checklist to identify cases that require a full citizenship assessment using the Citizenship Tool. This tool should be developed in consultation with Citizenship Operations to meet the operational requirements of the business areas that use it.
 - b) Citizenship Operations should conduct an implementation review of the Citizenship Tool six months after its introduction. The review should focus on the usability of the checklist and its suitability for use in various operational areas.
3. The National Character Consideration Centre should complete the agreed triage checklist and, if indicated, the Citizenship Tool, prior to every mandatory cancellation decision under s 501(3A). If there is inadequate information in departmental systems to answer every question in these tools, the National Character Consideration Centre should conduct further investigations to obtain this information.
4. The National Character Consideration Centre should engage in consultation with business areas that consider the mandatory cancellation Mandatory Control Point document later in the detention process, including ABF field operations, the Detention Review Manager and Status Resolution, to determine how the National Character Consideration Centre can better document their decisions to support the work of these business areas, and update its Mandatory Control Point document accordingly.
5. In relation to the Located Person Interview:
 - a) In Part A, it should be mandatory for officers to ask the interviewee what countries they are a citizen of and their country of birth. The accompanying standard operating procedure should clearly articulate the requirement for officers to ask the interviewee these questions and should caution officers against relying solely on information in departmental systems.
 - b) The ABF should conduct an implementation review of the Located Person Interview six months after its introduction.

6. The ABF should prioritise the development of nationally consistent processes and supporting standard operating procedures, for dealing with non-citizens in criminal detention.
7. When new processes or standard operating procedures are introduced, the department should ensure that all relevant officers who will engage with the standard operating procedure have a full understanding of their responsibilities and how to implement the procedure. The department should ensure that all relevant staff are made aware of their responsibilities under the *'Australian Citizenship Status Assessments for activities being undertaken under the Migration Act 1958 Procedural Instruction'* and the *'Amending or updating citizenship records where there is no application to consider Standard Operating Procedure'*.

Personal responsibility and reasonable suspicion

8. The ABF should improve communication with staff at all levels when responding to reviews, such as the Thom Review. All relevant staff, not just those immediately involved, should be given an understanding of the review, its recommendations and how the lessons learned apply to their work.
9. The Detention Review Manager and the Status Resolution Officer should be required to form and maintain a reasonable suspicion that the person in each case they review/manage is an unlawful non-citizen. This expectation should be clearly stated in relevant procedural documents for these roles, along with the point at which this responsibility is transferred between officers.
10. The department should ensure that all relevant procedural documents specifically include the requirement for officers to reconcile inconsistent information and update departmental systems with accurate information. The procedures should clarify the process for updating information and the circumstances in which officers would be expected to have the knowledge and authority to do so.

Quality assurance and quality control

11. The department should develop, implement and ensure staff are following the risk-based quality control processes listed below.
 - a) A senior officer should review all Community Placement Assessment Tools completed when a person enters immigration detention, to ensure citizenship issues have been identified and resolved.
 - b) Status Resolution Officers should be periodically observed and coached by their supervisor while conducting client interviews as part of the performance management framework.
 - c) Status Resolution should introduce robust quality control processes to support officers to conduct Detention Client Interview Part A interviews and mitigate the risk of not identifying an Australian citizen.
 - d) The Citizenship Helpdesk and the Detention Review team should develop risk-based quality control processes to ensure that all high risk cases are escalated for review by a manager or senior officer.
 - e) The ABF should implement a quality assurance process to ensure that officers are completing the Located Person Interview form as instructed and provide feedback to officers who are not complying with the standard operating procedure.
12. The department should develop a risk-based process for triaging, prioritising and allocating initial detention reviews to Detention Review Managers.

- 13.** The National Character Consideration Centre should require team leaders to complete and file a quality control checklist as a formal part of the quality control process for mandatory cancellation.
- 14.** The department should prioritise expanding and embedding automated quality management reporting to enable business areas to better identify emerging trends and issues, monitor performance and provide assurance to the Executive that decisions are compliant with policy and legislation.
- 15.** The department should develop processes for relevant areas to provide regular feedback to ‘upstream’ areas including the visa and status resolution networks and the ABF, on systemic quality issues they identify in reviewing decisions to detain unlawful non-citizens.

Home Affairs’ response to recommendations

On 22 October 2018 the Office provided the department with a copy of the draft report for comment. On 16 November 2018 the department provided a response to the report and recommendations. The department accepted all 15 recommendations, 14 in full and one (Recommendation 11) in part. The department’s response is at Appendix 1.

Part 1: INTRODUCTION AND SCOPE OF INVESTIGATION

1.1. In 2005 the department detained Cornelia Rau, an Australian permanent resident, for ten months, and removed Vivian Alvarez Solon, an Australian citizen. The Palmer and Comrie reports into the circumstances surrounding the detention and removal became the catalyst for major reform of the processes governing immigration detention within the department. To this end, in 2006 the department implemented the first iteration of a control framework around detention-related decision making to address the risks which manifested in the Rau and Alvarez cases.

1.2. There have been substantial changes to the makeup of the detention population since 2005. The detention-related decision-making control framework has evolved to reflect these changing risks and cohorts. The number of irregular maritime arrivals increased significantly in 2010, but in recent years there has been an increase in other cohorts. In 2018, unlawful non-citizens who have had their visas cancelled on character grounds under s 501 of the *Migration Act 1958* (the Act) account for approximately a third of the detention population. The changing cohort of immigration detainees has presented new challenges and different risks for the department to manage.

1.3. The scope of the department's operations has also increased significantly over this time. In 2015 the ABF was established as the operational arm of the newly created Department of Immigration and Border Protection (DIBP), following the merger of the then Department of Immigration and Citizenship (DIAC) and the Australian Customs and Border Protection Service. The integration of Australia's immigration and customs functions into a single entity was in response to a 2014 National Commission of Audit recommendation.

1.4. In December 2017 the department grew further, incorporating a number of other agencies, or parts of agencies responsible for national security, emergency management, multicultural affairs, counter-terrorism coordination, cyber security policy functions and criminal justice functions. The ABF reports directly to the Minister for Home Affairs and is considered to be an operationally independent arm of the department. The rationale for establishing the Home Affairs portfolio was to ensure better integration for domestic and border security. In this model, the department's mandate is to provide centralised support and coordination of operational responses.

1.5. Effective communication and preventing information from being siloed has been a significant challenge as functions that were previously the sole responsibility of DIAC, such as the management of immigration detention facilities, have been separated between the department and the ABF. The Australian National Audit Office's (ANAO) report 'The Integration of the Department of Immigration and Border Protection and the Australian Customs and Border Protection Service' questioned whether the claimed benefits of integration have been achieved and noted the lack of record keeping in the process.¹

1.6. Since 2011, the Office has had a standing own motion investigation into persons that are detained and later released as 'not unlawful' because the department can no longer maintain a reasonable suspicion that they are an unlawful non-citizen. Under this own motion investigation, the department provides six-monthly reports to the Office, detailing all of the instances where a person has been released from immigration detention as 'not unlawful' during the period. In each identified case, the department details the circumstances leading to the person being released as 'not unlawful' and the remedial actions it has taken in response to the specific and systemic issues raised.

¹ Australian National Audit Office, *The Integration of the Department of Immigration and Border Protection and the Australian Customs and Border Protection Service*, Report No 45 (2018) 8.

1.7. In March and April 2017, the department identified that it had erroneously detained two Australian citizens: Mr A and Mr B. These cases were reported to the Office under the standing own motion.

1.8. Mr A was born in Australia in 1990 to New Zealand citizen parents and automatically became an Australian citizen on his tenth birthday. He was granted a visa, which was mandatorily cancelled under s 501(3A) of the *Migration Act 1958* (the Act) while he was in prison. On release from prison he was held in immigration detention for 97 days before he was identified to be an Australian citizen and released.

1.9. Mr B automatically became an Australian citizen when he was born in the Australian territory of Papua in 1970. He retained his Australian citizenship on Papua New Guinea Independence Day and arrived in Australia with his family in 1978. He was granted a visa which was cancelled under s 501(3A) following his sentence to a term of imprisonment, and was held in immigration detention for 13 days before he was found to be an Australian citizen.

1.10. In response to the detention of Mr A and Mr B, the department reviewed the detention population to confirm that no other individuals in detention who had been subject to mandatory cancellation under s 501(3A) of the Act were Australian citizens. None were found. Following the release of the Thom Review, the department also established a taskforce to monitor the implementation of the Thom Review's recommendations.

1.11. In September 2018, the department identified that it had detained another Australian citizen, Mr C. The department is undertaking a review of the circumstances that led to Mr C's immigration detention. The Office is working with the department to identify the processes that failed to prevent Mr C's detention, and the steps the department is taking to prevent the detention of Australian citizens in similar circumstances in future.

Scope and Methodology

1.12. The [Thom Review](#)² made four recommendations. The first two recommendations were for specific improvements to tools and training, namely that the department should enhance immigration status training and develop a tool for decision makers to assist in identifying and resolving citizenship issues. The third and fourth recommendations were broader, with the third recommendation being that the department should address the findings of the review in the implementation of the recommendations it accepted from two previous reviews: by the ANAO in February 2017 on the ABF's use of statutory powers, and a 2015–16 internal audit by Ernst & Young of detention related decision making. The fourth recommendation was that the department should ensure its assurance processes address the systemic issues identified in the review.

1.13. In assessing the department's implementation of these recommendations, we focused on a selection of critical points across the entire immigration detention process—spanning visa cancellation to release from detention (see Figure 1). These points were identified in the Thom Review as the critical points of process failure that contributed to the detention of Australian citizens. Our investigation considered whether these changes will prevent the detention of Australian citizens in the future.

² Vivienne Thom, *Independent review for the Department of Immigration and Border Protection into the unlawful detention of two Australian citizens* (CPM Reviews, 9 June 2017), URL: <https://www.homeaffairs.gov.au/foi/files/2017/fa171000267-document-released.pdf>

1.14. We also focused on lawful non-citizens, noting the information provided by the department to the Office in the six-monthly report on people detained and later released as not unlawful. This aspect of our investigation was informed by the recent Ombudsman’s report into the circumstances of the detention of Mr G³ who was detained for nearly four years while he still held a Bridging visa. This report noted the department’s failure to maintain a reasonable suspicion that Mr G was an unlawful non-citizen after it became aware of an error in the notification of the refusal of Partner visas, but failed to apply this knowledge to his case.

1.15. The investigation included a program of fieldwork in both the department’s national office as well as state offices and immigration detention facilities⁴. We provided the department with our observations from this fieldwork and sought comment to clarify our understanding of the processes we observed and documents analysed. We then submitted our preliminary views to the department before providing a draft report with recommendations for comment.

³ Office of the Commonwealth Ombudsman, *Investigation into the circumstances of the detention of Mr G*, Report No 2 (2018).

⁴ A detailed summary of this fieldwork is at Appendix 2.

Figure 1—Ombudsman’s investigation into the Department of Home Affairs’ implementation of the recommendations of the Thom Review

Objective: To examine whether the recommendations of the Thom review have been effectively implemented by the department at identified points of process failure, to ensure that Australian citizens and lawful non-citizens are not detained in the future

Focus areas

- | | |
|--|---|
| A. Mandatory visa cancellations under s 501 of the <i>Migration Act 1958</i> | B. Detention of an individual under s 189(1) of the <i>Migration Act 1958</i> |
| C. Detention Review Manager | D. The Detention Client Interview, Community Placement Assessment Tool and ongoing monthly case review by a Status Resolution Officer |

Guiding focus questions

1. Are officers now trained to recognise and handle complex citizenship cases and notification errors?	2. Do officers effectively use a tool or checklist to identify and refer potential citizenship and notification issues?	3. Are there adequate quality assurance processes to address the risk of detaining an Australian citizen or lawful non-citizen?	4. Do officers take personal responsibility for identifying and addressing errors and for establishing and maintaining a reasonable suspicion that a person subject to immigration detention is an unlawful non-citizen?	5. Are ongoing processes in place to ensure critical data is captured, accurate and available across all departmental systems?
<p>1.1 Is the training adequate to equip officers to handle complex scenarios?</p> <p>1.2 Have all officers in the focus areas received adequate training and refresher training?</p> <p>1.3 Is the department able to assure itself that training has been effective?</p>	<p>2.1 Does each focus area have a tool that covers all potential citizenship and notification errors?</p> <p>2.2 Are these tools used consistently and correctly by officers?</p> <p>2.3 Has officer feedback on the tool been gathered and incorporated?</p>	<p>3.1 Are risk ratings reflective of potential consequences?</p> <p>3.2 Are quality assurance processes at decision points robust and effective?</p> <p>3.3 Does the department have processes to assure its executive that these decisions are being made correctly?</p> <p>3.4 Does the department have adequate systems to ensure that accepted recommendations from external reviews are tracked and implemented?</p>	<p>4.1 Do procedures make clear what each officer is personally responsible for and are accountabilities clear?</p> <p>4.2 Do officers take personal responsibility for checking assumptions and identifying and correcting errors?</p> <p>4.3 How do officers form and maintain a reasonable suspicion that a person in detention is an unlawful non-citizen?</p>	<p>5.1 Is inconsistent data across different systems reconciled on an ongoing basis?</p> <p>5.2 Are there procedures in place for officers to capture data and to follow if, in the course of their duties, they find inconsistent or missing data?</p> <p>5.3 Is there a consistent policy across all areas on where and how data should be recorded in various IT systems?</p>

The Immigration Detention Process

1.16. For the purposes of this own motion investigation, the immigration detention process begins with a person (the client) becoming an unlawful non-citizen when their visa is cancelled, refused or ceases. This can occur in a variety of ways, and in this investigation we focused solely on the mandatory cancellation of visas on character grounds under s 501(3A) of the Act, by the department's National Character Consideration Centre (NCCC).

1.17. Once the visa is cancelled under s 501(3A), the client is then either:

- located by the Police and referred to the ABF's Immigration Status Service call centre, which identifies the client's immigration status from departmental systems and then conducts the Located Person Interview Part A to confirm whether the client is an unlawful non-citizen
- located by or presents to ABF officers where the Located Person Interview Part A is conducted and systems are consulted to determine the person is an unlawful non-citizen, or
- reported to the ABF as a non-citizen in criminal detention, and upon release from prison the client is interviewed by an ABF officer using the Located Person Interview Part A.

1.18. The client is detained under s 189(1) of the Act if at the conclusion of the Located Person Interview Part A, the officer knows or reasonably suspects that they are an unlawful non-citizen. After the client is detained, the Located Person Interview Part B and C are conducted and the person is transferred to an immigration detention facility.

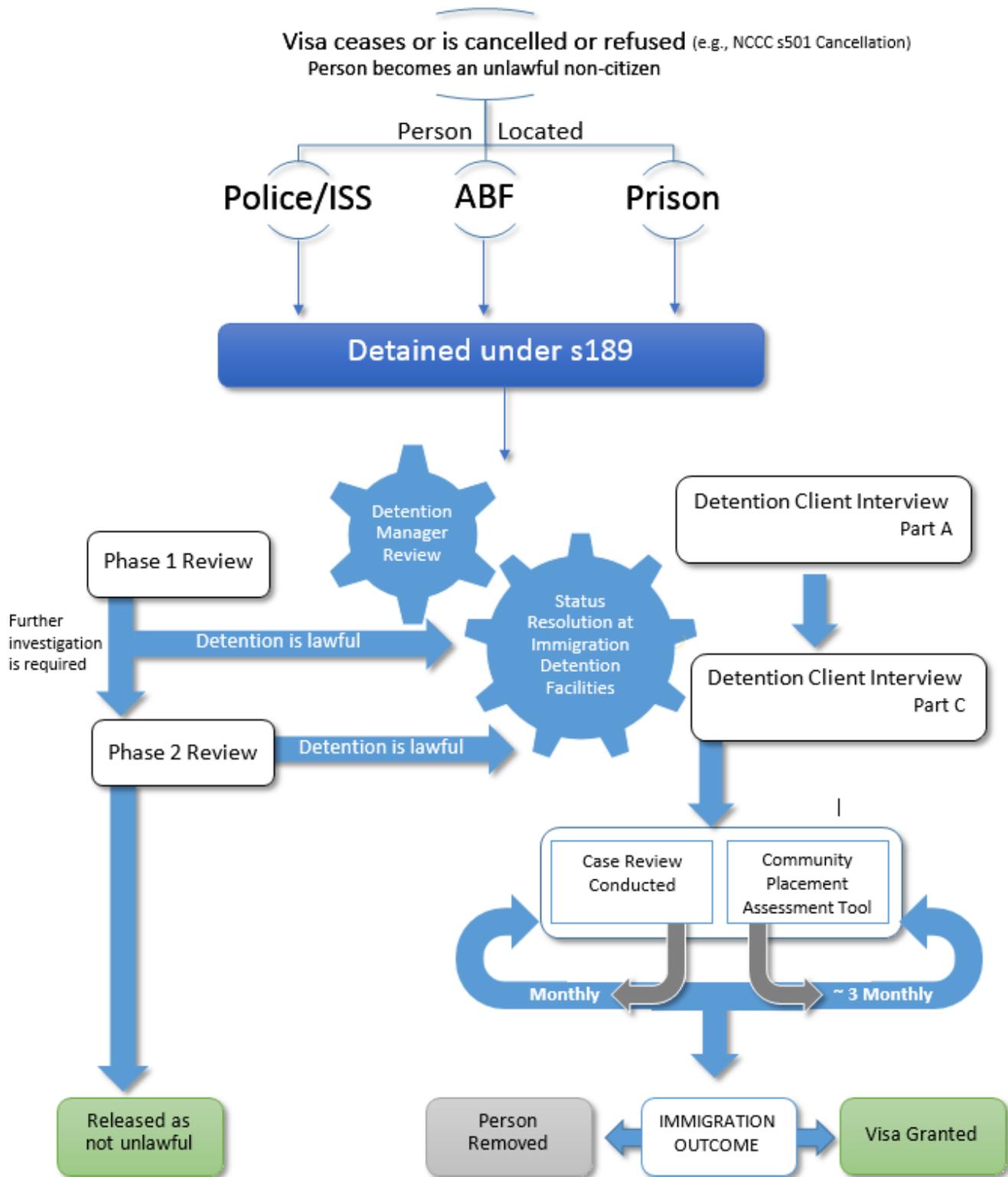
1.19. The detaining officer notifies the Detention Review Manager (DRM) that the person has been detained, and the DRM conducts an initial detention review, to check that the decision to detain is compliant with legislation and regulations. If identification requirements are met, the DRM will conduct the phase 1 review within two business days. If not, this will be done within 24 hours. If further investigation is needed, the DRM will conduct a phase 2 review within 14 days.

1.20. Concurrently, a Status Resolution Officer conducts the Detention Client Interview Part A within 24 hours of a client being transferred to an immigration detention facility. This interview confirms the personal information the department has about the client and outlines their immigration pathway. If a client agrees to depart Australia, the Detention Client Interview Part B is used to gather information to prepare for their removal. However, if a client declines to depart Australia or their departure is likely to be complex or protracted, the client is streamed into the Status Resolution Programme and their case is allocated to a Status Resolution Officer who completes the Detention Client Interview Part C and the initial Community Placement Assessment Tool within 5–14 days. These tools gather more information about the client and determine the most appropriate placement while they await an immigration outcome.

1.21. While a client remains in immigration detention, the Status Resolution Officer assigned reviews their case every month through a case review, and generally reviews the Community Placement Assessment Tool every 3 months, or every 6 months for clients subject to s 501 cancellation. The information compiled in a case review is reported to the Detention Review Committee, which meets to review cases each month for each immigration detention facility. This cycle of review continues until an immigration outcome is achieved and the person is released from immigration detention, either through a visa being granted to the client or the client being removed from Australia.

1.22. The parts of the immigration detention process examined in this investigation are depicted in Figure 2.

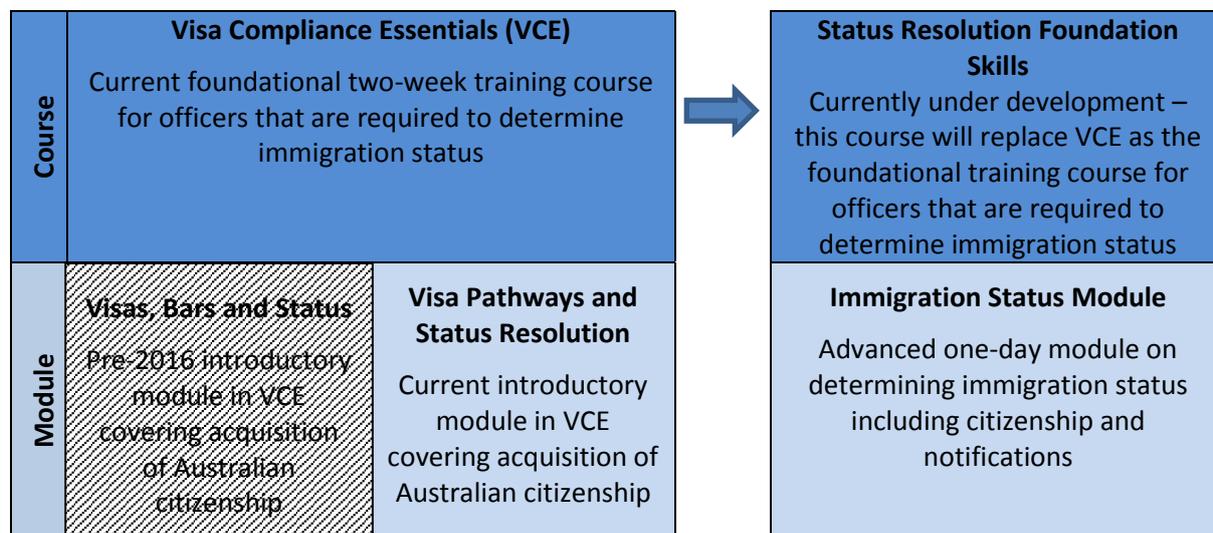
Figure 2 – Simplified* Thom own motion immigration detention process



*This diagram only depicts parts of the immigration detention process examined in this investigation.

Part 2: TRAINING

Overview of the department’s training courses and modules relating to acquisition of citizenship



2.1. The Thom Review identified that departmental staff, involved in the cases of Mr A and Mr B, had gaps in their knowledge about the acquisition of Australian citizenship and *‘did not have the base level of knowledge required to perform their duties.’*⁵ The Thom Review assessed that these knowledge gaps were a *‘systemic issue that poses a significant risk to DIBP and its clients’*⁶ and recommended that the department *‘should enhance immigration status resolution training’* and that *‘the training should be assessed and regular refresher training should be required.’*⁷

2.2. The Thom Review emphasised that officers should not be expected to have a comprehensive understanding of the complexities of determining Australian citizenship, but they must have sufficient knowledge to be able to recognise potential citizenship triggers and escalate them accordingly. The officers involved in the detention of Mr A and Mr B did not have this level of knowledge and were not able to identify that they were potentially Australian citizens, despite Mr A stating this claim to a number of officers.

2.3. In our view, the department has taken important steps towards building training infrastructure that will ensure officers are equipped with the essential skills and knowledge to recognise and escalate citizenship and status issues. We note the ongoing work by the department to fully implement the Thom Review’s recommendation in relation to training.

2.4. To action the Thom Review’s recommendation on training, the department undertook to update *‘Visa Compliance Essentials – Immigration Status’* training to include more detail on citizenship, develop an assessment tool to be included in the training package and determine the content and frequency of refresher training. It also undertook to update the *‘Status Resolution’*, *‘Field Operations’*, *‘Removals Officer’* and *‘Visa & Citizenship Decision Maker’* job role profiles and develop professional development pathways for these job types that document the requirements for training and refresher training.

⁵ Vivienne Thom, above n 2, 19.

⁶ Ibid 21.

⁷ Ibid 29.

2.5. *Visa Compliance Essentials* (VCE) is a foundational training course for Status Resolution Officers and some ABF officers, such as Field Compliance Officers. Citizenship issues were briefly covered in the pre-2016 *Visas, Bars and Status* module of VCE. The Thom Review suggested that the citizenship component of VCE training was inadequate to equip ABF and Status Resolution Officers with the knowledge required to lawfully perform their roles.

2.6. The department advised that this module had been revised in 2016 and that it was reviewed again immediately after the discovery of the detention of Mr A and Mr B, and again after the findings of the Thom Review. The department advised that, following the revision, there is now an increased focus on risks in status determination regarding citizenship assessments with 45–60 minutes spent on the topic in VCE training, but there is still no competency assessment covering acquisition of citizenship.

2.7. The training materials for the previous version of this module (*Visas, Bars and Status*) and the current version (*Visa Pathways and Status Resolution*) were provided to the Office in the course of this investigation. The previous version included information about some of the ways that Australian citizenship can be acquired in the facilitator guide, but very little information about acquisition of Australian citizenship in the participant guide or PowerPoint presentation.

2.8. The current version of the course includes more information about the acquisition of citizenship, with the PowerPoint slides containing comprehensive information about the ways that Australian citizenship can be acquired in the delivery notes section (not the slides themselves). The facilitator guide and participant handbook also now include information about critical dates in relation to the acquisition of Australian citizenship, and the participant guide briefly covers the ‘10 year rule’. The Thom Review identified ‘*six sets of defining circumstances [where] any cancellation or detention case meeting certain criteria could then be referred to the citizenship helpdesk to resolve*’⁸ These circumstances include being born in Papua New Guinea prior to independence in 1975. However, there is currently no information about this method of citizenship acquisition in the training. In our view, there would be value in including information about the Thom Review’s ‘*six sets of defining circumstances*’ in the materials that course participants can take away with them and refer to at a later date.

2.9. In response to the Thom Review, the department also developed the *Immigration Status Module*, an advanced course that builds on the knowledge acquired during the VCE training to provide more in-depth training about citizenship and notifications. This course was delivered to approximately 250–300 officers (mainly from Status Resolution) in the first half of 2018 and the department advised that it will be included in the redesigned *Status Resolution Foundation Skills* training.

2.10. As part of its response to the Thom Review, the department is in the process of redesigning some of its core training packages. A working group has been set up to evaluate and review the content of VCE and develop a new course – *Status Resolution Foundation Skills* – which will replace VCE and form foundational training for work streams that intersect with status resolution. The department advised that, in line with the recommendation of the Thom Review, *Status Resolution Foundation Skills* will include assessable components and certain modules will have mandatory refresher training requirements. The new course commenced in October 2018.

2.11. Training for officers performing visa cancellations has also been redeveloped, with the introduction of a multi-tiered training package for the Character and Cancellation Branch. The NCCC advised that the new training package for officers performing mandatory cancellations is assessed by

⁸ Ibid 29

a short test and a practical scenario in which staff must navigate the department's systems to successfully complete the exercise. Staff are also required to achieve a mandatory pass mark (which was yet to be determined) before a module is recorded as completed. The training package also includes a schedule of refresher training at varying intervals, with topics that involve more risk to clients (such as citizenship) requiring more frequent refresher training.

2.12. The NCCC advised that the new training package for officers who perform mandatory cancellations was trialled in June 2018, with feedback provided and incorporated into the design. This tier of training has now been fully implemented.

2.13. In response to the Thom Review's findings on training, the department has also begun to develop job role profiles and professional development pathways for job types including 'Status Resolution', 'Field Operations', 'Removals Officers' and 'Visa & Citizenship Decision Makers'. The professional development pathways include a matrix which maps training courses to the core competencies required at each level for each role. These are available to departmental staff together with job role profiles on the department's human resources portal.

2.14. The department has also undertaken to document the requirement for refresher training for each module. The job role profiles provided to the Office currently refer broadly to refresher training by stating 'employees will be able to refresh and update competency through attendance at specific modules',⁹ but they do not stipulate whether refresher training is mandatory or how frequently it must be completed. The department advised that this level of detail was still being discussed, and that once finalised, it would be included in the professional development pathways skills matrix.

2.15. The department is currently building the capability to record training requirements and attendance for officers in the 'Status Resolution', 'Field Operations', 'Removals Officers' and 'Visa & Citizenship Decision Makers' job types through its Learning Management System. Job specific mandatory training courses will appear in officer's Learning Management System portals as being assigned to them and with a deadline by which they must be completed. The department advised that refresher training requirements will also be built into this system, and the Learning Management System will have the capacity to generate reports on individuals or groups' completion rates of mandatory training, which feeds into the cycle of performance development reviews. The department is currently working on updating the Learning Management System with current training and qualification records. 'Status Resolution' is scheduled for completion by November 2018, with the remaining job roles still in progress.

2.16. In our view, it is critical that the department identify fundamental training required for a role. It is concerning that officers who joined the DRM team in early 2016 did not receive VCE training until early 2017. These officers had responsibility for identifying Australian citizens in immigration detention. As a result they performed their duties without core training for more than a year. In these circumstances, the department should provide additional supervision to officers until this training has been completed.

2.17. We would expect to see such minimum pre-requisites articulated in job role profiles and professional development pathways, and while the DRM role was not covered by the first package of work to develop these, the department has advised that it is working on developing these documents for the DRM role in future program years.

2.18. While developing foundational training that more comprehensively addresses citizenship is important, it is equally important that the department ensures that the officers who are currently

⁹ Job Role Profiles, provided to the Office 6 August 2018.

carrying out these functions are adequately trained in the acquisition of Australian citizenship, to be able to lawfully perform their duties. Following the identification of the detention of Mr A and Mr B, the department provided most of the staff in the implicated business areas with additional citizenship training.

2.19. Between April and September 2017, all DRMs completed two e-learning citizenship modules, attended the Immigration Status Module training and participated in an in-person citizenship training course.

2.20. The Status Resolution Operational Support Section provided the Office with national data which showed that the vast majority of Status Resolution Officers across the four immigration detention facilities where we conducted fieldwork, had attended the Immigration Status Module training, with only a handful of staff from one centre having not participated. Staff at this centre had also completed a range of e-learning modules relating to citizenship issues, but on the basis of the data provided, we were unable to determine whether all officers at this centre had received some kind of citizenship refresher training since March 2017, or whether there was one officer that had not.

2.21. The NCCC staff in the team responsible for mandatory cancellations all received two days of internally delivered citizenship training in April 2017 and an additional day of training delivered by Citizenship Operations in June 2017.

2.22. As part of our investigation we also asked the ABF what refresher citizenship training it had provided to officers exercising the power to detain under s 189(1) of the Act since the Thom Review's recommendations. The ABF advised that 'some' Field Operations Officers had received refresher training, but this was not mandatory and attendance was not recorded. As such, the ABF could not provide any data on how many officers attended this training.

2.23. It is concerning that nationally the ABF cannot quantify the training delivered to officers in response to an independent review's findings that officers did not have the base level of knowledge required to lawfully perform their jobs.

2.24. The Office was able to obtain some data at the state level in the course of our fieldwork. For example, in NSW all Field Operations Officers attended the Immigration Status Module course in June 2018, and the Immigration Status Service Officers attended this course in September 2017. However, other areas of the ABF were not able to advise whether their staff had attended refresher citizenship training. We asked ABF Victoria for details of any citizenship training Field Operations Officers had attended since the Thom Review, but were told that because the training was not regarded as mandatory, attendance was not recorded. Enforcement Command Victoria expressed the view that citizenship training was not as important as mitigation strategies, namely additional procedures that target areas of risk. We recognise that such mitigation strategies are essential; however we consider that officers also need to have strong background knowledge of citizenship to understand the importance of the questions they are asking.

2.25. The ABF's response stands in contrast to every other Home Affairs' business area impacted by the Thom Review's recommendations and within the scope of our investigation. All of these line areas have delivered multiple forms of citizenship refresher training to staff since mid-2017.

2.26. The ABF College has advised that it is working with Citizenship Operations to develop an online refresher package that it anticipates will be available via the Learning Management System to all staff before the end of 2018. The package will require staff to work through a number of scenarios and the results will be recorded within the Learning Management System.

2.27. We acknowledge the efforts that Status Resolution and the NCCC have made to provide staff with additional citizenship training since March 2017. We would expect the department and the ABF to take urgent steps to identify which officers, who determine immigration status in the performance of their role, have not received additional citizenship training in this time, and to deliver training to these officers as a matter of priority.

2.28. We would further expect that the ABF would mandate that identified staff complete its proposed online citizenship training within a set period of time, and that this training will include a competency assessment with a minimum pass mark before the module is recorded as completed.

Recommendation 1

The department should ensure that all officers who are required to cancel visas, assess immigration status, and/or detain or remove unlawful non-citizens are adequately trained in the identification of Australian citizenship. To facilitate this:

- a) Citizenship training, within the context of determining immigration status, should be a mandatory prerequisite for these officers and this should be documented in the relevant professional development pathways.
- b) Refresher training should also be delivered where necessary to update staff on legislative or policy changes, or in response to knowledge gaps identified by quality assurance processes.
- c) In light of the Thom Review's findings, officers performing these functions who have not received refresher training covering citizenship since March 2017 should be identified, and training should be delivered to these officers as a priority.

Part 3: SYSTEMS, TOOLS AND PROCEDURES

Tools and Checklists

3.1. A person who fails the s 501 character test for the specific reasons set out in s501(3A) of the Act and who is currently serving a sentence of imprisonment is potentially liable for mandatory cancellation of their visa under s 501(3A) of the Act. Before considering mandatorily cancelling a person's visa, the NCCC needs to confirm that the person is a non-citizen and comes within the provisions of the Act and in fact holds the visa listed in departmental systems. The department's systems are not always accurate and do not automatically reflect where a person has acquired Australian citizenship, particularly where this may have occurred by operation of law, some time ago or without the person's knowledge, as highlighted by the cases of Mr A, Mr B and Mr C. If a person is an Australian citizen, they cannot actually hold a visa and therefore they hold no visa that would be liable for cancellation under s 501(3A).

3.2. If a person remains in the migration zone once their visa has been cancelled (or ceases) they become an unlawful non-citizen. Similarly, a person whose visa has been cancelled under s 501(3A) of the Act will become an unlawful non-citizen upon their release from prison.

3.3. Under s 189(1) of the Act, a person in the migration zone (other than an excised offshore place) must be detained if an officer knows or reasonably suspects that they are an unlawful non-citizen. The Act requires the detaining officer to form and maintain this state of mind ('reasonable suspicion') and the reasonable suspicion must be maintained for the duration of a person's immigration detention. In order to hold reasonable suspicion that a person is an unlawful non-citizen, an officer must be able to consider and determine that they do not hold a valid visa (which includes confirming that any visa cancellation has occurred correctly) and they are not an Australian citizen.

The Australian Citizenship Status Assessment Tool

3.4. The Thom Review identified that the procedures and checklists in place at the time of the detention of Mr A and Mr B did not assist the officers involved to identify the possibility that they were Australian citizens. The Review recommended that the department '*should develop a tool to ensure that, when making a visa cancellation or detention decision, an officer explicitly identifies and resolves citizenship issues*'.¹⁰

3.5. In response to this recommendation, the department developed the Australian Citizenship Status Assessment Tool (the Citizenship Tool) and accompanying procedural instruction. The Citizenship Tool was developed by Citizenship Operations and implemented on 14 May 2018.

3.6. In the nearly 12 months that elapsed between the release of the Thom Review and the implementation of the Citizenship Tool, business areas put interim procedural measures in place to assist officers to identify potential Australian citizens in their work. However, interim approaches have not been coordinated across business areas, resulting in inconsistencies.

3.7. The NCCC introduced a new Mandatory Control Point (MCP) Liability Assessment Checklist for mandatory cancellations. In relation to citizenship, the MCP requires officers to escalate a case to their supervisor and refer it to the Citizenship Helpdesk if:

¹⁰ Vivienne Thom, above n 2, 29.

- the client is born in Australia
- the client was born in Papua New Guinea prior to 16 September 1975
- there is an indication that the client was legally adopted by an Australian citizen, or
- there is an indication that the client’s mother or father is an Australian citizen.

3.8. At immigration detention facilities, the Detention Client Interview Part A is conducted by a Status Resolution Officer within 24 hours of a person’s detention. While the Citizenship Tool was being developed, some immigration detention facilities, such as Villawood Immigration Detention Centre, took the initiative to have officers ask questions about citizenship during the Detention Client Interview Part A interview. At Villawood Immigration Detention Centre, Status Resolution Officers were observed recording the responses to these questions freehand on the Detention Client Interview form.

3.9. Conversely, Melbourne Immigration Transit Accommodation, Maribyrnong Immigration Detention Centre and Yongah Hill Immigration Detention Centre advised that officers at these centres were not instructed to ask additional questions about citizenship in this interview, as centres were awaiting the national release of a new version of the Detention Client Interview form. While one Status Resolution Officer was observed asking citizenship questions at these centres, we were advised that was of the officer’s own initiative and not in response to a formal instruction.

3.10. The DRM and the ABF did not put in place any interim tools to assist officers in identifying citizenship issues. Rather, these areas focused attention on providing information to officers, with the DRM team attending a number of citizenship training sessions, and the ABF sending out a weekly team brief to all officers with information on methods of acquisition of Australian citizenship to consider when determining immigration status.

3.11. Some business areas of the ABF implemented local procedures for the consideration of citizenship issues, for example the Immigration Status Service advised that it is their practice to ask additional questions regarding citizenship when completing the Compliance Client Interview, and ABF NSW demonstrated consideration of citizenship triggers in the Brief Assessment Tool prepared in advance of a s 251 warrant execution which was provided to our Office in this investigation.

3.12. The department advised that the Citizenship Tool was rolled out for use across the department in May 2018. Prior to this, the tool was trialled as part of the ABF’s new Located Person Interview form, which was designed to replace the Compliance Client Interview.¹¹

3.13. The Located Person Interview, which includes the Citizenship Tool in section (B6), was trialled by ABF teams in NSW and the ACT, initially from 27 November 2017 to 31 January 2018. Following feedback from the business areas, changes were made to the form and a second trial was conducted from 23 April 2018 to 18 May 2018. Further minor changes were made to the form after the second trial, and it was rolled out for use by ABF field officers nationally from 31 July 2018.

3.14. The Citizenship Tool was developed by the department’s subject matter experts on the acquisition of Australian citizenship. It is a comprehensive checklist that an officer must work through, covering all possible methods of becoming an Australian citizen. Officers are directed to skip sections and move on to the next relevant question based on the interviewee’s responses.

¹¹ Like the CCI, ABF officers will use the Located Person Interview in a range of circumstances prior to detaining a person under either ss 189 or 192 of the Act.

3.15. The feedback provided by ABF NSW following the Located Person Interview trial included concerns that the Citizenship Tool was too long and was difficult to conduct in the field environment. There were also concerns that questions were repetitive (from earlier parts of the Located Person Interview) and that the checklist did not flow intuitively for use in the field.

3.16. The department advised that since the release of the Citizenship Tool, the DRM has begun using the Citizenship Tool as a standard part of every detention review. However other business areas, including the NCCC and Status Resolution, are using the Citizenship Tool as a guidance document for complex cases, rather than to enable officers to *'identify and resolve citizenship issues'*¹² as a standard part of every decision.

3.17. Both the NCCC and Status Resolution have introduced a two stage process for the identification of citizenship issues, with both areas developing their own short checklist of questions to triage cases and identify those that require a full assessment using the Citizenship Tool. Citizenship Operations was not consulted in the development of these triage checklists.

3.18. In Status Resolution, the Detention Client Interview Part A has been updated (as of 30 July 2018) to include trigger questions, which will refer Status Resolution Officers to the Citizenship Tool for guidance if required. These questions relate to date and place of birth of the client, the place of birth of the client's parents and their status at the time of the client's birth, and whether the client claims to have applied for or been granted Australian citizenship.

3.19. Similarly, the NCCC advised that in its view, the Citizenship Tool is *'best used as a tool to support the mandatory pre-cancellation check process, rather than being a separate pre-cancellation step in and of itself'*¹³ and its MCP document now directs the officer to refer to this checklist if there is any indication that the citizenship listed in the departmental systems may be incorrect, or for further assistance in assessing the requirement to initiate a citizenship referral.

3.20. The Citizenship Tool was developed in response to the Thom Review's recommendation that the department develop *'a fairly short tool using a checklist of about six sets of defining circumstances [where] any cancellation or detention case meeting certain criteria could then be referred to the citizenship helpdesk to resolve'*.¹⁴ In our view, the Citizenship Tool does not meet these parameters. This is evidenced by the development and use of triage checklists by the NCCC (the MCP) and Status Resolution (the Detention Client Interview Part A). The Office understands that these first stage checklists were developed because these operational areas deemed the Citizenship Tool to be too complex to be used as a standard part of every cancellation/interview. On the basis of our observations during fieldwork, these appear to be valid concerns, and we note that neither of these business areas were directly consulted in the development of the Citizenship Tool.

3.21. We understand that the triage checklists were developed without input from the department's citizenship experts, and that they have not been endorsed by Citizenship Operations as covering all possible triggers of Australian citizenship.¹⁵ In our assessment, these checklists do not cover all of the possible methods for acquiring Australian citizenship detailed in the Citizenship Tool. Indeed, the NCCC described the citizenship questions in its MCP document as *'incorporating the more common scenarios caught in detail in the Citizenship Tool.'* Further, as these checklists form

¹² Vivienne Thom, above n 2, 29.

¹³ National Character Consideration Centre, Response to Preliminary Views provided to the Office 22 August 2018, 6.

¹⁴ Vivienne Thom, above n 2, 29.

¹⁵ Written correspondence from the department dated 31 August 2018.

part of documents that are owned by business areas (as opposed to Citizenship Operations) there is a risk that they will not be updated to reflect technical changes to citizenship legislation.

3.22. In our view, the department needs to develop a standard first stage triage checklist that identifies citizenship triggers, in line with the Thom Review’s recommendation, rather than seeking to determine whether a person is likely to be an Australian citizen, as the Citizenship Tool does. The Citizenship Tool would then sit behind this, and be completed in cases where a potential trigger is identified in the triage checklist as requiring further assessment. This checklist should be developed collaboratively, to ensure that it meets the operational needs of business areas while still being endorsed by Citizenship Operations as identifying all relevant triggers of Australian citizenship. The triage checklist could be inserted into business areas standard processes, but owned and endorsed by Citizenship Operations, to ensure that it is complete, remains accurate and up to date and is consistent across all business areas.

3.23. The department also needs to take ongoing steps to ensure that the Citizenship Tool is fit for purpose and being used correctly and effectively by officers in the field. Citizenship Operations advised that it will continue to liaise with Field Operations to amend and improve the checklist for use by their officers in the field. The ABF has advised that it will maintain an issues register of feedback from operational officers and will approach areas including Citizenship Operations to discuss possible changes, as required. We encourage the department to identify all of the business areas that are using the Citizenship Tool, including the NCCC and Status Resolution, and extend the consultation and feedback gathering process to these areas as well.

3.24. The department advised that further work was being undertaken by Status Resolution as part of developing procedural instructions for its new control framework, which will include a triage checklist of citizenship issues to determine if a full assessment is required. Status Resolution has committed to engaging with Citizenship Operations, the NCCC and the ABF to develop these questions.

Recommendation 2

In relation to the Citizenship Tool:

- a) The department should develop or, if already developed, finalise and endorse a short citizenship triage checklist to identify cases that require a full citizenship assessment using the Citizenship Tool. This tool should be developed in consultation with Citizenship Operations to meet the operational requirements of the business areas that use it.
- b) Citizenship Operations should conduct an implementation review of the Citizenship Tool six months after its introduction. The review should focus on the usability of the checklist and its suitability for use in various operational areas.

3.25. The Citizenship Tool is a comprehensive tool that seeks to enable officers to determine whether a person is likely to be an Australian citizen or not. However, the accurate identification of Australian citizens through the Citizenship Tool is highly dependent on the accuracy of the information used to complete it.

3.26. The risk of officers completing the tool and not identifying pertinent issues because of a lack of relevant information is highest in the work of the mandatory cancellations section of the NCCC. Mandatory cancellation under s 501(3A) of the Act does not involve a pre-cancellation natural justice process, so officers in this team must rely primarily on information in the department’s systems to assess liability for cancellation. There are some citizenship ‘red flags’, such as adoption and a parent’s country of birth, which are not always evident on departmental systems and can only be picked up by directly engaging with the client.

Case study: Mr Y

Mr Y's visa was mandatorily cancelled by the NCCC under s 501(3A) of the Act and he was detained under s 189(1) of the Act following his release from prison.

In his pre-release interview, Mr Y advised that he was adopted, but thought that the adoption had been finalised overseas. Once Mr Y was in immigration detention, his Status Resolution Officer and the DRM both identified the prospect that he was potentially an Australian citizen by virtue of his adoption and conducted further urgent investigations into Mr Y's biological parents' details and the details of his adoption.

Mr Y's Status Resolution Officer reviewed the mandatory cancellation MCP document from the NCCC, in which it appeared that the delegate had not been able to identify Mr Y's adoption from the information available in departmental systems and therefore had not considered the possibility of him having acquired Australian citizenship through this.

After further investigation, the Status Resolution Officer and the DRM confirmed that the circumstances of Mr Y's adoption did not lead to him acquiring Australian citizenship, and his detention was therefore lawful.

3.27. Mr Y's case highlights that the information in departmental systems is limited, and in some instances is inadequate to provide NCCC officers with the information needed to accurately answer every question in the Citizenship Tool and confidently conclude that a person liable for mandatory cancellation is not an Australian citizen. There is a risk that decisions based solely on information in departmental systems will be incorrect, and result in the detention of further Australian citizens.

3.28. During our investigation, we suggested to the NCCC that we considered that the Citizenship Tool should be used as a mandatory part of every mandatory cancellation decision, as this is the tool that has been endorsed by the department's citizenship experts as covering all of the ways that a person could acquire Australian citizenship. The NCCC responded that it *'[does] not consider the full Australian Citizenship Status Assessments checklist to be a definitive touchstone'*¹⁶ and that in its view, it was enough that an officer be able to answer the citizenship questions in the MCP.

3.29. In our view, Mr C's case clearly demonstrates that the citizenship questions in the MCP are not adequate to identify all Australian citizens being considered for mandatory cancellation under s 501(3A) of the Act. The case officer and team leader in this case answered the questions in the MCP, and were still unable to identify that Mr C was an Australian citizen who should not have been liable for cancellation.

3.30. While we appreciate the NCCC's hesitation about the usability of the Citizenship Tool in every case, the NCCC's MCP checklist has not been endorsed by the department's citizenship experts and does not capture the *'six sets of defining circumstances'* identified by the Thom Review [where] *'any cancellation or detention case meeting certain criteria could then be referred to the citizenship helpdesk to resolve'*¹⁷. Moreover, the standard of evidence that the MCP checklist requires for some acquisition methods, such as having Australian citizen parents or being adopted by an Australian citizen, is that there is no indication on departmental systems that this is the case.

3.31. In our view, this is an unacceptably low threshold for concluding that a person liable for mandatory cancellation of a visa is not an Australian citizen. This is especially true given the known gaps in departmental records (as evident in Mr C's case) and the department's own assessment, as

¹⁶ National Character Consideration Centre, above n 13, 6.

¹⁷ Vivienne Thom, above n 2, 29.

documented in a 2018 report by the ANAO, that its records and information management is in a critically poor state.¹⁸

3.32. We expect that the triage checklist outlined in Recommendation 2 of this report would set higher thresholds for identification of potential citizenship triggers than the NCCC's current threshold of 'no indication' that a person meets the criterion. We appreciate that currently, in a significant number of cases the NCCC does not have access to enough information in departmental systems to be able to answer yes or no to some questions, for example adoptive status and parents' places of birth. In our view, the NCCC needs to do more to obtain this information prior to cancelling a person's visa.

3.33. Currently, NCCC case officers will occasionally assess that there is insufficient information known about a person's identity, visa or citizenship status while they are in prison to cancel their visa. In these circumstances, the NCCC will send the prisoner a pre-cancellation questionnaire to gather further information.

3.34. We consider that the NCCC should ensure that it has enough information about a person to definitively complete an agreed triage checklist and, if indicated, the Citizenship Tool, before mandatorily cancelling their visa. If the NCCC does not have this level of information about a person, it should be obtained before cancelling a visa. This could be achieved through a number of mechanisms including sending a pre-cancellation questionnaire to a prisoner.

3.35. The NCCC has more time to gather further information about a person's status than any subsequent business area, and in our view it should do more to ensure that mandatory cancellation decisions are based on knowledge, rather than the absence of information to the contrary. This would not subvert the intention of the mandatory cancellation legislation, which is to shift procedural fairness to a later stage in the process. Rather, it would support the legislative intent in ensuring that only non-citizens are subject to mandatory cancellation.

3.36. We appreciate the resourcing constraints the NCCC has faced since the significant increase to its workload with the introduction of mandatory cancellation provisions under s 501 of the Act in 2014. We also acknowledge that gathering additional information about a person at this stage of the process, rather than relying on departmental systems, will likely add to this workload. Notwithstanding this, we suggest that investing additional resources in gathering additional information at this stage of the process, will reduce the amount of work that needs to be done by officers who subsequently handle the case to form and maintain a reasonable suspicion that a person subject to immigration detention is an unlawful non-citizen.

Recommendation 3

The NCCC should complete the agreed triage checklist and, if indicated, the Citizenship Tool, prior to every mandatory cancellation decision under s 501(3A). If there is inadequate information in departmental systems to answer every question in these tools, the NCCC should conduct further investigations to obtain this information.

The Mandatory Cancellation Mandatory Control Point Checklist

3.37. The MCP checklist requires officers to tick boxes to show which departmental systems have been interrogated and to answer 'yes' or 'no' to broad questions on potential issues such as citizenship red flags and visa held. There is a free text field in the 'other' line in each table, and the NCCC advised that officers are required to input an explanatory comment if a 'yes' response has

¹⁸ Australian National Audit Office, above n 1.

been indicated. However, if ‘no’ is selected, there is no requirement to explain what information was considered and no free text fields for officers to show how they reached their conclusions.

3.38. In Mr Y’s case (case study above), his assigned Status Resolution Officer reviewed the mandatory cancellation MCP document from the NCCC, where the delegate had ticked ‘no’ to ‘there is an indication that the client was legally adopted by an Australia citizen.’ The Status Resolution Officer was unable to tell from this response whether the delegate had identified Mr Y’s adoption and conducted sufficient research to confirm that he was not legally adopted by an Australian citizen, or whether the delegate had not identified the potential adoption issue at all.

3.39. The NCCC advised that in the case of Mr Y, the explanation in a free text field ‘*would presumably have stated that departmental systems did not indicate Mr Y was adopted. This fact is reasonably inferable from the MCP as currently drafted*’ and in its view it was ‘*unclear what an additional narrative would add in terms of value*’.¹⁹

3.40. The NCCC stated that it did encourage officers to use the free text fields in the MCP document to note any unusual or important characteristics which have informed their assessment. This is not apparent from the MCP itself or any of the NCCC’s supporting process documents.

3.41. It is also evidently not clear to officers further down the process, as in the course of our fieldwork in this investigation, officers from multiple business areas downstream from the NCCC expressed frustration with the lack of information contained in the mandatory cancellation MCP document to indicate what the delegate had considered at each point that they had ticked ‘no’.

3.42. We consider this indicates a lack of understanding by each business area of the work of other business areas involved in the process. The NCCC is unable to see how further information about what it considered, could be valuable for those who handle a case after them, and downstream business areas appear to assume that in mandatorily cancelling a visa, the NCCC has access to and considers significantly more information than it actually does. While downstream business areas were happy to discuss their concerns about the NCCC’s documentation of decisions with our Office in this investigation, none of these business areas had offered this feedback directly to the NCCC.

Case study: Mr X

Mr X’s visa was mandatorily cancelled by the NCCC in August 2017. Six days later, the NCCC requested advice on whether Mr X met the criteria in s 501(3A) and received advice the next day indicating that there were complex issues to be resolved.

During the initial detention review, the DRM identified potential Australian citizenship issues and referred the case to Citizenship Helpdesk and Status Resolution Operational Support Section. The NCCC had not flagged that there was advice outstanding and the DRM did not identify this in their assessment.

Status Resolution Operational Support Section identified the outstanding advice and begun investigating the validity of the cancellation. Mr X was released having been detained for ten days while still holding a valid visa.

3.43. Mr X’s case illustrates the risks associated with poor information flow between business areas. It also highlights the importance of being aware of potential consequences downstream as

¹⁹ National Character Consideration Centre, above n 13, 7.

well as ensuring that decision records are comprehensive so that business areas that subsequently handle the case can be confident in the information they receive.

3.44. In our view, the department needs to take more proactive steps to improve communication and understanding between business areas operating within the same process. In this investigation we attempted to share issues that were raised with us by downstream business areas with the responsible business area, but gained limited traction. This conversation would likely be more productive if held directly between the business areas.

3.45. We recommend that the NCCC engage in consultation with downstream business areas including ABF Field Operations, the DRM and Status Resolution to give these business areas a better understanding of how the NCCC performs its work and to discuss how the NCCC can better document its decisions to support the work of downstream business areas.

3.46. The NCCC should then update its MCP document accordingly. This might include adding more free text fields to the MCP (similar to the Comprehensive Assessment Tool) to enable officers to provide information showing their decision making process when they have considered information and reached a conclusion.

3.47. The NCCC has committed to developing further supporting documents in relation to circumstances in which officers would be required to note unusual or important characteristics in the free text fields. We suggest that the NCCC make it clearer on the MCP document and in its associated procedures that officers are expected to document information on the MCP that they have considered and ruled out as a potential barrier to cancellation, if it is not otherwise evident from the record.

Recommendation 4

The NCCC should engage in consultation with business areas that consider the mandatory cancellation MCP document later in the detention process, including ABF field operations, the DRM and Status Resolution, to determine how the NCCC can better document their decisions to support the work of these business areas, and update its MCP document accordingly.

The Located Person Interview form

3.48. In 2016, a report into detention-related decision-making²⁰ found that officers did 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.

3.49. The report recommendations, which were reiterated as needing to be actioned in recommendation 3 of the Thom Review, included:

*'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 ... 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.'*²¹

²⁰ EY, DIBP internal audit report, *Detention-related decision-making*, Engagement 32 2015/16

²¹ Vivienne Thom, above n 2, 31.

3.50. In our view, the ABF's new Located Person Interview tool still does not meet this recommendation. The Located Person Interview tool has three sections. The first section, Part A, is to assist the officer to collect information about a located person's immigration status and identity. If the officer forms a reasonable suspicion that the located person is an unlawful non-citizen from the information recorded in Part A, they will then detain the person under the Act, before continuing with Part B and C of the interview.

3.51. Currently, the initial decision to detain, as recorded in Part A of the Located Person Interview form, may rely solely on information recorded in departmental systems. Part A of the Located Person Interview includes questions about the client's country of birth and citizenship, but the ABF advised that officers were encouraged to pre-fill this part of the form with systems data '*to mitigate the risk of perceived detention*',²² whereby a client being questioned may believe they have been detained, before this has formally taken place.

3.52. This is of concern, as the department acknowledges that its systems data does not always accurately reflect a client's immigration status. If the systems information that is relied on is incorrect or incomplete, there is the potential for another Australian citizen to be detained. While this risk is mitigated by further citizenship questions in Part B of the Located Person Interview form, our view is that the officer conducting the Located Person Interview should, at a minimum, ask the interviewee about their country of birth and citizenship in Part A of every interview.

3.53. We note that Part B4 and B6 of the Located Person Interview, which are asked after a person has been detained, do contain questions about place of birth and citizenship. However, we are concerned by the amount of discretion officers have in relation to which questions are mandatory, which questions they ask the located person and which questions they can rely on systems data to complete.

3.54. The ABF advised that it designed the Located Person Interview in such a way that officers are encouraged to think, exercise judgement and ask questions, rather than reading a rote list. As such, the Located Person Interview Standard Operating Procedure makes it clear that officers should use their discretion in deciding which sections are relevant and which are not.

3.55. In relation to the questions at B4 – 'which countries are you a citizen of' and 'where were you born,' the Located Person Interview Standard Operating Procedure indicates that '*officers are to use discretion in asking...*' these questions '*for example, it may not be necessary to ask these questions if already asked in Part A3.*' While we agree that officers should not need to ask these questions again if they were put to the person in Part A, in our view that is the only circumstance in which officers should not need to ask these questions in Part B, and this should be made clearer in the standard operating procedure.

3.56. We are concerned about the risks of allowing officers to decide the relevance of certain questions, and in our review of Located Person Interview forms we noted a variety of ways in which officers indicated those parts that they considered not relevant. Some recorded them in writing as being not applicable, some put a line through them and others left them blank with no notation.

3.57. We suggest that the current form of the Located Person Interview and supporting standard operating procedure should more clearly articulate which questions must be asked in every interview, and which questions are discretionary and in what circumstances they can be skipped. There is an inherent risk in leaving it up to individual officers to decide which questions are relevant and which are not, as it relies on every officer exercising good judgement and accurately assessing

²² Australian Border Force, Response to Preliminary Views provided to the Office 22 August 2018, 1.

potential risks in every case. In our view, there are some elements of the Located Person Interview form that are so important that an officer should not be able to decide to skip them, and this should be made clear to officers.

3.58. Similarly, the way that the Citizenship Tool at B6 is structured and written implies that these questions are not to be put to the person being interviewed. If they were to be asked as written, the interviewer would be required to ask a series of repetitive questions, for example ‘were you born in Australia’, ‘were you adopted by an Australian citizen’, ‘were you born in Papua before 16 September 1975’, ‘were you born outside Australia before 26 January 1949’ and so on.

3.59. We discussed the Citizenship Tool with ABF officers during our fieldwork, and officers expressed concerns about asking a series of questions like this in the operational environments that they are working in. The circumstances of Field Compliance Officers’ work means that the person being interviewed is often distressed and agitated, and asking repetitive questions that the interviewee perceives to be pointless can pose a risk to officer safety.

3.60. The ABF National Compliance Program advised that officers are not expected to ask the located person every question in the Citizenship Tool as it is written, but should ask the person the questions they need to in order to be satisfied of the answers as they work through the checklist. While we understand that this was communicated to officers during the information sessions delivered with the national rollout of the Located Person Interview, it is not clear from the current version of the Located Person Interview form and accompanying standard operating procedure.

3.61. In our view, the Located Person Interview Standard Operating Procedure should clearly state that officers are expected to ask questions as required in working through the Citizenship Tool, and should also make clear to officers that they should not seek to rely on systems data to definitively determine a person’s immigration status. The weekly team brief the ABF distributed in July 2017 in response to the Thom Review’s findings states ‘*officers should recognise that departmental system records for individuals may in some instances be incomplete...*’ In contrast, the Located Person Interview Standard Operating Procedure suggests to officers that an acceptable summary of their reasons for holding a reasonable suspicion that the person is an unlawful non-citizen would be ‘*a search of departmental system shows the person is a UNC*’²³. In our view, the standard operating procedure should seek to alert officers to the risks of relying solely on systems data, and mandate that they ask the interviewee to confirm biodata details upon which their reasonable suspicion is based.

Recommendation 5

In relation to the Located Person Interview:

- a) In Part A, it should be mandatory for officers to ask the interviewee what countries they are a citizen of and their country of birth. The accompanying standard operating procedure should clearly articulate the requirement for officers to ask the interviewee these questions and should caution officers against relying solely on information in departmental systems.
- b) The ABF should conduct an implementation review of the Located Person Interview six months after its introduction.

Systems and records management

3.62. The Thom Review found that the department’s systems and processes surrounding detention-related decisions were deficient and did not support good decision making. In

²³ Unlawful Non-citizen (UNC)

Recommendation 3, the Thom Review reiterated the recommendation made in a 2016 internal report into detention-related decision-making, that the department should recognise the limitations of current systems and ensure that decisions to detain are made after all departmental systems and paper files are interrogated.

3.63. A 2018 review by the ANAO found that *'the department's record keeping continues to be poor'*²⁴ and recommended that *'the Department of Home Affairs give priority to addressing its records and information management deficiencies including by implementing the Records and Information Management Action Plan 2016-20.'*²⁵ The audit found that the department had critical issues with the amount of information that was not stored in or accessible through its IT systems, to the tune of 200 million documents stored in network drives, 238 million documents in TRIM and 241 shelf kilometres of paper based files. The audit further found that this lack of centralised information in departmental systems has resulted in *'poor decision making and advice to key stakeholders and individuals'*.²⁶

3.64. We note the challenges the department faces, particularly in relation to citizenship, where a large volume of historical information is recorded in a number of different media, including paper-based registers, reels and fiches. Although much of the data has been migrated to departmental systems, there are known data transfer issues (such as for dependants on citizenship applications lodged prior to 1998) which means it is often necessary to check original source documents. Another challenge is that the department's systems do not and cannot automatically reflect the acquisition of Australian citizenship through less common mechanisms, such as the 10 year rule and in some circumstances, being born in Papua before 16 September 1975.

3.65. These challenges in accessing historical information mean that it is not uncommon for officers to be required to make decisions to detain when they do not have all the relevant information available to them. In particular, the Immigration Status Service Officers, who staff a 24 hour helpline, are called on to respond to queries from law enforcement officers and decide whether or not to detain people on the basis of information in the various online departmental systems.

3.66. The Immigration Status Service Officers need to make decisions based on the information available to them, but where an officer has not been able to access a paper file, they generally make a note for the DRM. The paper file is then quickly requested and checked by the DRM, and if a notification error is identified, the detained person is released from immigration detention as still holding a valid visa.

3.67. Indeed, the department's six-monthly reports to our Office on people detained and later released as not unlawful have revealed a number of cases involving people who had been referred to the Immigration Status Service for a visa status check and then subsequently detained. In these cases, if there was a defective notification, this could not be identified until the DRM could recall and examine the paper file and undertake a review of notifications using the Comprehensive Assessment Tool.

3.68. While we acknowledge that areas like the Immigration Status Service do the best they can with the information available to them, we note the findings of the recently published ANAO report which highlighted the wider problem the department has in terms of inaccessibility of vast quantities of information that is not stored in its electronic databases. The ANAO report found that *'the*

²⁴ Australian National Audit Office, above n 1, 17.

²⁵ Ibid 30.

²⁶ Ibid 29.

*department's own assessment is that its records and information management is in a critically poor state. The problems and their solutions are known to the department, and it has an action plan to address them, although numerous previous attempts to do so have not been successful.*²⁷

3.69. ABF and departmental officers across the immigration detention continuum must navigate a multitude of departmental systems, including the Compliance Case Management Detention (CCMD) portal, the Integrated Client Services Environment (ICSE), TRIM, the Enterprise Correspondence Service and Mainframe.

3.70. While procedural instructions generally provide officers with an explanation of each of the systems they are required to navigate in their role, in our assessment of these documents we found limited guidance on how to navigate between different systems, how to determine which system was accurate in the event of inconsistency, and what to do to rectify this.

3.71. Officers across the continuum including Field Compliance Officers, DRMs and Status Resolution Officers are required to compile a detailed immigration history for each client by cross-referencing multiple portals and systems. This is a time consuming task, but is necessary due to the lack of complete and accurate data in any one system. Further inconsistencies arise because of the different ways that officers across the continuum and across the country record information from TRIM into ICSE.

3.72. In our fieldwork, we were repeatedly told of the challenges that business areas face in using IT systems that were not fit for the purposes they needed to use them for. ABF officers and Status Resolution Officers spoke about the challenges of character limits in CCMD, which prevent them from being able to enter all necessary information in response to questions at Mandatory Control Points, or require them to enter this information in unintuitive ways. Status Resolution Officers also reported struggling with CCMD failing to automatically generate prompts to perform Case Reviews, as it should. The NCCC, the Immigration Status Service and the DRM were all heavily reliant on Excel spreadsheets for managing caseloads and allocating cases to officers, because they currently did not have IT systems that were capable of performing this function. In our view, there are considerable risks and potential for human error in a system that relies so heavily on manual data entry.

Processes and Procedures

3.73. The Thom Review recommended that the department should ensure that *'there is a clear and single-source procedural guidance for key decisions'*.²⁸ It also recommended that *'for consistency and ongoing accuracy...any checklist or tool is included in corporate procedural documentation...not developed as a local help sheet'*.²⁹

3.74. In the course of our fieldwork we encountered a number of business areas that, in our view, had not adequately documented important procedures. During our visit in May 2018, the DRM team was using local guidance documents for some specific, high risk decision types and the department was working on developing a high level procedural instruction for the team. There was no formal checklist or detailed operating procedure for the detention review process and the team advised that they relied on their experience and knowledge to perform reviews.

²⁷ Ibid 9.

²⁸ Vivienne Thom, above n 2, 32.

²⁹ Ibid 29.

3.75. In our view, there are significant risks associated with processes that are based on assumed knowledge rather than documented procedure, particularly in the event of staff turnover. It is also difficult for the department to be assured that reviews are being carried out consistently.

3.76. The cases of Mr A and more recently Mr D highlight the dangers in relying solely on officers' knowledge rather than documented processes. While it was understood by the DRMs that they should check all of the records on a client's file in TRIM as part of their review, this requirement was not part of any written process or checklist. In both these cases the DRM did not perform this step, and consequently missed critical information that would have alerted them to the client's lawful immigration status.

Case study: Mr A

Mr A's visa was cancelled under s 501(3A) of the Act in November 2016. He applied for revocation of the cancellation and made claims to Australian citizenship in his request for revocation. Mr A's revocation request was scanned and stored in his TRIM file.

The DRM responsible for reviewing Mr A's detention did not view the revocation request stored in his TRIM folder, which would have alerted them to the possibility that Mr A was an Australian citizen.

3.77. The DRMs advised that one of their learnings from the detention of Mr A was the importance of checking all documentation in a client's TRIM file as part of the review. In spite of this, the DRM reviewing Mr D's detention in August 2017 made the same error.

Case study: Mr D

In November 2014, the NCCC requested advice regarding the type of visa held by Mr D. This advice was stored in Mr D's TRIM folder and noted in the 'additional information' field in ICSE.

In October 2015 the NCCC mistakenly purported to cancel Mr D's BF-C visa, which was still listed as his current visa in ICSE.

Mr D was released from prison and detained under s 189(1) in August 2017. The DRM who conducted the Phase 1 review did not review the advice in Mr D's TRIM file. The DRM therefore did not identify that Mr D continued to hold a visa. They did, however, refer the case to Citizenship Helpdesk to confirm that he was not an Australian citizen.

Nine days later, the DRM team leader reviewed Mr D's case and identified the error in the visa cancellation. The team leader had only looked at Mr D's case because the DRM raised a question with them about the unrelated referral to Citizenship Helpdesk.

3.78. The department has acknowledged the need for a standard operating procedure to formally document the general checks and processes for completing an initial detention review is necessary, and have undertaken to develop this in the 2018–19 program year.

3.79. Consistency in standardised processes was also an issue for larger program areas like Status Resolution and ABF Field Operations, and we observed divergent procedures at a local level in business areas around the country.

3.80. Processes across the four immigration detention facilities that we visited in this investigation were broadly consistent, but some centres had additional local checklists and tools that they had developed to assist officers in completing these processes. Across the four centres we observed differences in the job level classification at which officers were expected to perform certain tasks, and in quality control processes such as the review of key documents by a more senior officer.

3.81. The response to introducing risk mitigation strategies following the detention of the Australian citizens was also inconsistent across centres. For example, Villawood Immigration Detention Centre Status Resolution Officers were directed to ask additional citizenship questions in the day one interview (Detention Client Interview Part A) while the other centres did not ask additional citizenship questions and indicated they were waiting for the national process to be updated.

3.82. We appreciate that, to an extent, these variations are attributable to differences in size, resourcing and location (i.e. remote or urban) of the four centres. In our view the department should continue to work towards standardising processes across centres, taking these variables into account. The draft national standard operating procedure documenting status resolution processes that is currently under development should go some way towards ensuring greater consistency, so long as it is used by officers across all regions as the department intends.

3.83. From our observations, local processes were even more divergent in ABF Field Operations, a comparably large and dispersed operational segment. While the ABF has developed a number of overarching procedural instructions and standard operating procedures, these only provide high level guidance, meaning that operational processes can vary significantly between states and territories.

3.84. Of particular concern was the inconsistent processes we observed across ABF field offices for managing non-citizens in criminal detention and their transfer to immigration detention upon release from criminal custody. In the cases of Mr A and Mr B, this was one of the critical processes that failed to prevent their detention, as Australian citizens. While the ABF has a procedural advice manual in place for managing non-citizens in criminal detention, this only provides high level advice. From our observations, ABF field officers operate differently on the ground with inconsistent processes across the states.

3.85. ABF NSW, which performed the detention of Mr A, advised that it has revised some of its processes in response to the lessons learned from this detention. In NSW, at the time of Mr A's detention, the pre-release interview with a non-citizen prisoner was conducted by a different part of the ABF to the release interview. This contributed to a breakdown in communication between officers handling these cases. ABF NSW has now shifted responsibility for these interviews to the same section and introduced a prison coordination team to improve communication flow and coordination of cases. ABF NSW has also developed checkpoints and checklists for the prison team to assist in the identification of issues in relation to citizenship and the detention of lawful non-citizens and has developed a draft local standard operating procedure for prison releases.

3.86. ABF Victoria also deals with a sizeable criminal caseload. It does not have any coordination team or checklists for handling these cases, but has developed a spreadsheet that draws out systems' information about the criminal caseload which informs case allocations. The spreadsheet enables the team to prioritise more complex cases and identify potential issues, including citizenship issues, in advance of the client's release from prison.

3.87. While we welcome these developments in NSW and Victoria, we are concerned that these innovations have not been shared and standardised across teams or states. In our view, the ABF should have taken a national approach to incorporating the lessons from the detention of Mr A and Mr B, and resultant revisions to processes should have been implemented consistently across the country.

3.88. The ABF has acknowledged the importance of having nationally consistent, best practice procedures in place and we welcomed advice that its 'Managing Non-Citizens in Criminal Detention

Working Group' is currently developing a detailed national process and a supporting standard operating procedure and materials. We anticipate that the documentation produced by this working group should be sufficiently detailed to standardise procedures across the country. We also expect that the working group will collaborate with regional ABF Enforcement Command teams to ensure that the new processes meets their needs and are able to replace any local process documents.

Recommendation 6

The ABF should prioritise the development of nationally consistent processes and supporting standard operating procedures, for dealing with non-citizens in criminal detention.

3.89. As the department introduces new procedures to address the issues identified in the Thom Review, it will also be important to ensure that all officers know their responsibilities under these standard operating procedures, and why these are important.

3.90. When the ABF began trialling the new Located Person Interview form and accompanying standard operating procedure, it provided officers in NSW and the ACT with information in a weekly team brief, but no formal training on how to use the new form. The Office conducted a review of a sample of completed Located Person Interview forms, from both the first and second trials. We noted that the Citizenship Tool checklist (section B6 of the Located Person Interview) had been completed by officers in a variety of ways, including for example, ticking every box instead of moving, as directed, to the next relevant question, indicating a lack of understanding of how to use the form. The ABF has subsequently advised that information sessions were run for officers across the country to support the national rollout of the Located Person Interview and accompanying standard operating procedure.

3.91. In the course of this investigation we were also alerted to a new draft standard operating procedure being developed by Citizenship Operations: *'Amending or updating citizenship records where there is no applications to consider.'* This standard operating procedure details how citizenship fields should be updated in departmental systems in cases where a person has not applied for anything (such as a passport) and who should be responsible for ensuring this occurs. In addition to Citizenship Helpdesk Officers, at a minimum this standard operating procedure will also interact with the work of Cancellation Officers, Field Compliance Officers and Status Resolution Officers. In our view, it is important that the department identifies business areas that will interact with any new process, and ensures that officers are aware of the process and their responsibilities under it. The communication method used should be commensurate to the extent of the changes and the risk involved in the process.

Recommendation 7

When new processes or standard operating procedures are introduced, the department should ensure that all relevant officers who will engage with the standard operating procedure have a full understanding of their responsibilities and how to implement the procedure. The department should ensure that all relevant staff are made aware of their responsibilities under the *'Australian Citizenship Status Assessments for activities being undertaken under the Migration Act 1958 Procedural Instruction'* and the *'Amending or updating citizenship records where there is no application to consider Standard Operating Procedure'*.

Part 4: PERSONAL RESPONSIBILITY AND REASONABLE SUSPICION

Personal responsibility

4.1. The Thom Review noted that *‘previous reviews 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.*³⁰

4.2. The Review found that *‘these characteristics were not consistently present in the decisions made relating to [Mr A and Mr B]’*³¹ and noted that errors, assumptions and reliance on decisions made by ‘upstream’ officers pervaded through each phase of the detention process in these cases.

4.3. In our view, the concepts of reasonable suspicion and personal responsibility are inextricably linked. The Thom Review highlighted a number of points in the cases of Mr A and Mr B where officers did not take personal responsibility for forming reasonable suspicion in their own mind, and the Review noted that in both cases, the detaining officers saw their job as implementing a decision to detain that had already been made by someone else and assessed that there was *‘no expectation that officers would exercise personal responsibility and judgement’*.³²

4.4. In this investigation, we looked at whether officers now took personal responsibility for identifying and addressing errors, and for forming and maintaining a reasonable suspicion that a person subject to immigration detention is an unlawful non-citizen.

4.5. New procedural instructions and guidance documents were being developed in each of the focus areas we interacted with in this investigation. These included the:

- NCCC Consolidated Business Rules
- ABF Field Operations (Field Compliance) Procedural Instruction (Draft)
- Detention Review Procedural Instruction (Draft)
- Status Resolution Officer Procedural Instruction (Draft)

4.6. For the most part, these procedural instructions consolidate existing fragmented and local documents and procedures into a single source document for officers to refer to. All of these documents include clear statements of officers’ responsibilities and obligations in relation to consideration and escalation of potential citizenship issues.

4.7. In most business areas these procedural instructions represent a significant shift in the documentation of the expectation for officers to take personal responsibility. For example, the ABF Field Operations (Field Compliance) Procedural Instruction consolidates a range of existing procedural advice manuals, including ‘PAM3: Act – Field Compliance Operations’. This procedural

³⁰ Vivienne Thom, above n 2, 23.

³¹ Ibid.

³² Ibid, 25.

advice manual specifies that if a person claims to be an Australian citizen or permanent resident, officers should report that detention to the DRM within 24 hours. While in the new procedural instruction, the expectation is more strongly stated, as being that if a person claims to be an Australian citizen, the detaining officer must take this into account and consider it fully, and *‘officers must seek to clarify the information, request relevant documentation from the person to support their claims, seek advice from the relevant helpdesks and escalate the case as necessary.’*³³

4.8. The business areas that we interacted with across the department all advised that they had taken steps to remind staff of the importance of exercising personal responsibility and judgement since the detentions of Mr B and Mr A. These efforts ranged from the ‘Immigration Status Roadshow’ which saw Senior Executives present to Status Resolution Officers and other interested staff around the status resolution network on the lessons to be learned from detention of Mr A and Mr B, to the all staff weekly team brief³⁴ which the ABF issued in July 2017, reminding staff of their obligation to consider claims of Australian citizenship and not to rely on the decisions of previous officers when determining a person’s immigration status.

4.9. Unsurprisingly, the varying communication methods employed by different business areas had different levels of efficacy in generating understanding and attitudinal shift among officers. As we conducted fieldwork across the department, we encountered varying levels of awareness and engagement with the lessons of Mr A and Mr B, and a range of attitudes towards how officers perceived their roles and responsibilities. In our view, there was a fair correlation between the efforts a business area expended on communicating these lessons to officers, and officers’ levels of awareness of the risks of detaining a citizen and attitudes towards taking responsibility for mitigating these in their own role.

4.10. The vast majority of Status Resolution Officers that we interacted with across four immigration detention facilities had attended the Immigration Status Roadshow and were cognisant of the department’s learnings from the detention of Mr A and Mr B and the ongoing risks of detaining a citizen. Similarly, officers at the NCCC and the DRM team appeared to have been guided by management to engage in considerable reflection on these cases. In contrast, the ABF officers we interacted with had little knowledge about the cases of Mr A and Mr B, or the ABF’s role in the detention of these citizens.

4.11. The ABF pointed to a July 2017 weekly team brief as the primary piece of national communication with officers after the detention of Mr A and Mr B. We note that while this document reminds officers of the importance of considering whether a person could be an Australian citizen, it makes no mention of either case or the recommendations arising from the Thom Review. We understand that ABF officers were also invited to attend the Immigration Status Roadshow, and attendance varied across states.

4.12. In response to our feedback, ABF NSW acknowledged that there may not have been sufficient focus on providing officers who were not directly involved in the detention of the Australian citizens with an understanding of the broader issues identified in the Thom Review and the subsequent departmental response to the recommendations. The business area undertook to look at ways to provide a reminder to operational officers on the issues raised in the Thom Review. We consider that the ABF should also engage with this at a national level.

³³ Field Operations (Field Compliance) Procedural Instruction, provided to the Office 3 April 2018, 54.

³⁴ Determination of Immigration Status – Consideration of Australian Citizenship Status – July 2017, provided to the Office 9 July 2018.

Recommendation 8

The ABF should improve communication with staff at all levels when responding to reviews, such as the Thom Review. All relevant staff, not just those immediately involved, should be given an understanding of the review, its recommendations and how the lessons learned apply to their work.

Reasonable suspicion

4.13. Before an officer exercises the power to detain under s 189(1) of the Act, they must know or reasonably suspect that a person is an unlawful non-citizen. An officer is required to know or form reasonable suspicion, based on facts that were known or reasonably capable of being known at the time the suspicion was formed. The department advised that currently, responsibility for maintaining a reasonable suspicion that a person subject to immigration detention is an unlawful non-citizen moves from the detaining officer to the removals officer, with no formal expectations of the officers in between (the DRM and the Status Resolution Officer) to maintain this state of mind.

4.14. The Thom Review found that some of the officers involved in the detention of Mr A and Mr B claimed to have based their ‘reasonable suspicion’ on the background work done by upstream areas like the NCCC, rather than coming to a conclusion in their own mind based on the available information.

4.15. In April 2018 the Office released a report³⁵ on the circumstances of the detention of Mr G, who was held in immigration detention for 1,375 days before the department identified that he still held a valid visa, due to a defective notification. The defective notification in Mr G’s case did not come to the attention of his case managers in any of the 30 monthly case reviews conducted after the defects in the notification process became known to the department.

4.16. Under the current status resolution process, Status Resolution Officers working in immigration detention facilities do not conduct any notification assessments once a person has been detained, relying instead on the notification assessments done by Field Compliance and the DRM. This meant that it was very unlikely that notification errors, like the one present in Mr G’s case, would be identified once he was in immigration detention.

4.17. In that report, the Office recommended that the department review how it maintains the reasonable suspicion that a person in immigration detention is an unlawful non-citizen and that it update its policies and procedures to ensure that the ongoing lawfulness of a person’s detention is regularly reviewed. The department accepted these recommendations.

4.18. During our fieldwork in this investigation, the Office observed that neither the DRM nor Status Resolution Officers currently viewed themselves as being responsible for forming and maintaining a reasonable suspicion that a person subject to immigration detention is an unlawful non-citizen. The DRM team believed that they do not hold reasonable suspicion at any stage and that reasonable suspicion moves from the initial detaining officer to the removals officer. The DRMs currently view their role as checking the reasonable suspicion of the detaining officer rather than holding it themselves, and this view was reinforced in the draft procedural instruction.

4.19. From our observations, we believe that the DRM conducts a thorough review of each case and does take personal responsibility for forming an independent view of each client’s immigration status. We consider that the DRM is uniquely positioned to be able to assess, based on all of the information at the department’s disposal and with legal advice if required, whether a reasonable

³⁵ Commonwealth Ombudsman (2018) *Investigation into the circumstances of the detention of Mr G*, Report No 2.

suspicion exists that the person in question is an unlawful non-citizen. In our view, the DRM does form and hold this state of mind during each review under its current process. We suggested to the department that the conceptualisation of the role of the DRM as ‘checking’ reasonable suspicion rather than ‘holding’ reasonable suspicion reduces the DRMs sense of personal responsibility for the ongoing detention of the person in each case they review.

4.20. Similarly, in our view it is reasonable that the Status Resolution Officer, who is responsible for reviewing a person’s case every month that they remain in immigration detention, should be responsible for forming and maintaining a reasonable suspicion that the person is an unlawful non-citizen throughout that time.

4.21. We consider that in order for the department to have confidence that each person held in immigration detention is held lawfully as an unlawful non-citizen, the DRM and the allocated Status Resolution Officer must form and hold reasonable suspicion in their own mind for each case they handle. To do otherwise reduces the officer’s personal responsibility to ensure the lawfulness of the ongoing detention of the person in each case.

4.22. We understand that the department is developing a Status Resolution System Control Framework to replace the Detention Related Decision Making Control Framework. This new framework will include ‘reasonable suspicion’ as a new control point. Since the completion of our fieldwork, the department has advised that this control point will identify how ‘reasonable suspicion’ will be transferred and recorded between different officers across the ABF and Status Resolution from the point of detention until the non-citizen is granted a visa or removed. We welcome this significant step by the department to clearly document expectations around which officers are expected to hold reasonable suspicion, how they do this, and the points at which it transfers to the next officer.

Recommendation 9

The DRM and the Status Resolution Officer should be required to form and maintain a reasonable suspicion that the person in each case they review/manage is an unlawful non-citizen. This expectation should be clearly stated in relevant procedural documents for these roles, along with the point at which this responsibility is transferred between officers.

4.23. From our observations, some areas of the department have made improvements in shifting or reinforcing officers’ attitudes towards taking personal responsibility, while in other areas there is still room for improvement.

4.24. In conversations with ABF officers during fieldwork, some officers expressed the view that they should not be required to ask detailed questions about citizenship during the Located Person Interview, as these questions should have been resolved at the visa cancellation stage. Based on these interactions, we are not confident that all ABF officers now understand that the role of a detaining officer is to make their own informed decision to detain, rather than to enforce a decision that has already been made by someone else.

4.25. In response to these observations, ABF management advised that these comments do not align to directions given to officers. We note that there is an apparent disconnect between the directions provided to officers by ABF management and the attitudes expressed in our discussions with operational officers. While we are encouraged to hear that officers have been given clear directions by management, there is still more work to be done to ensure that all ABF officers understand the importance of taking responsibility for forming, in their own mind, a reasonable suspicion that each and every person they detain is an unlawful non-citizen.

4.26. In the Status Resolution space, we observed Status Resolution Officers for the most part, exercising personal responsibility and judgement by conducting a thorough examination of the information at hand before completing Detention Client Interview, Community Placement Assessment Tools and case reviews. We also observed that the expected role of Australian Public Service (APS) 4 level officers is characterised as more administrative than the APS5 level officers, and that some APS4 level officers therefore viewed their role as being largely administrative and had less of a sense of personal responsibility for identifying issues than APS5 and APS6 Status Resolution Officers. This is concerning, as in most facilities that we visited, the day one interview (the Detention Client Interview Part A) in which any unidentified citizenship issues should theoretically be picked up, was conducted by an APS4 officer.

Processes that support taking personal responsibility

4.27. In response to the learnings from the detention of Mr A, ABF NSW took steps to reform their structures and processes to mitigate the risk of the recurrence of this type of event. The standard practice for unlawful non-citizens being released from prison into immigration detention is for a pre-release interview to be conducted by a Field Compliance Officer using the Located Person Interview format approximately three months prior to a prisoner's earliest date of release, and a second Located Person Interview to be conducted by (usually a different) Field Compliance Officer at the time of release and detention. The changes made by ABF NSW included reallocating functions so that both interviews were conducted by the same part of Enforcement Command to improve communication, and the creation of a prison team to handle the coordination of this cohort.

4.28. The Thom Review noted that a factor contributing to a diminished sense of personal responsibility on the part of the detaining officer in the case of Mr B, was that the officer who detained him had little time to interview him in the prison before he had to be transferred to a flight which had already been arranged, along with a security escort. There was little practical opportunity for the officer to consider anything Mr B said at the time of detention as the decision had, in effect, already been made.

4.29. The ABF's processes in this regard remain largely unchanged, in that the officer conducting the pre-release interview makes a decision about whether a former prisoner should be detained upon release and sets in motion the necessary logistics, such as arranging for a security escort to be present at the release to transfer the former prisoner to an immigration detention facility or a flight.

4.30. This is not to say that detaining officers do not as a matter of course exercise personal responsibility for forming reasonable suspicion that a former prisoner is an unlawful non-citizen in their own mind, prior to detaining them under s 189(1), as required by law. Rather, we note that the processes in place make it simpler for an officer to rely on the decision to detain made during the pre-release interview, than to make their own potentially different decision on the day of release, given logistical arrangements are already in place.

4.31. In our view, it would be preferable for the same officer to conduct both the pre-release Located Person Interview and the release Located Person Interview, for continuity of knowledge and ownership over the case. However, we note the operational challenges for the ABF in ensuring consistency in dealing with pre-release non-citizen prisoners over a period of months and recognise that for operational reasons this might not be feasible.

4.32. In this case it is essential that the detaining officer has a strong sense of personal responsibility for the decision to detain, and must form and maintain reasonable suspicion, rather than relying on the information recorded and decision made by another officer in the pre-release interview. The ABF should consider how it can improve the communication between officers who

conduct these interviews, either with a comprehensive handover or a checklist that incorporates the need to fully review the pre-release interview.

4.33. In response to these concerns, the ABF advised that its 'Managing Non-Citizens in Criminal Detention' working group is currently working on clarifying and streamlining the transition points between officers dealing with pre-release prisoners, as part of its work to develop standard national processes in this space.

Taking responsibility for updating systems

4.34. During our visit to the NCCC on 23 March 2018, the Character Liability Assessment team presented the case of Mr N to the Office as an example of a complex case.

Case study: Mr N

Mr N's case was referred to the NCCC for consideration under s 501(3A) of the Act. A case officer interrogated departmental systems to assess whether he should be liable for mandatory cancellation of his visa under this provision.

ICSE and Mainframe records indicated that Mr N was born in Tonga and a citizen of Tonga, but the case officer was unable to establish the date that Mr N arrived in Australia from departmental systems. The case officer requested Mr N's paper file, and found a copy of his Australian birth certificate.

Mr N's case was referred to Citizenship Helpdesk and allocated to an officer who formed the view that Mr N would likely have acquired Australian citizenship on his 10th birthday. The Citizenship Helpdesk Officer advised the NCCC that Mr N would have acquired citizenship on his tenth birthday, but did not update ICSE to reflect this assessment.

The Citizenship Helpdesk Officer also advised the NCCC officer to contact Mr N and encourage him to apply for evidence of Australian citizenship, to allow a full assessment and a finding of fact.

The NCCC ceased consideration of Mr N's case under s 501(3A) of the Act on the basis of Citizenship Helpdesk's advice. The NCCC officer was not in contact with Mr N and considered the case resolved for their purposes once he was found to be not liable for cancellation.

A client of interest note was placed on Mr N's file in ICSE, but neither the NCCC nor Citizenship Helpdesk sought to update the core ICSE biodata to reflect that Mr N was born in Australia and was an Australian citizen.

Following our discussion of this case, the NCCC identified that Mr N's birth certificate on file had been verified at the time of the application, and updated his country of birth data in ICSE accordingly.

4.35. Mr N's case highlighted a gap in the department's processes, in terms of who should take responsibility for updating core data in departmental systems in this scenario. In our view, the issue was not that individual officers involved in Mr N's case did not want to take personal responsibility for amending the information, it was that departmental processes did not make clear whose responsibility this was.

4.36. The issue of officers not considering it was their role to update inaccurate system data was not isolated to the NCCC and Citizenship Helpdesk, but was consistent across a number of business areas we observed in this investigation.

4.37. During our fieldwork with the Immigration Status Service, we observed an officer who identified that the date of birth that the client stated and the date of birth on his passport were

slightly different from the date of birth in ICSE. The officer advised that the Immigration Status Service is only really concerned with confirming a person's identity and they would generally leave these kind of errors to be corrected by detention centre staff.

4.38. Similarly, the role of helpdesk and review functions including the DRM and Status Resolution Helpdesk appears to be viewed as identifying errors and referring them back to relevant business areas for rectification. Both the DRM team and Status Resolution Helpdesk advised that if they identify an error in the data in ICSE, they will notify the responsible business area and request that they correct it in the system. Status Resolution Helpdesk advised that its officers are not responsible for updating citizenship or country of birth fields as this would be done by the Status Resolution Officers who have the same level of access to systems.

4.39. We welcomed anecdotal information gathered during fieldwork of instances where Status Resolution Officers have taken personal responsibility for updating systems when they identified an error. However, reliance on Status Resolution Officers in detention centres to identify and correct inaccurate systems information is problematic as this inaccurate information might not come to the Status Resolution Officers attention and not every case handled by upstream business areas will end in immigration detention. In the instances where a person's visa is not cancelled (such as Mr N) or a person is granted a Bridging visa, inaccurate systems data is unlikely to be corrected if business areas do not take responsibility for resolving these discrepancies as they are identified.

4.40. In the cases we observed in our fieldwork, in all instances the officer took the necessary steps to assure themselves of the person's identity and immigration status. But in a number of instances, this was not followed up with the vital next step of updating departmental systems to reflect the officer's conclusions. Officers explained that they did not or could not do this for a range of reasons, including because they were not the subject matter expert, they did not have the necessary systems access, it was not their role to update these fields and updating systems was a time consuming process which they did not have time for in their fast paced roles.

4.41. If officers do not take personal responsibility for updating systems to reflect their findings and to ensure the department has the most accurate information about a person, departmental systems will continue to be inaccurate. Having incorrect information in ICSE poses a risk to the department, as future decision makers may rely on this information, with adverse consequences that could extend to the detention and removal of an Australian citizen.

4.42. This risk manifested in Mr A's case, where officers relied on ICSE data which listed his citizenship as 'New Zealand'. The Thom Review found that a contributing factor to the detention of Mr B and Mr A was that *'a range of DIBP officers did not recognise any responsibility to resolve data discrepancies'* and *'on a number of occasions different DIBP officers received critical information that differed from that recorded in ICSE [but] no consistent attempts were made to resolve the inconsistencies or escalate the matter.'*³⁶

4.43. The department also has an obligation under the *Privacy Act 1988* to ensure that the personal information it holds about an individual is accurate, up to date and complete, and to take reasonable steps to correct information it holds about an individual that is inaccurate, incomplete or misleading.

4.44. The Office raised the issues highlighted in Mr N's case in further meetings with both the NCCC and Citizenship Operations. In response, Citizenship Operations has developed a standard

³⁶ Vivienne Thom, above n 2, 23.

operating procedure - *'Amending or updating citizenship records where there is no application to consider'* clarifying processes and responsibilities in scenarios like Mr N's.

4.45. The new draft standard operating procedure clarifies that if there is a likelihood that a person referred for consideration is an Australian citizen, Citizenship Helpdesk will commence an internal process to finally determine this question, and will seek the business area's assistance in obtaining additional documents from a person as required. The person under consideration is not required to complete an application in these circumstances. Citizenship Helpdesk will record a client of interest note in ICSE while a determination is pending, and once a final determination is made, Citizenship Helpdesk will be responsible for updating departmental systems.

4.46. Once introduced, the new standard operating procedure will provide clear guidance to officers from Citizenship Helpdesk and line areas that they interact with on their responsibilities in relation to updating systems to reflect citizenship findings.

4.47. The NCCC has updated its procedures to reflect this delineation of responsibilities and has advised that once the standard operating procedure is finalised it will be stored centrally and NCCC process documents will be updated to refer to it as appropriate. However, we have not been advised on how this procedure has been disseminated and communicated more broadly to all officers that it may potentially be relevant to.

4.48. While welcoming the creation and dissemination of this standard operating procedure, we are still concerned that the broader responsibility to update systems is not clearly stated in procedural documents. For example, the NCCC advised that if officers have sighted a copy of verified documents, such as a birth certificate, then they would be expected to update the relevant field in ICSE to reflect this. However this expectation is not documented in any of the NCCC's procedural documents.

4.49. Indeed, none of the standard operating procedures or procedural instructions provided to the Office in this investigation have clearly stated the circumstances in which officers are expected to update systems data where they find inaccuracies, who has the authorisation to amend systems, or how to go about doing so.

4.50. The NCCC has acknowledged this feedback and undertaken to update its business rules as a matter of priority, to clearly document the responsibility for updating systems. In our view, this should be a critical inclusion in business process documents across all business areas that interact with the department's IT systems.

Recommendation 10

The department should ensure that all relevant procedural documents specifically include the requirement for officers to reconcile inconsistent information and update departmental systems with accurate information. The procedures should clarify the process for updating information and the circumstances in which officers would be expected to have the knowledge and authority to do so.

Case study: Mr O

Mr O was referred to the NCCC for consideration of potential liability for mandatory cancellation of his visa under s 501(3A) of the Act.

The case officer identified that he had been adopted as a child, but in ICSE Mr O appears to be a citizen of Thailand. The case officer referred the case to Citizenship Helpdesk, who confirmed that he was very likely an Australian citizen due to the circumstances of his adoption.

The case officer ceased consideration of Mr O's case under s 501(3A) of the Act and made a client of interest note on his ICSE record, but the citizenship field in ICSE was not updated.

4.51. Mr O's case is one of two that came to the Office's attention during fieldwork which highlighted that the circumstances in Mr N's case are not an isolated occurrence. We suggested that the NCCC do a review of historical cases where mandatory cancellation has ceased after Citizenship Helpdesk has made a positive finding, to make a final determination and ensure that departmental records are accurate.

4.52. The NCCC advised that this would be beyond its resources and in its view, was not feasible, as it does not keep records of these referrals and the department often has no current address for a person who has been released from prison and thus limited capacity to establish contact and request any documents that are required for a final determination. We accept the department's advice that it would not be practicable for it to identify and finalise all historical cases like Mr O's, but remain concerned that citizenship fields in the department's systems do not accurately reflect its own assessment of the most likely outcome in these cases.

4.53. In our view, the department should seek to improve its record-keeping practices around referrals to its various helpdesks, to enable affected cases to be identified, reviewed and corrected in these type of circumstances. This also provides a further example of the unreliable nature of the department's systems data, highlighting the importance of officers checking their assumptions rather than relying solely on systems data to form and maintain reasonable suspicion.

Part 5: QUALITY CONTROL AND QUALITY ASSURANCE

5.1. In March 2017 the department adopted an assurance model that features three distinct but interconnected lines of assurance. These are:

- 1st Line: Management Assurance—managers across the department own and manage risk in their business area.
- 2nd Line: Risk Oversight and Compliance Functions—which ensure that the first line of assurance is properly designed, in place and operating as intended.
- 3rd Line: Independent Assurance—from independent assurance functions within the department including internal audit and detention assurance sections to provide reassurance of the effectiveness of risk management and internal controls.

5.2. The Thom Review assessed that the assurance policy document was *‘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.’* It went on to recommend that *‘as a matter of urgency, DIBP should ensure that its assurance processes address the systemic deficiencies identified in this report...’*³⁷

5.3. In our investigation we examined whether the quality control processes in place at important decision points in the detention continuum were robust and effective as well as whether the department had adequate systemic quality assurance processes in place to assure its Executive that decisions were being made correctly and in compliance with the policy and legislative framework.

Quality control checks at decision points

5.4. There are a number of points across the detention continuum at which junior officers are responsible for making decisions with significant consequences. At the NCCC, APS4 officers are responsible for cancelling the visas of persons who meet the criteria for mandatory cancellation under s 501(3A) of the Act. In immigration detention facilities, in the majority of instances it is an APS4 that is responsible for conducting the Detention Client Interview Part A on a person’s first day in detention and at the Citizenship Helpdesk, determinations on whether a person is an Australian citizen or not are made by officers ranging from APS4s to EL1s.

5.5. In our view, the extent of quality control checks at decision points should reflect the risks associated with the decision, both in terms of the complexity and importance of the decision itself and in terms of the level of the decision maker. At a number of these points we assessed that there were inadequate quality control checks of high risk decisions. These are discussed in more detail below.

Status Resolution

5.6. Based on our observations, we consider that there needs to be more robust quality control checks at decision points in status resolution processes, particularly in the context of immigration detention facilities.

5.7. A person being held in immigration detention will have their immigration case managed by a Status Resolution Officer. Within 24 hours of being detained, a detainee will be interviewed by a Status Resolution Officer using the Detention Client Interview Part A form. This interview is used to

³⁷ Vivienne Thom, above n 2, 30.

confirm the personal information the department has about the detainee and to discuss their immigration pathway, and the revised form contains a series of questions about Australian citizenship.

5.8. At the majority of the immigration detention facilities visited in this investigation, the Detention Client Interview Part A will usually be conducted by an APS4 level officer before the case is allocated to an APS5 or 6 level Status Resolution Officer who will be responsible for managing the case to an immigration outcome. This officer will conduct the Detention Client Interview Part C interview with the detainee within 14 days to gather more information about them and their potential pathway, and will use the information gathered to complete a Community Placement Assessment Tool, to determine the most appropriate placement for the client. The updated version of the Community Placement Assessment Tool also contains questions that aim to identify potential triggers of Australian citizenship, and the user guide reminds officers of the expectation to put these questions to the detainee rather than relying on systems data.

5.9. There are a range of quality assurance mechanisms in place in the Status Resolution space, including quality assurance on Community Placement Assessment Tools conducted nationally by the Status Resolution Support Section, and the monthly Detention Review Committee which provides a forum to ensure that cases are progressing and can be escalated if required. While these are valuable in their own right, in our view, neither of these processes are likely to identify errors pertaining to citizenship or notification defects. We suggest that the department's best opportunity to identify these types of issues is in the Detention Client Interview Part A and the Community Placement Assessment Tool.

5.10. The Detention Client Interview Part A is important as it is the department's first opportunity in the status resolution continuum to obtain assurance that the person detained is an unlawful non-citizen. In many cases, the Detention Client Interview Part A will be completed before the DRM completes the initial detention review, or the reviews will be performed concurrently. While the DRM review should look at all relevant materials and identify all cases of inappropriate detention, it is limited as it is a review based only on the documentation. In conducting the Detention Client Interview, the Status Resolution Officer has the advantage of being able to ask the client questions and obtain further information where clarification is necessary.

5.11. Within the current status resolution process, we believe it is highly unlikely that immigration detention of an Australian citizen or lawful non-citizen that is not identified from the outset (in the Detention Client Interview / Community Placement Assessment Tool process) would be identified at a later stage. This risk was highlighted in the cases of Mr G and Mr P (case study below). While the Status Resolution Officer conducts a monthly case review of each case that they manage, it may be unreasonable to expect Status Resolution Officers to continue to re-check a client's citizenship as part of each review, given the competing priorities Status Resolution Officers must balance at these later stages. As such, it is critical that the correct information about a client's citizenship status is collected at the first point of contact, that being the Detention Client Interview Part A.

5.12. In our fieldwork, we observed that the Detention Client Interview Part A was often characterised as a straight-forward interview. In light of our assessment of the Detention Client Interview Part A as a vital point in identifying complex cases of potentially inappropriate detention, we would suggest that the department should reconsider the perception of the Detention Client Interview Part A as an administrative type of interview, and put safeguards in place to ensure that complex issues are being identified at this point. We suggest that the department should put in place processes to better support officers to question assumptions and identify issues requiring resolution through this interview.

5.13. Currently, after the initial training period, Status Resolution Officers conduct Detention Client Interviews and case review interviews unsupervised and unobserved and without a systematic process of quality assurance to ensure that they are performing their role as expected. In our view, it is unlikely that managers can be fully assured that Status Resolution Officers are performing their duties at the expected standard when interviewing clients, without ever observing them doing so. We consider that periodic observations of interviews by a Status Resolution Officer's supervisor and appraisal of case reviews could be introduced as a further layer of quality assurance and performance development. In response to our written observations, the department advised that it would consider putting in place periodic observations of client interviews and reviews of monthly case reviews.

5.14. Additionally, we recommend that the department should put in place a formal quality control check on the initial Community Placement Assessment Tool conducted after a person enters immigration detention. During our fieldwork we observed this occurring at one immigration detention facility, but suggest it would be valuable to instigate this type of process at all immigration detention facilities. While it is necessary for a Status Resolution Officer to be able to use their skills to identify errors themselves, there would be value in an additional layer of formal oversight, to ensure that checks relating to identity and citizenship status have been performed correctly and relevant issues identified and escalated.

Citizenship Helpdesk

5.15. The Citizenship Helpdesk was another area of the department where we found critical decisions being made by junior officers without appropriate assurance processes. In the second level helpdesk, which handles more complex requests for citizenship findings from operational areas of the department, officers ranging from the APS4 level and up, make findings on whether the person in question is an Australian citizen. The department advised that making a finding of fact on whether a person is an Australian citizen is a task that sits at the APS4 level throughout Citizenship Operations, not just at the helpdesk.

5.16. At the time of our fieldwork, there was no formal quality control process in place for findings of fact by Citizenship Helpdesk Officers at any level. The previously mentioned case study of Mr N highlights why this was of concern to our Office. In Mr N's case, the APS4 Citizenship Helpdesk Officer gave advice to the NCCC indicating that they had found Mr N to be an Australian citizen, but did not update departmental systems to reflect this as they were not confident in their assessment. The officer did not verify the birth certificate upon which they based their finding or discuss the case with their supervisor and there was no quality control check on the officer's decision, their written advice to the NCCC, or their record keeping.

5.17. This was in contrast to the processes in place at the Status Resolution Helpdesk, which is responsible for making equally complex and consequential findings. All of the officers working at the Status Resolution Helpdesk are at the APS6 level, yet all written advice is cleared by the team's EL1 manager before being sent out.

5.18. We presented our concerns about the lack of appropriate quality control processes, as evidenced in the case of Mr N, to Citizenship Operations. In response, the business area undertook to have the findings of fact completed by APS4 and 5 officers at the second level helpdesk reviewed by either the APS6 or EL1 in the team. This undertaking has been incorporated in the draft standard operating procedure for *'Amending or updating citizenship records where there is no application to consider'*.

5.19. We would encourage the Citizenship Helpdesk to consider implementing a similar quality control model to the Status Resolution Helpdesk, where all decisions are checked by the team's EL1

Manager, or a risk-based approach to this process, triaging assessments to ensure that at least the more complex ones are reviewed by the EL1 Team Manager.

The Detention Review Manager

5.20. In our view, the initial detention review conducted by the DRM is the critical point in the immigration detention continuum for identifying instances of immigration detention of Australian citizens or lawful non-citizens. We recognise that decisions to detain can occur in field environments, where departmental officers do not have access to all relevant records. The initial detention review represents the department's opportunity to obtain assurance that a person's detention is lawful, while they have been held in detention for only a relatively short amount of time. The initial detention review is the first point at which any officer handling a person's case will have access to all of the information at the department's disposal about that person. If an Australian citizen or lawful non-citizen is not identified at the initial detention review, it is highly unlikely to be picked up at a later stage, given that Status Resolution Officers in immigration detention facilities do not conduct Comprehensive Assessment Tools and have a range of competing priorities to manage. Such cases are often not identified until a thorough review is conducted as part of preparations to remove a person from Australia.

5.21. Currently, there is no quality control check on the initial detention review. While DRM team members are all at the APS6 level, with one EL1 team leader, we consider that the risk in terms of not identifying an Australian citizen or lawful non-citizen at this stage, creates a strong case for an additional level of review.

5.22. Based on our analysis of recent reports on *'people detained and later released as not unlawful'* provided to our Office by the department, there is a strong correlation between cases where inappropriate detention has not been identified by the DRM, and the length of time a person is detained. In the period January–June 2017, three cases of inappropriate detention were reviewed but not identified by the DRM: Mr A, Mr B and Mr P. The average length of inappropriate detention for these cases was 182 days. In contrast, the average length of inappropriate detention for all other cases (including cases where inappropriate detention was identified by the DRM and cases where the inappropriate detention was identified before review by the DRM) was 14 days.

5.23. In the period July–December 2017, Mr G's period of inappropriate detention (1,375 days) was by far the longest, and this could not have been identified by the DRM as the notification defect was not known to the department at the time of the initial detention review. The next longest period of inappropriate detention in this period was ten days, which was the length of time that both Mr D and Mr X (case studies in Part 3) were detained. In both cases the DRMs who conducted the initial detention review did not identify the errors which meant that the detainees still held valid visas. Rather, the errors were identified fortuitously, in one case by the DRM team leader and in the other by a helpdesk that the case had been referred to for an unrelated question.

5.24. In Mr D's case, the DRM raised a question about an unrelated referral of the case to the Citizenship Helpdesk. The cancellation error was then identified, but were it not for this unrelated referral, the initial detention review would not have been subject to any quality control check. It is highly unlikely that the notification error would have been identified by Mr D's Status Resolution Officer in immigration detention, as they do not currently routinely conduct notification assessments.

Case study: Mr P

Mr P lodged an application for a Combined Partner (subclass 820/801) visa in 2011 which was refused in July 2012. He reported to the department's office in South Australia in October 2015 at the request of the ABF and was detained because he appeared to be an unlawful non-citizen on departmental systems.

Prior to detaining him, an ABF officer completed a review of the Partner (subclass 820) visa refusal but did not realise that a separate assessment had to be completed in relation to refusal of the Partner (subclass 801) visa.

The DRM who conducted the initial detention review also did not identify the requirement to complete a separate review of the Partner (subclass 801) visa application decision.

Mr P was held in immigration detention for 436 days while still holding a valid Bridging visa. In line with current process, the validity of his visa refusal notification was not checked again following the DRM review, until the department began preparing to remove Mr P from Australia.

5.25. In light of the significant consequences of an Australian citizen or lawful non-citizen in immigration detention not being identified by the DRM, it is our view that the initial detention review should be subject to a robust, risk based quality assurance process to give the department a greater level of assurance that all such cases will be identified at this stage.

5.26. There is no role dedicated to quality assurance in the DRM team. Rather, we observed that there is an ad hoc quality assurance process that involves informal reviews of a team member's work upon request. Of concern, there is also no systematic supervision of high risk cases even where these cases have been allocated to the least experienced team members.

5.27. In response to feedback provided by the investigation team during fieldwork, the department has acknowledged the need for quality assurance checks on the initial detention review and has undertaken to implement such a process in the 2018–19 program year.

Recommendation 11

The department should develop, implement and ensure staff are following the risk-based quality control processes listed below.

- a) A senior officer should review all Community Placement Assessment Tools completed when a person enters immigration detention, to ensure citizenship issues have been identified and resolved.
- b) Status Resolution Officers should be periodically observed and coached by their supervisor while conducting client interviews as part of the performance management framework.
- c) Status Resolution should introduce robust quality control processes to support officers to conduct Detention Client Interview Part A interviews and mitigate the risk of not identifying an Australian citizen.
- d) The Citizenship Helpdesk and the Detention Review team should develop risk-based quality control processes to ensure that all high risk cases are escalated for review by a manager or senior officer.
- e) The ABF should implement a quality assurance process to ensure that officers are completing the Located Person Interview form as instructed and provide feedback to officers who are not complying with the standard operating procedure.

Risk based processes

5.28. The department has made an effort to reflect risk in its processes. The DRM team, for example, did not previously review the detention of people streamed into the rapid removal pathway until they had been detained for more than 28 days (and were therefore considered to no longer be on a rapid removal pathway). In response to the risk that someone in this cohort may be inappropriately detained for a significant period of time before being identified, the DRM team has begun to assess the immigration histories of people in this stream. If a person has adverse events in their immigration history (such as refusals or cancellations) which could be subject to notification defects, the DRM will review their case immediately. We would encourage the department to expand this risk-based approach to the work of the DRMs more broadly and to processes in other business areas.

5.29. There is also currently no process for triaging cases for initial review by the DRMs. DRMs are allocated cases on a rotating basis using an Excel spreadsheet. There is no consideration of risk or complexity in the allocation of cases and as such the team leader will be allocated reviews which may have the same risk factors as those allocated to other team members. It is up to the individual officer to prioritise their own caseload. In response to concerns raised by the Office during fieldwork, the department has acknowledged the need for a formal, risk-based process for assigning cases within the team and has undertaken to develop and implement a risk matrix and process in 2018 – 19.

5.30. The current working arrangements for the DRM team could also increase the risk of a case of an Australian citizen or lawful non-citizen in immigration detention not being identified. In response to the current policy requirement for phase 1 reviews to be completed within 48 hours, the DRM team has developed a local arrangement whereby they work on a rotating roster to cover weekends and public holidays. Two officers are rostered on non-working days on a rotational basis and as such the DRMs often work 14 consecutive days. Given the size of the team (five people), it is our view that this creates a risk of burnout and a commensurate risk of critical details being missed if officers are tired and unfocused. The draft detention review procedural instruction reflects a shift to a timeframe of two business days, rather than 48 hours, and the department has advised that the roster arrangement is currently under review.

5.31. It is expected that once implemented, the new timeframes will reduce the amount of work performed by the DRM out of hours and on weekends. There will still be a need to retain on call arrangements for exceptional cases and to provide a point of contact, but it is expected that the majority of reviews would be conducted within business hours under the new arrangements.

Recommendation 12

The department should develop a risk-based process for triaging, prioritising and allocating initial detention reviews to DRMs.

Documentation of quality control checks

5.32. In our view, it is also important that quality control checks are documented and filed in an auditable way. This would support the department's assurance model, by enabling second line oversight to ensure that the quality assurance checks in the first line of assurance at the decision point are adequate.

5.33. In the NCCC's Character Liability Assessment team, team leaders conduct quality control checks on all mandatory cancellation decisions (performed by APS4s). The department advised that there is a checklist that team leaders refer to when performing checks. However, the team leader we

observed performing quality control during our fieldwork did not refer to or complete this document.

5.34. While we acknowledge the possibility that the team leader we observed did not refer to this document during our visit as they usually would, it is evident that this checklist is not a mandatory part of the quality control process, as it is not mentioned in the NCCC's Business Rules for Mandatory Cancellation or the Liability and Assessment Guidelines. The Business Rules only refer to a requirement for the team leader to finalise the Liability Assessment Checklist, which we understand to mean that they place their name and position number at the top of the 'NCCC – s 501(3A) mandatory cancellation MCP' checklist when they have completed their review.

5.35. In our view, there would be value in the quality control checklist being a mandatory part of the quality control process, whereby team leaders' mark off each item as they check it and then file the document to create an audit trail documenting their review. This requirement should be referenced in the NCCC's Business Rule and as the NCCC moves towards a process that is fully automated through its new electronic cancellations management system (CanX), this checklist should be built in and completed electronically by team leaders.

5.36. In response to this suggestion, the NCCC advised that it accepted that a separate quality assurance checklist completed by team leaders should be mandatory, and has undertaken to update its business rules to incorporate mandatory quality assurance processes by team leaders.

Recommendation 13

The NCCC should require team leaders to complete and file a quality control checklist as a formal part of the quality control process for mandatory cancellation.

Quality assurance and reporting

5.37. In its investigation of business areas involved in the detention of Mr A and Mr B, the Thom Review found that *'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.'*³⁸ It commented that *'in the absence of 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.'*³⁹ The Thom Review went on to recommend that the department's assurance processes should ensure that *'the Executive is provided with assurance, including independent external assurance, that operational activities are compliant with the policy and legislative framework.'*⁴⁰

5.38. The response to this recommendation across the department has been mixed, with some business areas making significant progress in building effective quality assurance processes, and others still in development.

5.39. The most robust response to this recommendation has been by the NCCC, which has put in place quarterly quality assurance checks and reporting across its entire caseload. Effective from 1 January 2018, the NCCC has performed checks on a sample of approximately 100 cases each quarter, which equates to approximately eight per cent of its annual caseload. The results of the

³⁸ Vivienne Thom, above n 2, 22.

³⁹ Ibid.

⁴⁰ Ibid.

quarterly checks are used to generate a report which can include recommendations for training, support and process improvements.

5.40. The department advised that in response to the issues identified in the NCCC's first quarterly quality assurance report, it provided feedback to individual officers and to the team more broadly and reviewed and updated standard operating procedures to ensure relevant instructions were clear. The report was also used to inform team and individual training requirements, and fed into formal monthly performance development conversations between officers and their supervisor.

5.41. The quarterly report is disseminated to all NCCC staff and uploaded to its central document storage site. It was not clear whether the quarterly reports are also provided to relevant departmental executives, but we believe there would be considerable value in doing so.

5.42. In our view, this model of quality assurance and reporting addresses a number of the concerns raised by the Thom Review, and should allow the NCCC to identify emerging trends and issues, monitor staff performance and provide assurance to the department that decisions are being made correctly. The NCCC has taken the initiative to develop this reporting framework within the department's existing information technology systems, and we would encourage other business areas to follow the NCCC's lead in this regard.

5.43. Status Resolution Branch (encompassing status resolution in immigration detention facilities as well as the DRM team) has advised our Office that it is committed to introducing robust quality assurance processes and reporting in the coming program year for both areas. While the DRM team currently does not have quality assurance mechanisms in place to provide assurance that issues are being identified in detention reviews, Status Resolution has some mechanisms in place for identifying emerging trends and informing the Executive, such as the Community Placement Assessment Tool checks conducted by Status Resolution Support Section and the monthly Detention Review Committee for each immigration detention facility.

5.44. The department advised that it intends to introduce a robust quality assurance process for the DRM. This will likely be based on a review of a sample of cases each month by both the DRM team (internally) and the Status Resolution Helpdesk (externally). The department further advised that it is working on the reintroduction of Senior Officer Reviews of status resolution cases, which will work holistically with the new Status Resolution System Control Framework. This will entail every case that results in a detention of six months being reviewed on a periodic basis by a senior officer from a different area, to check that the decisions at earlier control points have been accurate and to provide assurance that the case is being appropriately progressed towards an immigration outcome.

5.45. From the fieldwork we conducted with the ABF, we understood that only one team responsible for detaining unlawful non-citizens (the Immigration Status Service) had a quality assurance process in place to sample cases and analyse decisions for systemic issues. We understood that the Immigration Status Service uses EQuIP, the same departmental system as the NCCC to conduct this sampling, however management expressed the view that this is not a useful tool for ABF Field Compliance in Victoria. It was not made clear to our Office whether the information obtained from this exercise is provided to the Executive, or how it is used to inform better practice within the business area.

5.46. The ABF did, however, introduce a Compliance Assurance Program in September 2017, which involves ABF Senior Executive officers conducting Compliance Assurance Checks in administrative and operational functions across the ABF. A Compliance Assurance Check assesses an

area's working environment and culture, operation of function and administrative responsibilities and leads to a report which can contain recommendations for improvements.

5.47. In our view, the ABF's Compliance Assurance Program is a positive step towards the Executive being assured that operational areas are working in compliance with departmental policy and legislation. However, we still consider there would be value for the ABF in systematic analysis of the decision to detain. This could involve analysing samples of completed Located Person Interview forms.

Recommendation 14

The department should prioritise expanding and embedding automated quality management reporting to enable business areas to better identify emerging trends and issues, monitor performance and provide assurance to the Executive that decisions are compliant with policy and legislation.

5.48. The recommendations of the Thom Review highlighted the importance of the department developing a culture of continuous improvement, with Recommendation 4 stating that the department's assurance processes should ensure that there is continuous analysis and reporting of issues that are detected. Similarly, Recommendation 3 reiterated that in establishing a formal governance framework over the end-to-end detention continuum the department should *'establish formal feedback mechanisms whereby lessons learned from the national network of Detention-Related Decision-Making 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.'*⁴¹

5.49. Within the current control framework, the department prepares an 'Inappropriate Detention Release' report in every instance that it releases a person from immigration detention on the basis that it can no longer maintain a reasonable suspicion that the person is an unlawful non-citizen. These reports form the basis of a six-monthly report that the department prepares for the Office under a standing own motion investigation into people who are detained and later released as not unlawful. In each case identified, the department will detail the circumstances leading to the person being released as 'not unlawful' and the remedial actions it has taken in response to the specific and systemic issues raised in each case.

5.50. Recently, the department has also begun to conduct deeper analysis on this caseload, with a comprehensive review conducted in December 2017 of 51 cases since July 2015, where people have been released from immigration detention having been found to be 'not unlawful'. The purpose of this review was to identify whether the errors evident in these cases were systemic and if so, what had been done to rectify them.

5.51. We note that the number of people released from immigration detention as 'not unlawful' each year is a fraction (under one per cent) of the number of people who are detained each year. Yet, we also note that the size of this group is not diminishing, and indeed in the department's most recent report to our Office, the number of people released as 'not unlawful' had increased significantly from previous reports.⁴²

⁴¹ Vivienne Thom, above n 2, 31.

⁴² Between July and December 2017, the department released 29 people from immigration detention (0.67 per cent of the total number of people detained) after it was identified that they were 'not unlawful'. In each of the three reports preceding this, this figure was between 13 and 14 people (0.33 – 0.38 per cent).

5.52. Of concern to our Office, is that similar issues recur in each report, suggesting that the department could do more to reflect and take action on these systemic issues. Deficient notification of visa decisions accounted for 50 per cent of this cohort since July 2015. The department faces ongoing challenges with historical, non-digitised letters that have been sent to notify clients of the refusal or cancellation of their visa. If a substantial error has been made in a notification letter, the refusal or cancellation may be invalid. We acknowledge that in some instances, lawful non-citizens will be detained in unplanned detentions, where the department is not able to immediately review non-digitised notifications for errors. However, the majority of notification errors in the most recent report were in notifications made in the last two years, which should be stored digitally and available for immediate review. This suggests an ongoing issue with reviewing notifications as well as an ongoing issue with issuing defective notifications in the first instance.

5.53. The department identified the systemic nature of the deficient notification issue in its analysis in the most recent report, and advised that it was undertaking additional training targeting known issues and additional quality assurance. We encourage the department to continue undertaking this type of analysis to identify and address systemic issues that are contributing to cases of inappropriate detention.

5.54. In implementing these recommendations, we suggest that the department should also seek to utilise the role of the DRM and its line of sight across a range of business areas. In performing the initial detention review, the DRM team reviews documentation supporting the decision to detain, including the Located Person Interview and the Comprehensive Assessment Tool. The DRMs see documentation prepared by ABF officers around Australia, and in our view the DRM team is therefore uniquely positioned to identify systemic and/or regional quality issues in the documentation.

5.55. The department should seek to formalise a process whereby the DRM team provides feedback to the ABF and potentially other business areas, on an ongoing basis. We presented this view to the DRMs during fieldwork, and the department has agreed that there is an opportunity for the DRM to provide feedback to business areas through their processes, and have undertaken to consider how to achieve this as new processes are developed.

Recommendation 15

The department should develop processes for relevant areas to provide regular feedback to 'upstream' areas including the visa and status resolution networks and the ABF, on systemic quality issues they identify in reviewing decisions to detain unlawful non-citizens.

Recommendation tracking

5.56. The Thom Review assessed that the systemic issues it identified were common themes in the findings and recommendations of reports on the department dating back to 2005. It assessed that these systemic issues would largely be addressed, by the effective implementation of the accepted recommendations in two recent reports: *The Australian Border Force's use of statutory powers*, Australian National Audit Office, February 2017 and *Detention-related decision-making*, EY, DIBP internal audit report, 2015–16.

5.57. In its current form, the department is responsible for a broad range of functions across diverse areas. The department is the subject of reports and recommendations from numerous internal audits and reviews as well as from external bodies such as the ANAO, the Office and the Australian Human Rights Commission. The department advised that '*due to the breadth, size and*

*complexity of the Department, it is not practicable for all recommendations from internal and external reviews to be centrally managed by a single business area.*⁴³

5.58. The majority of recommendations are monitored and reported on by the Audit and Assurance Branch, which tracks the implementation of recommendations from internal audits, in-house detention assurance reviews, ANAO performance audits and reports by external scrutiny bodies including the Office. The Audit and Assurance Branch is not responsible for monitoring recommendations from ANAO financial statement audits, Comcare, Parliamentary Inquiries and the Inspector of Transport Security, as these are tracked by the responsible business area. The Audit and Assurance Branch has visibility of all ANAO recommendations, but does not have line of sight over the implementation of recommendations by Comcare, the Inspector of Transport Security or Parliamentary Inquiries.

5.59. The department advised that its Audit Committee is its primary mechanism for centralised oversight across this suite of recommendations by internal and external reviews. The Audit Committee is made up of five members, three of whom are external to the department. At each meeting, the Audit Committee receives updates on internal audit activities, activities and reports by external scrutiny bodies, and progress against recommendations by internal and external audits and reviews. The Audit Committee does not routinely receive updates on the implementation of recommendations by Comcare or Parliamentary Inquiries.

5.60. The Audit Committee is also responsible for endorsing the closure of recommendations from internal audits and ANAO performance reports. The department has a robust process in place, requiring responsible business areas to submit a minute with supporting evidence through various layers of internal Executive clearance and review by the department's external assurance provider, before being submitted to the Chief Audit Executive and then to the Audit Committee. The closure of recommendations from internal detention assurance reports and external scrutiny bodies, including the Office, do not currently require sign off by the Audit Committee, and can be finalised with endorsement by the Chief Audit Executive.

5.61. In continuation of the Thom Review's finding that the systemic issues it identified had been evident in the recommendations made by reviews across the last 13 years, in our investigation, we looked for assurance from the department that it has systems and processes in place to ensure that recommendations are actioned and implemented in a reasonable timeframe. The department advised that it has made a number of changes to its recommendation tracking processes since March 2017 to ensure that reporting occurs more frequently and that it is directed to a range of Senior Executives. These changes included the introduction of monthly data analysis and reporting on recommendations, as opposed to this only occurring in preparation for an upcoming Audit Committee meeting. The department also began involving division heads in the requests for reporting on implementation and began providing reports on implementation to the Enterprise Operations Committee and the Executive Committee.

5.62. These changes represent positive progress in ensuring that the implementation of recommendations is tracked and regularly considered by the department's senior Executive. We note that as at 14 June 2018, the department still had 300 open recommendations on its books. The department advised that it was working to identify recommendations that had not yet been actioned and seek updates on these from the responsible business areas.

5.63. The Audit and Assurance Branch, as the area responsible for tracking the implementation of the majority of these recommendations, plays a central coordination role in bringing together

⁴³ Department of Home Affairs, Response to Observations provided to the Office 4 September 2018.

insights from a cross section of recommendations. The Audit and Assurance Branch advised that it was working towards being able to collate similar recommendations from different sources and action them together.

5.64. Currently, the majority of the department's recommendations are tracked in spreadsheets which are manually updated by the area responsible for monitoring implementation progress. Analysis of commonalities and identification of emerging themes is therefore also a manual and time intensive process, requiring an officer to have knowledge of all of the different potentially relevant reports being actioned by other parts of the department.

5.65. We understand that the department is currently investigating moving to a single ICT system for monitoring and analysis of recommendations across the department. While we acknowledge the department faces an array of operational and financial challenges in such a step, in our view there appears to be considerable value in moving to a single system that allows the department to identify themes and avoid duplication in implementation activities.

GLOSSARY

ABF	Australian Border Force
ANAO	Australian National Audit Office
CCMD	Compliance Case Management Detention Portal
DIAC	Department of Immigration and Citizenship
DIBP	Department of Immigration and Border Protection
DRM	Detention Review Manager
ICSE	Integrated Client Services Environment
MCP	Mandatory Control Point
NCCC	National Character Consideration Centre
The Act	<i>The Migration Act 1958</i>
The Citizenship Tool	The Australian Citizenship Status Assessment Tool
The department	The Department of Home Affairs
The Office	The Office of the Commonwealth Ombudsman
VCE	Visa Compliance Essentials

APPENDIX 1 – HOME AFFAIRS’ RESPONSE TO RECOMMENDATIONS



Mr Michael Manthorpe PSM
Commonwealth Ombudsman
Office of the Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601

Dear Mr Manthorpe

Thank you for the opportunity to respond to your report on *Preventing the Unlawful Detention of Australian Citizens – Investigation into the Department of Home Affairs' Implementation of the Recommendations of the Thom Review* (the report).

I would like to thank you and your officers for acknowledging and reporting upon the significant work the Department of Home Affairs (the Department) and Australian Border Force (ABF) has undertaken in implementing the four recommendations from the June 2017 review conducted by Dr Vivienne Thom AM into the detaining of two Australian citizens (the Thom review), including:

- the important steps made towards building and delivering training to ensure officers are equipped with the essential skills and knowledge to recognise and escalate citizenship and status issues
- our commitment to developing further supporting documents, procedures and controls for circumstances where officers would be required to note unusual or important characteristics in free text fields or to otherwise update departmental records, and
- the significant progress made by the Department and the ABF to clearly document expectations about which officers are expected to hold and maintain reasonable suspicion, how they do this, and about documenting handover points, through the newly developed Status Resolution System Control Framework – replacing the Detention Related Decision Making Control Framework.

The Department and the ABF are working together to continually improve quality assurance mechanisms and feedback loops, monitor the effectiveness of new or updated controls, and promote a joined up approach to addressing risk across the immigration decision making continuum. This is no small undertaking and we expect that this work will require time to be fully implemented, however we are pleased with our progress in mitigating the highest risks and the effort that your review team has made to understand the considerable complexities.

The Department is committed to reviewing and delivering training and has made a substantial investment in ensuring policy and procedural instructions support officers in their decision-making. The Department commenced this in 2018 and has a planned a program of Status Resolution Foundation Skills training and refresher programs for delivery throughout 2019. An invitation to attend and observe the face-to-face training has been made to your officers.

Robust oversight against this work continues to be provided through departmental governance structures, notably the Status Resolution Committee (which is co-chaired by the ABF Deputy Commissioner and the Deputy Secretary of Immigration and Citizenship Services) and the Thom Review Implementation Taskforce. This oversight facilitates both a holistic approach and a culture of collaboration and clear accountability across the Department and the ABF in mitigating the risk of inappropriate detention.

I also note with appreciation your recognition of the challenges the Department faces, particularly in relation to the complex area of Australian citizenship, where a large volume of historical information is recorded in a number of different media, including paper-based registers, reels and fiches, often stored off-site and not always readily accessible. Although the Department has committed significant resources and time to migrating

this data to departmental systems, it is often still necessary to check original source documents particularly in circumstances where citizenship has been acquired prior to 1986 or through less common mechanisms – such as under the 10th birthday provision and by some born in Papua New Guinea before 16 September 1975.

The limitations of existing Departmental ICT systems coupled with the complex circumstances of individuals means that officers may not always have all relevant information to hand when a person's immigration status needs to be confirmed – for example, in a situation where someone is posing an unacceptable and imminent risk to the Australian community and all available evidence at the time points to the person being a non-citizen. The risk of inappropriate detention is kept to a minimum through a stringent control framework, supporting the underpinning principle of establishing reasonable suspicion that someone is an unlawful non-citizen prior to any detention.

Turning to the specific recommendations in your report, the Department accepts 14 of the 15 recommendations and partially accepts recommendation 11(a). I note that the Community Placement Assessment Tool is not a tool to ensure citizenship issues have been identified and resolved when a person enters immigration detention. The tools the Department and the ABF currently use to identify and resolve citizenship issues are the Detention Client Interview Part A (the Department) and Located Person Interview (the ABF). The Department accepts the remaining parts of recommendation 11 including parts (c) and (e) which recommend quality assurance and quality controls in relation to the Detention Client Interview Part A and Located Person Interview respectively.

More specifically, in relation to the recommendations, the Department makes the following comments:

Recommendation 1: Accepted

The Department has developed and is currently piloting a Status Resolution Foundational Training Package, which includes structured modules on immigration status, citizenship, and associated risks. The foundational course forms the basis of training for Enforcement Command, Status Resolution, and Onshore Cancellation staff. Job role profiles have also been developed for the relevant roles (Status Resolution Officer, Field Operations, Removals Officer and Visa & Citizenship Decision Maker) each articulating that the foundational learning applicable to each role as listed requires an understanding of the *Australian Citizenship Act 2007*.

Professional Development Pathways have been developed, which include the requirement for refresher training. Content will also be reviewed prior to each delivery to ensure materials include up-to-date information on legislative and policy changes, and relevant example cases.

Recommendation 2: Accepted

a) Partially completed. Interim checklists were developed and deployed immediately after the Thom Review, to mitigate risks while tools were developed and cleared. A full Citizenship Assessment Tool was developed and implemented on 14 May 2018. Additionally, in light of operational challenges, citizenship triage checklists were developed and are in use in the immigration detention process. The Status Resolution triage checklist was developed in discussion with Citizenship Operations – and will be reviewed and endorsed for consistent use by all operational business areas. It is important to note that these tools and processes are not static and effectiveness will be reviewed in light of any subsequent events and reviews.

b) Citizenship and Multicultural Affairs Programs Branch will work with Status Resolution Branch to review the Citizenship Tool to ensure it is both useable and fit for purpose in the operational environment.

Recommendation 3: Accepted

The Citizenship Assessment Tool implemented on 14 May 2018 is being used by the National Character Consideration Centre. Mandatory cancellation processes will be updated in response to this recommendation.

Recommendation 4: Accepted

Recommendation 5: Accepted

a) Partially completed. Part A, Section A3 (Personal Details) of the Located Person Interview (LPI) captures information about an individual's country of birth and citizenship. The form instructs officers that all fields in Part A must be completed. Further, the supporting Standard Operating Procedure (SOP) currently instructs officers that the officer must ask the person these citizenship related questions verbally. The SOP will be updated to direct officers to ask **all** located persons to provide their country of birth and all countries of citizenship before officers turn their minds to consideration of detention.

For complete assurance, Part C of the LPI revisits these questions once more as part of the Identity Assessment. Together, these parts of the form provide located persons with opportunities to put forward any relevant information regarding their country of birth and countries of citizenship.

b) ABF Governance will conduct a post implementation review of the LPI form in early 2019. In the interim, an issues log is being maintained to capture feedback from LPI users which will also inform the review, or be actioned in real time (if the issue is minor).

Recommendation 6: Accepted

Action underway. The ABF Governance-led Managing Non-Citizens in Criminal Detention Working Group has produced a consultation paper which is with relevant program managers for review. Once the content is settled among all Department and ABF stakeholders it will be developed into a nationally consistent Procedural Instruction and published in accordance with Policy and Procedure Control Framework (PPCF) processes. The procedural instruction will support officers in the way we manage all cohorts of non-citizens who are in criminal detention.

Recommendation 7: Accepted

The Department, through the Policy and Procedural Control Framework introduced in May 2017, provides guidance on the implementation of new processes and states (in part) that document owners are responsible for ensuring key stakeholders and end users are advised when a refreshed document has been issued and for providing them with effective guidance on changes. Additionally, document owners are responsible for ensuring required training be delivered.

The Department will develop instructions and ensure that relevant staff are aware of and fulfil their record keeping responsibilities.

Recommendation 8: Accepted

Recommendation 9: Accepted

The development of a framework for forming and maintaining reasonable suspicion and guidance for handover points is currently under development, as part of the Status Resolution System Control Framework. Once endorsed, supporting procedural documents will be updated.

Recommendation 10: Accepted

Overlaps with Recommendation 7 in relation to citizenship. The Department will develop instructions and ensure that relevant staff are aware of and fulfil their record keeping responsibilities.

Recommendation 11: Accepted in part, noting comments in relation to Part a)

a) The Community Placement Assessment Tool is not the Department's tool for addressing citizenship issues – it is designed to assist decision makers consider the suitability of resolving status in the community. The Department therefore does not accept part a) of this recommendation. The Detention Client Interview Part A and Located Person Interview are the current tools to ensure citizenship issues have been identified and resolved. The Department notes that parts c) and e) of this recommendation address quality controls in relation to the Detention Client Interview Part A and Located Person Interview.

b) A process for the periodic observation and coaching for Status Resolution Officers will be developed to ensure this occurs.

c) The Department will review current quality controls to ensure additional quality control processes identified in this recommendation are incorporated.

d) The Department will review quality control processes for the Citizenship Helpdesk and the Detention Review team to ensure that all high risk cases are escalated for review by a manager or senior officer. Risk-based quality control and escalation process will be developed within the broader Immigration and Citizenship Services Group Quality Management Framework.

Recommendation 12: Accepted

Overlaps with Recommendation 11(d).

Recommendation 13: Accepted

Recommendation 14: Accepted

The Visa Business Optimisation Branch is leading work to automate quality management reporting, however this work is dependent on budget, enterprise risk and organisational capability priorities.

Recommendation 15: Accepted

The Department is currently reviewing its approach to acquitting its 6-monthly detention reporting obligations to the Ombudsman, in order to improve identification of any systemic issues and respond to them early. As part of this work, the Department recently reviewed reports provided to the Ombudsman over a two year period. The outcome of this work will shortly be reported to the Department's Status Resolution Committee for their endorsement of a business improvement program, including to provide regular internal feedback, going forward.

While rare, the Department conducts Detention Assurance reviews of any instances of detention of Australian citizens (regardless of circumstances) and remediation is given the highest priority.

The Department is also currently undertaking a project to map and strengthen the controls, linkages and feedback mechanisms across the immigration continuum – which will in turn further strengthen the connection of detention decision making to other parts of the business.

I would like to thank you and your officers for the collegiate way in which this review was conducted. In particular I would like to acknowledge the investment and commitment to engaging with the Department throughout the review, and on early findings and draft recommendations. This approach was welcomed by my staff. It has contributed to the report reflecting a depth of understanding of the complexity of and challenges inherent in the Department and ABF operating environments and the Department's efforts to mitigate the risk of the detention of Australian citizens are reflected in the report.

Yours sincerely



Michael Pezzullo
Secretary

 November 2018

APPENDIX 2 – SUMMARY OF FIELDWORK

NCCC

The Office visited the NCCC on 23 March 2018, 16 April 2018 and 18 May 2018 to interview and observe the team responsible for processing mandatory visa cancellations under s 501(3A) of the Act.

ABF

The Office engaged with a number of operational areas of the ABF in Canberra, Sydney, and Melbourne. We observed officers at the Immigration Status Service in Melbourne on 17 April 2018 and ABF Enforcement Command (NSW) from 9–10 May 2018. We also met with the leadership of the Immigration Status Service and ABF Enforcement Command (Victoria) on 18 May 2018; ABF College on 30 May 2018 and National Compliance Program, Canberra on 30 May 2018.

Detention Review Manager

The Office spent two days, 3–4 May 2018, interviewing and observing the DRM team in Melbourne.

Status Resolution at immigration detention facilities

The Office spent two days observing Status Resolution Officers at Villawood Immigration Detention Centre 10–11 May 2018; one day at Maribyrnong Immigration Detention Centre on 16 May 2018, one day at Melbourne Immigration Transit Accommodation on 17 May 2018, one day at Yongah Hill Immigration Detention Centre on 24 May 2018, and one day at the department's Perth office on 25 May 2018.

Citizenship and Status Resolution Helpdesks

The Office met with and observed officers at the Citizenship Helpdesk on 12 April and 5 June 2018, and the Status Resolution Helpdesk on 21 May 2018.