

Did They Do What They Said They Would?

REVIEWING OUR RECOMMENDATIONS

September 2020

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

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FOREWORD

I am pleased to introduce this report on the implementation of recommendations made in a range of my earlier public investigation reports. Through our work the Office aims to influence enduring systemic improvement in public administration in Australia. We also oversee a number of industry sectors through specialist ombudsman roles, such as Australia Post and private health insurers.

We seek to influence improvements in the agencies and organisations we oversee in a number of ways, both formal and informal. Using my formal powers under the *Ombudsman Act 1976*, I have investigated and reported publicly on a wide range of issues and made many recommendations for improvements to administration.

Making enduring improvement in public administration is often painstaking and far from glamorous. My recommendations typically focus on the nuts and bolts of program delivery. Yet, these nuts and bolts matter, going as they do to the success or otherwise of countless day to day interactions between members of the public and government. Often these interactions impact upon vulnerable people in serious ways.

I am pleased that the recommendations I make are generally accepted, with agencies committing to take future action to address the areas of improvement I have identified. But that's only half the story—the improvements won't be realised until those actions have indeed been taken.

Which led me to ask one simple question: *Did they do what they said they would?*

To answer this, I commenced a new investigation to formally follow up on recommendations made in seven investigation reports published by my Office over a two year period, from July 2017 to June 2019. I made a total of 61 recommendations in these reports, across a broad range of issues including the administration of the National Disability Insurance Scheme, assessment of Australian citizenship applications, detention of Australian citizens, health insurance policy changes and decision-making at the Department of Veterans' Affairs.

I am pleased the agencies concerned have made significant progress toward implementing these recommendations. Of the 55 recommendations accepted, 54 have either been fully or partially implemented. While in many cases considerable work had already been undertaken by the agencies to implement the recommendations made, my Office's follow up and scrutiny in conducting this investigation influenced timely further action in response to my recommendations.

Going forward, my Office will integrate this follow up monitoring into our everyday work and I intend to periodically report on our findings. In addition, in recent years I have separately reported on follow up to recommendations in reports about Centrelink, Australia Post, the Australian Federal Police and others.

I would like to thank all agencies and organisations involved for their cooperation with my Office throughout this project. It is to their credit that, for the most part, they *did* do what they said they would.

Michael Manthorpe PSM
Commonwealth Ombudsman

PART 1: INTRODUCTION

SCOPE OF REPORT

- 1.1. This report provides public assurance by reporting on agencies' progress to implement recommendations in reports published by the Office of the Commonwealth Ombudsman (the Office) between July 2017 and June 2019. It does not include the Office's 2018 *Review of Australia Post complaints about carding, Safe Drop and compensation*, as we released a report following up on the implementation of these recommendations in June 2019. It also does not include our April 2019 report into *Centrelink's Automated Debt Raising and Recovery System Implementation*, as this follows up on the implementation of recommendations made by the Office in our 2017 own motion investigation¹. A number of other reports from this Office capture agencies' progress on earlier findings, including in relation to our role in law enforcement oversight. All of our public reports can be found on our website.
- 1.2. The reports included in this report are listed below.

Table 1—Reports within scope

Reports within scope	Agency	Publication date
<i>Bupa Health Insurance Hospital Policy Changes</i>	Bupa Health Insurance	June 2018
<i>Delays in processing of applications for Australian Citizenship by conferral</i>	Department of Home Affairs	December 2017
<i>Investigation into the circumstances of the detention of Mr G</i>	Department of Home Affairs	April 2018
<i>Preventing the immigration detention of Australian citizens</i>	Department of Home Affairs	December 2018
<i>Investigation into delays in processing inbound Containerised Sea Cargo</i>	Department of Home Affairs and Department of Agriculture	May 2018
<i>Administration of reviews under the National Disability Insurance Scheme Act 2013</i>	National Disability Insurance Agency	May 2018
<i>Investigation into the actions and decisions of the Department of Veterans' Affairs in relation to Mr A</i>	Department of Veterans' Affairs	July 2018

¹ These reports can be accessed here: <https://www.ombudsman.gov.au/publications/reports/investigation>

- 1.3. This report considers the work undertaken by agencies after the Office finalised its investigation and published its report. The Office made 61 recommendations in the seven investigation reports covered, 55 of which were supported in full, four which were supported in part and two which were acknowledged. This report finds that 54 of the 55 recommendations supported in full have been either implemented or partially implemented. This report notes the progress of agencies against those recommendations supported in part or acknowledged. We acknowledge that since finalising this report two more recommendations that were supported in full have been implemented by the Department of Home Affairs (see Chapters 3 and 4).

Figure 1—Summary of recommendations



- 1.4. The Office will continue to oversee the administrative actions and decisions of the agencies covered by this report through our ongoing monitoring of issues, including through complaints received by the Office and liaison with the agencies.
- 1.5. To increase the transparency of our work and deliver greater accountability to the public, the Ombudsman has decided it is in the public interest to publish this report under s 35A of the *Ombudsman Act 1976* (Ombudsman Act).

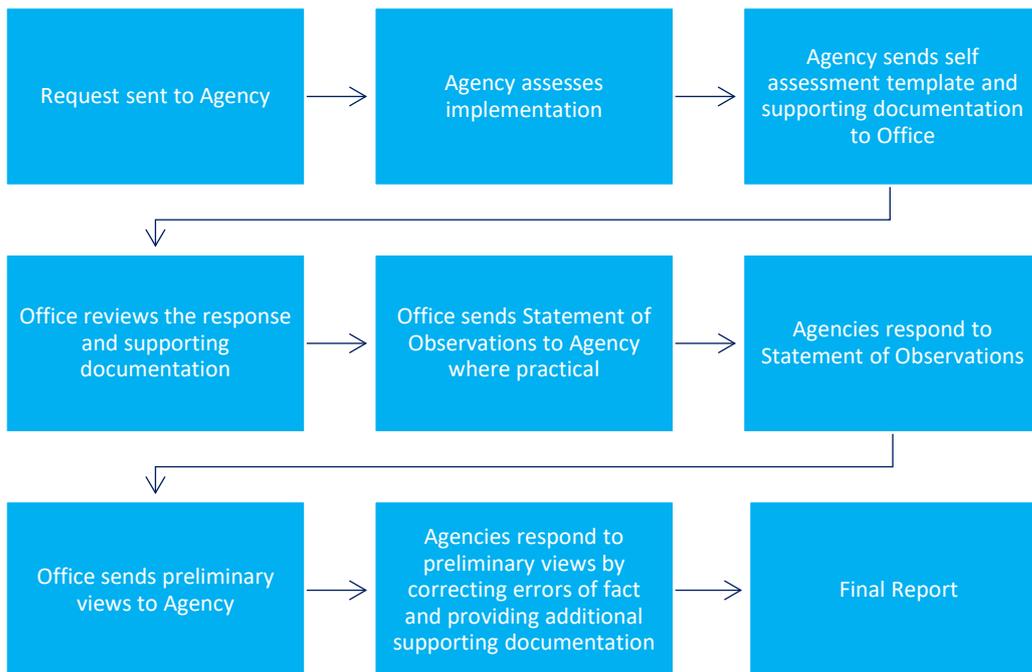
METHODOLOGY

- 1.6. In July 2019, the Ombudsman wrote to the five agencies covered by this report to formally request information about the implementation of recommendations. The Ombudsman made this request for information using his powers under sections 8 and 15(4) of the Ombudsman Act. The letter included a self-assessment template and a request for supporting documentation.
- 1.7. The Office analysed the self-assessment and supporting documentation provided by the agencies. In many cases additional supporting documentation was requested, asking further questions and consulting with agencies to clarify the Office’s understanding. The Office took measures to advise agencies of the level of assurance required by the Office. Where practical, the Office provided agencies with a statement of observations, setting out our understanding of the facts based on the information provided to us by the respective

agencies. We invited the agencies to respond. Following consideration of responses the Office sent draft preliminary views and invited agencies to correct errors of fact and provide additional documentation to support their self-assessment.

- 1.8. The Office adopted this self-assessment approach as it recognises agencies have their own internal processes for monitoring implementation of recommendations in public reports and in many cases considerable work had already been undertaken to implement the recommendations made.
- 1.9. While the Office has engaged extensively with agencies to obtain a high level of confidence about the implementation of our recommendations, the Office cannot provide complete assurance about an agencies' future adherence to improved processes and policies in day to day administration and operational activities. Where possible, the Office has sought to obtain information that demonstrates the practical implementation of a recommendation. For example, where an agency has changed or implemented a policy, the Office has sought assurance the policy is captured in procedural instructions, has been communicated to relevant officers and training has been delivered where appropriate.
- 1.10. In accordance with the principles of procedural fairness and the Office's standard practices, agencies were provided with the opportunity to correct errors of fact and to provide a formal response to the report. These responses are included in the appendix.

Figure 2—Methodology



PART 2: BUPA HEALTH INSURANCE

Bupa Health Insurance Policy Changes

- 1.11. In late February 2018, Bupa Health Insurance (Bupa) announced significant changes to its policies affecting consumers with basic and mid-level hospital policies, and to its medical gap scheme on all hospital policies. This was in conjunction with its 3.99 per cent average premium increase announcement. The Office was approached by the Minister for Health, the Hon. Greg Hunt MP, as well as members of the public, with respect to the two most significant policy changes—restrictions becoming exclusions and new conditions on medical gaps.
- 1.12. Bupa advised the Office that these changes would affect a large number of policy holders. As a result, the Office focussed its own motion investigation on these policy changes and the potential effect on consumers.
- 1.13. The Office’s own motion investigation report was published in June 2018 and made two recommendations, both of which Bupa accepted.

Recommendation 1: That Bupa carefully review the appropriateness and effectiveness of its first communication of February 2018 to policyholders. The Office has previously provided advice to insurers about making policy changes in its PHIO Quarterly Bulletin 69 and the ACCC has provided guidance in its 2014–15 report on the subject of notifying policy changes.

- 1.14. The Office considers this recommendation implemented. Bupa advised the Office it has completed a formal review of the appropriateness and effectiveness of its communication and identified root causes. Several measures and initiatives intended to improve communication with members were implemented as a result of the review.

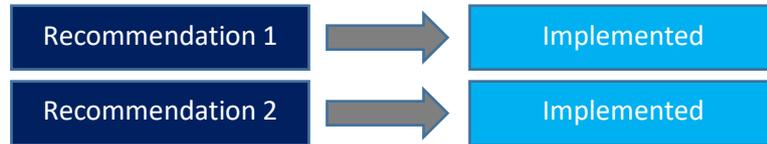
Recommendation 2: The next communication to policyholders should give increased prominence to the detrimental changes and provide consumers with clear information that they need to take action before 1 July 2018 if they wish to maintain their current level of health insurance benefits.

The Office is able to provide comments and suggestions on proposed policy change communications. The Commonwealth Ombudsman also investigates and reports on complaints about health insurance communication as part of its complaint investigation function.

- 1.15. The Office considers this recommendation implemented. The Office has reviewed documentation which demonstrates that in subsequent communication with policy holders, there was increased prominence of the detrimental changes and consumers were provided with clearer information about what they needed to do to maintain their level of cover. In addition, the deadline of 1 July 2018 was extended to 1 September 2018.

SUMMARY

1.16. On the basis of our analysis of Bupa's self-assessment and supporting documentation, the Office considers both recommendations implemented.



PART 3: DEPARTMENT OF HOME AFFAIRS

- 1.17. The Office published four public reports about the administrative actions of the Department of Home Affairs (the department) between July 2017 and June 2019:
- *Delays in processing applications for Australian Citizenship by conferral*
 - *Investigation into the circumstances of the detention of Mr G*
 - *Preventing the immigration detention of Australian citizens*
 - *Investigation into delays in processing inbound Containerised Sea Cargo.*
- 1.18. Over the same period, the department improved its governance arrangements for centrally tracking the implementation of recommendations made by the Office in our investigation reports.
- 1.19. The *Investigation into delays in processing inbound Containerised Sea Cargo* made one recommendation and one joint recommendation to the then Department of Agriculture and Water Resources (now Department of Agriculture, Water and the Environment).

Delays in processing applications for Australian Citizenship by conferral

- 1.20. In July 2016, the Office commenced an own motion investigation into the then Department of Immigration and Border Protection's processing of applications for Australian citizenship by conferral that required enhanced identity and integrity checks. This was in response to increasing complaint volumes to the Office from people who were subject to enhanced integrity and identity checks. The Office published its investigation report in December 2017, making four recommendations to the department. The department accepted all four recommendations.

Recommendation 1: The Ombudsman recommends the department continue its efforts to ensure the Australian Citizenship Instructions provide adequate information for delegates on how to be satisfied of an applicant's identity; the thresholds to be met to enable consistent decision-making and to give delegates confidence to make a decision.

- 1.21. The Office considers this recommendation implemented. The department advised it has finalised and published the 'Citizenship Policy Instruction: Assessing Identity under the Citizenship Act' to the department's internal database. The Office has reviewed the instruction, which provides guidance on how to assess a person's identity according to the department's three pillars of identity—biometrics, documents and life story. The instructions provide guidance on the legal requirements and related policy that apply when undertaking an assessment of a person's identity. The instruction guides decision-makers on assessing the consistency of evidence collected across the three pillars and how much weight to give individual pieces of evidence where there is conflicting information.

Recommendation 2: The Ombudsman recommends the department continues to develop the Australian Citizenship Instructions to include more information about how to assess and be satisfied that an applicant is of good character, as well as the development of an internal instruction (not for public release) when considering protected intelligence information and allegations, as opposed to criminal convictions. The department should provide us with a copy of both instructions once complete.

- 1.22. The Office considers this recommendation partially implemented. The department advised it has developed the 'Citizenship Policy Instruction: Assessing Character under the Citizenship Act'. The Office has reviewed the instruction which provides guidance about when a decision-maker must consider good character and the meaning of good character. The instruction also includes discussion of case law, applied examples, legislative requirements, factors that must be taken into account, weighting information and natural justice considerations. The Office has also reviewed a draft of the procedural instruction, 'Guide to making intelligence informed visa and citizenship decisions'. The department has advised this instruction is intended to provide support and guidance to visa and citizenship decision-makers, to use intelligence information whilst affording natural justice to applicants. The Office would expect to see this instruction finalised and published on the department's internal database to consider the recommendation implemented.

Recommendation 3: The Ombudsman recommends the department continues to develop the Australian Citizenship Instructions to include information about determinations made under section 26(3) of the *Australian Citizenship Act 2007* and lawful decision-making, and that it provides us with a copy of the revised instructions once complete.

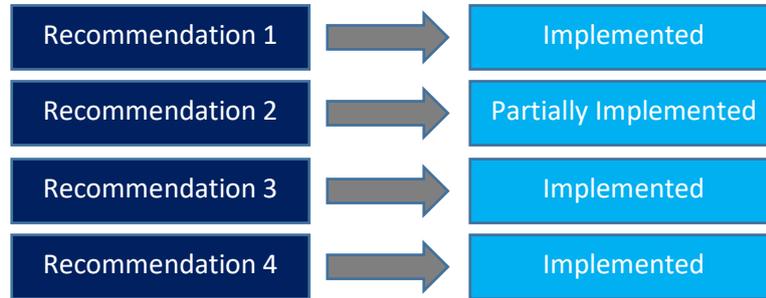
- 1.23. The Office considers this recommendation implemented. The department has developed the following two citizenship policy instructions: 'Cancellation of Approval' and 'Delay in Making the Pledge and Decision Making under the Citizenship Act'. The Office has reviewed these instructions, which include information about how determinations under s 26(3) of the *Australian Citizenship Act 2007* apply and the general principles of good decision-making, including assessing the evidence.

Recommendation 4: The Ombudsman recommends the department continue its efforts to implement the capability developments it has envisaged in its Identity Strategy, as this may most assist the citizenship program to manage its backlogs.

- 1.24. The Office considers this recommendation implemented. The Office has reviewed the updated 'Australian Citizenship Ceremonies Code 2019' which now provides guidance on how to identify an individual at a conferral ceremony. The Office notes this Code was approved by the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs on 23 August 2019 and implemented on 19 September 2019. The department advised the Office it delivered facial recognition training to ceremonial officers between July 2018 and June 2019. The Office has reviewed training materials on 'Australian Citizenship Ceremonies and Identity Verification/Imposter Detection' and evidence of delivery of these training sessions to 248 council officers across 158 councils in Darwin, Launceston, Hobart, Perth, Adelaide, Sydney, Brisbane and Melbourne. The department advised it has undertaken additional work to explore online delivery of this training to ceremonial officers in regional and remote locations.

SUMMARY

1.25. On the basis of our analysis of the department’s self-assessment and supporting documentation, the Office considers three recommendations implemented and one recommendation partially implemented.



Investigation into the circumstances of the detention of Mr G

1.26. On 30 April 2018, the Office released its report: *Investigation into the circumstances of the detention of Mr G*. The investigation looked at the circumstances of the detention of Mr G, a national of Country A, who was held in immigration detention for four years before being involuntarily removed from Australia in 2017. Mr G was originally detained in 2013 when his partner visa application was refused and his associated bridging visa was cancelled.

1.27. In July 2017, as part of the department’s process for preparing for Mr G’s removal from Australia, it determined the notification of the refusal of his partner visa was defective and he in fact still held a valid visa. He was released from detention and then on the same day his visa was cancelled because of his conviction for criminal offences committed while in detention. He was re-detained until his removal from Australia. In response to the Office’s investigation, the department advised an error in the partner visa refusal notification process became known to the department in March 2014, five months after Mr G’s original detention. The department undertook a review of the cases that may have been affected, but the error in Mr G’s case was not identified, nor was it identified in the subsequent monthly reviews of the case.

1.28. The Office made four recommendations. The department accepted all of the report’s recommendations, noting that the implementation of recommendations one, two and three will depend on the outcome of ongoing litigation relating to other individuals that raised similar issues.

Recommendation 1: The Ombudsman recommends that the department review, with the assistance of external legal counsel if necessary, how it maintains the reasonable suspicion that a person in immigration detention is an unlawful non-citizen.

1.29. The Office considers this recommendation implemented. The department advised us the ‘Status Resolution Reasonable Suspicion Framework’ replaces the ‘Detention Related Decision Making Control Framework’. The department advised that it had developed the status tool, which is designed to provide a holistic view of an individual’s circumstances in order for an officer to form a reasonable suspicion the individual in question, is an unlawful non-citizen.

- 1.30. The Office has reviewed the new framework, which includes reasonable suspicion as a new control point and sets out the proposed model for officers to form and transfer reasonable suspicion throughout an individual's detention. The Office has reviewed the 'status tool'.

Recommendation 2: The Ombudsman recommends that the department update its relevant policies and procedures in light of the review in Recommendation 1 to ensure the ongoing lawfulness of a person's detention is regularly reviewed, and the steps taken to maintain the suspicion that the detainee is an unlawful non-citizen are appropriately recorded.

- 1.31. The Office considers this recommendation partially implemented. The department advised us it has taken additional steps since August 2019, to update its policies and procedures to support officers and ensure the ongoing lawfulness of a person's detention is regularly reviewed. The Office has reviewed the 'Reasonable Suspicion Framework' and 'status tool'. The department advised the 'Establishing and Maintaining Reasonable Suspicion Procedural Instruction' is currently in development. In addition, the department has advised it has developed comprehensive explanatory notes on the use of the 'status tool'. The department also advises, once these draft documents have been finalised and approved, training materials will be developed to assist officers to use the new procedural documents. To assess this recommendation as implemented, the Office would expect the new procedural instruction and suite of training to be implemented.

Recommendation 3: The Ombudsman notes that the department has commenced a formal legal review of the detention of Mr G and recommends that if this review, taking into account the outcome of any review mentioned in Recommendation 1, forms the opinion that his detention was unlawful, it take steps, informed by precedent, to offer Mr G appropriate redress, for example:

- an apology
- a waiver of any debt to the Commonwealth incurred by his removal from Australia, and/or
- an appropriate amount of compensation.

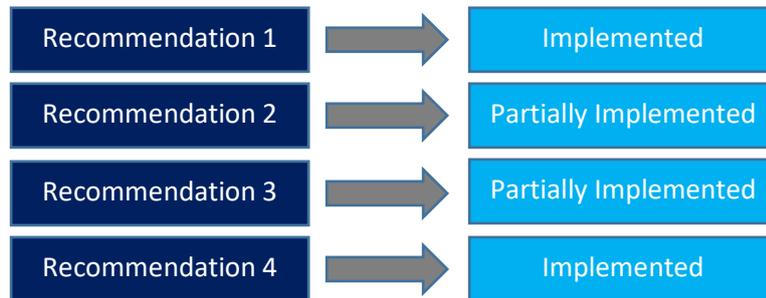
- 1.32. The Office considers this recommendation partially implemented. The department has advised the Office it has completed a formal legal review into the lawfulness of Mr G's detention and considers it is not appropriate to write to Mr G. The Office is satisfied the legal review has been finalised, but considers it unfortunate the department is unable to advise Mr G of the outcome of the review.

Recommendation 4: The Ombudsman recommends that the department, if it has not already taken this step, identify all cases affected by the errors identified in March 2014 in the notification of the refusal of Partner visa applications. It should then take appropriate measures to ensure that such refusals have been correctly notified and the visa status of affected individuals has been regularised.

- 1.33. The Office considers this recommendation implemented. The department advised the Office it completed a review of the detention population on 9 May 2018 ('Sweep 2'). The department had previously conducted a review of the detention population in March 2014 ('Sweep 1') to identify individuals affected by the identified errors in the notification of the refusal of partner visa applications, however Mr G's case was not identified. The Office has reviewed the methodology and scope applied to Sweep 2 and considers that, if applied correctly it would address the administrative deficiency in Sweep 1.

SUMMARY

1.34. On the basis of our analysis of the department’s self-assessment and supporting documentation, the Office considers two recommendations have been implemented and two have been partially implemented.



Preventing the immigration detention of Australian citizens

1.35. In March and April 2017, 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 was provided to the department in June 2017. It contained four recommendations which the department accepted in full. To provide assurance the department had effectively implemented the recommendations of the Thom Review, the Office commenced an own motion investigation in February 2018. The Office released its report in December 2018 making a further 15 recommendations to the department. The department accepted all recommendations except recommendation 11, which it accepted in part.

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.

1.36. The Office considers this recommendation implemented, noting the need for ongoing training. The Office has reviewed the job profiles and professional development pathways for Status Resolution Officer, Field Operations, Visa and Citizenship Decision-Maker and Removals. The Office has also reviewed course materials for refresher training for ‘Bridging Visa E decisions’ and ‘Determining Immigration Status and Notification Skills’, which include updates on legislative and policy changes. The Office has reviewed documentation that shows the department is recording details of staff who have completed the Determining

Immigration Status Training (DIS) and identified staff who require DIS training. The department also provided a training calendar for 2020 which included six DIS sessions.

Recommendation 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.

1.37. The Office considers this recommendation implemented. The Office has reviewed the citizenship triage questions included in the Detention Client Interview. The department has advised the Office that Citizenship Operations have cleared the citizenship questions.

1.38. The department advised it has conducted an implementation review of the citizenship tool. The Office has reviewed documentation recording feedback from the department's review.

Recommendation 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.

1.39. The Office considers this recommendation implemented. The Office has reviewed the National Character Consideration Centre (NCCC) 'Record Keeping' Standard Operating Procedure (SOP) and correlating's 501 (3A) Mandatory Cancellation Control Point' document. The NCCC 'Record Keeping' SOP refers to the mandatory control point document that requires users to complete the triage checklist if there is any indication the citizenship status listed in departmental systems may be incorrect. Where any questions in the checklist are answered in the affirmative, the officer is required to escalate the case to a supervisor and Citizenship Helpdesk.

Recommendation 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 Australian Border Force (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.

1.40. The Office considers this recommendation implemented. The Office has reviewed correspondence demonstrating the NCCC sought feedback from ABF field operations, the Detention Review Manager and Status Resolution on the s501 (3A) Mandatory Control Point document. The Office has also reviewed the Mandatory Control Point document which supports documentation of NCCC decisions in more detail. The Office observes there are additional free text fields allowing for officers to provide detailed documentation of their decision-making.

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.

- 1.41. The Office considers this recommendation partially implemented.² The Office has reviewed the 'Located Person Interview' (LPI) form and accompanying SOP, which includes mandatory questions about a person's country of birth and citizenship. The LPI form and SOP do not explicitly caution officers against relying solely on information in departmental systems. The ABF has advised it will review the SOP and form to incorporate wording which explicitly cautions against relying solely on information in departmental systems.
- 1.42. The department has provided the Office with supporting documentation to show evidence of the department's compliance with the LPI. The department has advised Field Operations Regional Commands undertook the first review of LPIs completed in March 2019 in response to recommendations 5(b) and 11(e). The Office has been provided a copy of the LPI 'Master Process Brief' developed as a key outcome in response to implementing recommendations 5b) and 11e). To assess this sub-recommendation as implemented the Office would expect to see the scope, methodology and outcomes of a review of the LPI.

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.

- 1.43. The Office considers this recommendation partially implemented. The department has advised it is undertaking various activities to implement this recommendation and the Office has been provided with a working document for the 'Managing Non-Citizens in Criminal Detention Procedural Instruction'. The department notes final clearances are being sought on this procedural instruction.
- 1.44. The Office would expect to see the procedural instruction finalised and published on the department's internal database to consider this recommendation implemented.

² Subsequent to our finalisation of the report, the Department provided further information of its progress as part of its formal response (see Appendix). The Office now considers this recommendation implemented.

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'.

- 1.46. The Office considers this recommendation implemented. The Office has reviewed the updated 'Policy and Procedure Control Framework Procedural Instruction' which requires document owners to ensure key stakeholders and end users are advised about updated documents and provide them with effective guidance on changes. The department advised 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' SOP have been published on the Policy and Procedure Control Register. The Office observes, by publishing the documents on the register, the department has taken steps to make staff aware of these new documents.

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.

- 1.47. The Office considers this recommendation implemented. The Office has reviewed documentation to show the department will communicate the outcomes of the Thom investigation to staff and how this can be adapted for other reviews. The department has advised steps have been taken to implement these strategies.

Recommendation 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 not inappropriate 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.

- 1.48. The Office considers this recommendation implemented. The Office has reviewed the new 'Reasonable Suspicion Framework' and 'status tool'. The 'Reasonable Suspicion Framework' sets out the proposed model for Detention Review Managers and Status Resolution Officers to form and transfer reasonable suspicion throughout an individual's detention. The 'status tool' is designed to provide a holistic view of an individual's circumstances in order to form a reasonable suspicion the individual in question is an unlawful non-citizen.

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.

- 1.49. The Office considers this recommendation implemented. The Office has reviewed the department's SOP: Amending or updating citizenship records where there is no application to consider.

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.

- 1.50. The department did not accept part a of this recommendation. The Office considers the remaining parts of the recommendation implemented.
- 1.51. The Office has reviewed the 'Status Resolution Officer Procedural Instruction' which provides guidance to Status Resolution Officers (SROs) on their core responsibilities, including but not limited to preparing and conducting interviews. It also includes guidance on the tools and contact points available to a SRO, to support the management of the case and areas for collaboration. The instruction also sets out an expectation that managers must regularly observe and coach their staff while conducting interviews.
- 1.52. The Office has reviewed the new risk matrix for use by Detention Review Managers. The department advised the matrix and additional risk-based quality control measures will be incorporated in the new 'Detention Review Manager Procedural Instruction'. The Office notes there is scope for the department to improve its quality control processes by releasing the draft 'Detention Review Manager Procedural Instruction' to provide consistent guidance to staff.
- 1.53. The department provided the Office with supporting documentation to show evidence of the department's compliance with the Located Person Interview (LPI) as set out in the response to recommendation 5 b). The department provided a copy of the Operational Notification and the Interviewing Located Persons SOP. The Office notes that a quality assurance process has been implemented and feedback is provided to officers who do not comply with the standard operating procedure.

Recommendation 12: The department should develop a risk-based process for triaging, prioritising and allocating initial detention reviews to Detention Review Managers.

- 1.54. The Office considers this recommendation implemented. The Office has reviewed the risk matrix for use by Detention Managers. The department has advised the matrix and

additional risk-based quality control measures will be incorporated in the new 'Detention Review Manager Procedural Instruction'.

Recommendation 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.

1.55. The Office considers this recommendation implemented. The Office has reviewed the National Character Consideration Centre's quality control checklist and the National Character Consideration Centre's Record Keeping Standard Operating Procedure for s501 mandatory cancellations, which prompts team leaders to use the checklist and file it appropriately.

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.

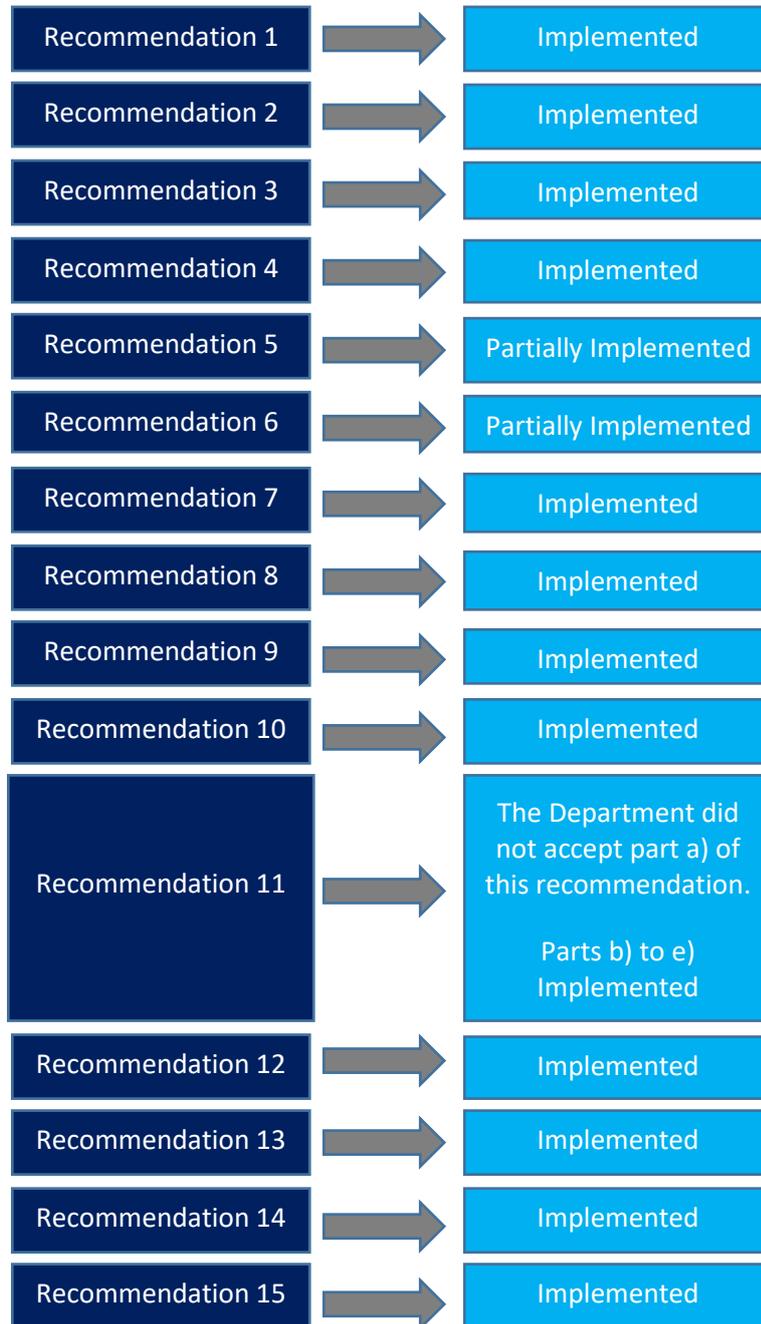
1.56. The Office considers this recommendation implemented. The Office has reviewed the 'Immigration and Citizenship Services Line 1 Assurance Procedural Instruction' and the 'Evidence of Quality in Performance' (EQuIP) tool, as the system for recording and reporting on Line 1 quality assurance activities in the Immigration and Visa Services Division.

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.

1.57. The Office considers this recommendation implemented. The department has advised a Cross Program Working Group has been established to coordinate the implementation of responses to issues identified within the 'Detained and later released as Not Unlawful' reports. The Office has reviewed the group's Terms of Reference and agendas for meetings held in 2018–19 and notes it includes a range of stakeholders, including visa program management, cancellations, status resolution, ABF and other enabling areas which can help improve mechanisms, guidelines and training. The Office has also seen details of the initiatives to improve quality of controls/processes and their status which are discussed at the meetings.

SUMMARY

1.58. On the basis of our analysis of the department’s self-assessment and supporting documentation, the Office considers the department has implemented thirteen recommendations and partially implemented two recommendations.



PART 4: DEPARTMENT OF HOME AFFAIRS AND THE DEPARTMENT OF AGRICULTURE

Investigation into delays in processing inbound Containerised Sea Cargo

- 1.59. In May 2017, the Office commenced an own motion investigation into the administration of powers under the *Customs Act 1901* by the then Department of Immigration and Border Protection's operational arm, the Australian Border Force (ABF). Prior to commencing this investigation, the Office had received complaints and concerns about the border control area of the ABF including the reasonableness and consistency of the ABF's handling of the clearance of inbound containerised sea cargo.
- 1.60. The Office published its report in May 2018, making 10 recommendations in total—eight to the Department of Home Affairs (the department), one to the Department of Agriculture (previously the Department of Agriculture and Water Resources) and one joint recommendation to both departments. Of the eight recommendations to the Department of Home Affairs, the department supported five recommendations in full and three in part. The Department of Agriculture acknowledged the two recommendations related to its role.

Recommendations for the Department of Home Affairs

Recommendation 1: The department increase x-ray capacity at the smaller ports to increase inspection capacity and reduce inspection timeframes and the need to physically unpack containers and pallets.

- 1.61. The Office considers this recommendation has not been implemented. While supporting this recommendation, the department advised its implementation is subject to funding approval and is part of its proposed trade compliance and modernisation agenda. The department advised timing for the government's consideration of this agenda is to be confirmed but is expected to be within the next 12 months.
- 1.62. To assess this recommendation as implemented, the Office would expect to see implementation of relevant parts of the department's proposed trade modernisation agenda.

Recommendation 2: The ABF, in consultation with industry, develop and make publicly available on its website plain English guidance information on the potential messaging capabilities of the Integrated Cargo System when used in conjunction with appropriate software.

- 1.63. The Office considers this recommendation partially implemented. The department advised it is in the process of modernising and refreshing the Integrated Cargo System, and is expected to roll out improvements in early 2020. The Integrated Cargo System improvements are scheduled for rollout in June 2020, with further improvements to the Application Programming Interface planned for initial release in December 2020.
- 1.64. To assess this recommendation as implemented, the Office would expect the department to implement the Integrated Cargo System improvements and to see documentation explaining how the improvements address the recommendation.

Recommendation 3: Noting the difficulty the department has in meeting targets, combined with increased delays in the processing of containerised sea cargo and an increasing number of complaints, the department consider one or more of the following:

- Increasing staffing levels at Container Examination Facilities (CEF) by placing a lower operational priority on another activity.
- Proactively adjusting the number of containers inspected in line with operational capacity by reducing the number of priority four (4) containers inspected.
- Better utilising the surge model at CEFs to increase inspection capacity in periods of peak work load or following periods where the number of containers inspected has had to be temporarily reduced to cater for other operational priorities.
- Increasing the pool of ABF officers who are trained in the inspection and examination technologies employed at CEFs.

1.65. The department supported this recommendation in part. The department said it would review the funding model and performance measures as part of its trade modernisation agenda; and refine the ABF's existing surge models based on the findings of the report.

1.66. The department has advised that it:

- is not in a position to increase staffing levels at the CEFs by placing a lower priority on other activities
- continues to direct resources to the areas of highest areas of priority and risk
- is proactively adjusting the number of containers inspected in line with operational capacity by reducing the number of priority four containers inspected
- has undertaken a complementary body of work to improve effectiveness of its intelligence-informed, risk-based approach to selecting sea cargo containers for inspection.

1.67. The ABF is undertaking a complementary body of work (Alternative Intervention Approach) and is considering more proactive targeting methodologies.

Recommendation 4: The department:

- introduce service standards for container inspection based on the three day free storage period that require the majority of containers selected for inspection to be processed within three days, unless a detection has been made
- maintain annual statistics on the time taken to inspect containers.

1.68. The department supported this recommendation in part. The department advised it did not support the introduction of a three-day service standard for security reasons. The department also advised it did not have the data to report against the end-to-end process for cargo clearance, but would consider changes needed to allow this reporting, subject to a cost-benefit analysis.

Recommendation 5: The department improve complaint handling by providing timely and detailed responses to complainants utilising subject matter experts.

- 1.69. The Office considers this recommendation implemented. The department has provided a copy of the Client Feedback Standard Operating Procedure, which has been updated to include a process for the Global Feedback Unit to escalate and resolve matters where there is a lack of clarity regarding the most appropriate area to respond to a complaint. The Department also provided a Referral Guide which lists agreed contact officers at Executive Level one, Executive Level two or above, in the Responsible Business Areas, assisting Global Feedback Unit officers to identify the most appropriate contact person to refer client feedback.
- 1.70. The procedures and guide provided by the department appear to demonstrate a framework which would assist officers to provide more timely and detailed responses to complainants, using subject matter experts. If followed correctly, the procedures and guidance would improve processes by providing more timely and detailed responses to complainants.

Recommendation 6: In cases where the ABF has not been able to process containers efficiently, consideration should be given to advising complainants of compensation schemes available under the *Public Governance, Performance and Accountability Act 2013*.

- 1.71. The Office considers this recommendation partially implemented.³ The Office reviewed two recent examples of correspondence to complainants which included a link to information about compensation schemes. In the absence of further supporting documentation (procedural instructions, training materials or correspondence templates), this is insufficient to provide assurance the department has implemented this recommendation. To assess this recommendation as implemented, the Office would expect to see updated procedural instructions, training material and correspondence templates to support officers in providing advice to complainants of available compensation schemes.

Recommendation 7: The ABF to work with industry to improve its methodologies for asbestos risk assessment to reduce the repeated targeting of importers with a history of compliance, except where new information suggests such targeting is appropriate.

- 1.72. The department supported this recommendation in part, noting the actions it takes to review its risk assessment approach and working with industry, but explaining that ‘the prevalence of asbestos in common goods and commodities necessitates a sustained effort in ensuring this prohibited import is prevented from entering Australia.’
- 1.73. The department advised it has improved its methodology for assessing asbestos risk and to reduce repeat targeting of importers with a history of compliance. The response provided links to information published on the department’s website as ‘evidence of working with industry to educate and manage risk’ and ‘demonstrating how the department has improved methodology’.

³ Subsequent to our finalisation of the report, the department provided further information of its progress as part of its formal response (see Appendix). The Office now considers this recommendation implemented.

Recommendation 8: The ABF review its website to increase its functionality and user-friendliness for those seeking to import freight by sea and ensure that information and links are clearly laid out and updated on a regular basis.

- 1.74. The Office considers this recommendation partially implemented. The department has advised the Office it is developing a formal schedule which will support the implementation of this recommendation.
- 1.75. To assess this recommendation as implemented, the Office would expect the department to implement the proposed website enhancements and to see documentation demonstrating how the enhancements address this recommendation.

Joint recommendation for the Department of Home Affairs and the Department of Agriculture

Recommendation 9: The department and the Department of Agriculture and Water Resources increase collaboration for container inspections and where possible, conduct inspections in the same location and at the same time.

- 1.76. The Department of Home Affairs supported this recommendation. The Department of Agriculture and Water Resources acknowledged the recommendation, welcoming increased collaboration with the Department of Home Affairs, but noting there may be limited opportunities for conducting inspections at the same time and place as the Department of Home Affairs due to the operation of the *Biosecurity Act 2015*.
- 1.77. Both departments advised the Office that they continue to work together and collaboration will be strengthened by proposed programs, including as part of the Department of Home Affairs' trade modernisation agenda.
- 1.78. The Department of Home Affairs noted it is working collaboratively with the Department of Agriculture in a feasibility study which will examine alignment of Agriculture's approved arrangements and the Home Affairs' Portfolio's Australian Trusted Trader and Known Consignor scheme.
- 1.79. The Department of Agriculture explained how both departments continue to use a range of methods to align and coordinate efforts to modernise the cross-border trade and travel system. This includes working level liaison and meetings between the Secretary and the Commissioner, relevant Deputy Secretaries/Deputy Commissioners/First Assistant Secretaries and Group Managers.

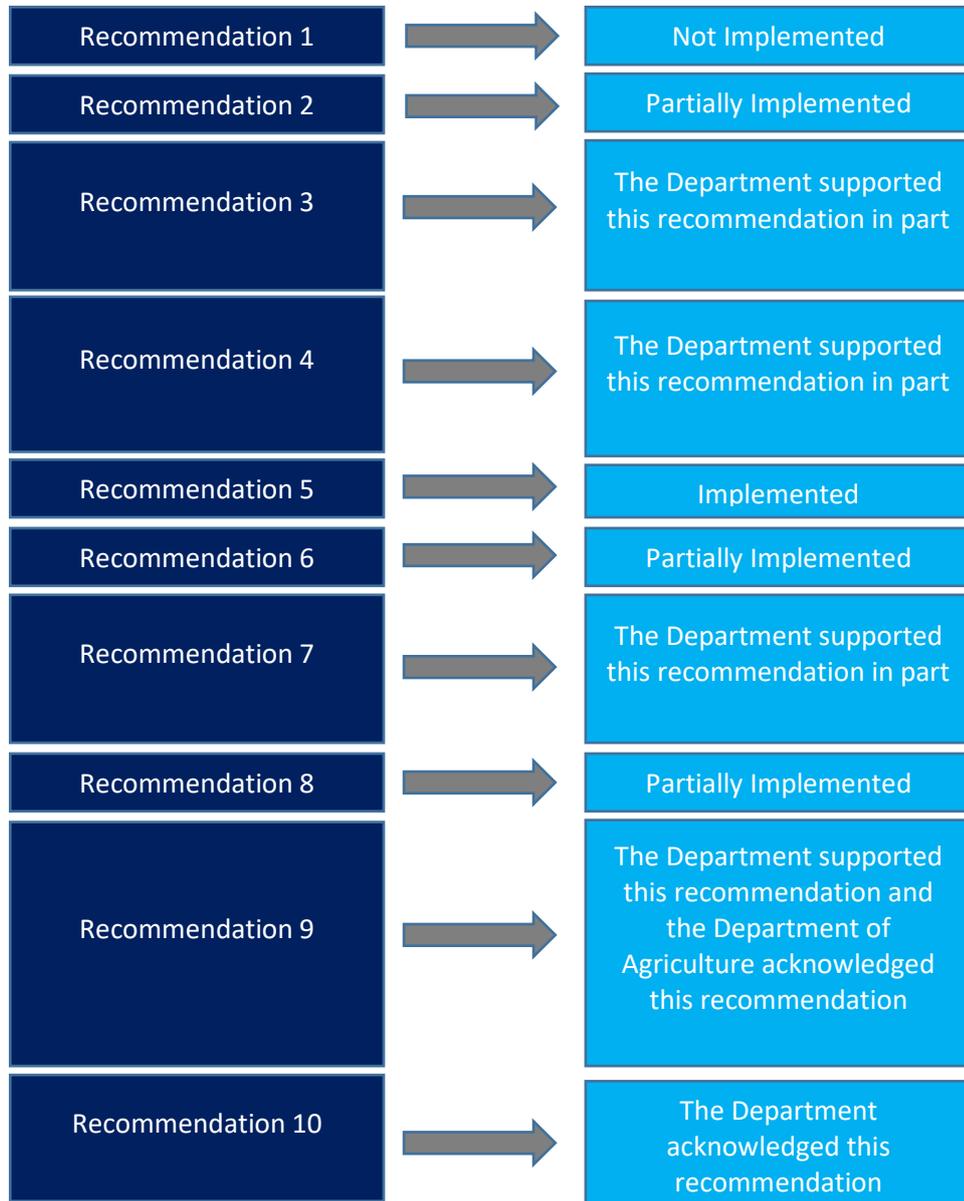
Recommendation for the Department of Agriculture

Recommendation 10: The Department of Agriculture and Water Resources revise its cost recovery model to ensure importers are charged the same for the assessment of identical import declarations based on the real cost of proficient operational activity.

- 1.80. The Department of Agriculture acknowledged the recommendation, noting that it regularly reviews and updates cost recovery charges in accordance with Australian Government Cost Recovery Guidelines. The Department of Agriculture advised it would consider the appropriateness of the current cost recovery model for import declaration assessments at the next cost recovery review, scheduled for 2021 and the Ombudsman's recommendation will be considered as part of this review.

SUMMARY

On the basis of our analysis of the self-assessment and supporting documentation provided by the Department of Home Affairs and the Department of Agriculture, the Office considers one recommendation implemented, three recommendations partially implemented and one recommendation not implemented. The Office notes the progress both departments have made against a further five recommendations, which were either supported in part or acknowledged.



PART 5: NATIONAL DISABILITY INSURANCE AGENCY

Administration of reviews under the National Disability Insurance Scheme Act 2013 (NDIS Act)

- 1.81. The Office published its report *Administration of reviews under the NDIS Act* in May 2018. Between July 2016 and January 2018, the Office received 400 complaints that were, at least in part, about the National Disability Insurance Agency's (NDIA) administration of reviews. This represented 32 per cent of all complaints made to the Office about the NDIA during this period.
- 1.82. The report identified systemic issues with the NDIA's handling of reviews including significant delays in decision-making, gaps in staff training and guidance, and poor communication with NDIS participants. The Ombudsman made 20 recommendations aimed at improving the NDIA's administration of reviews, all of which were accepted by the NDIA.
- 1.83. Complaints about NDIS reviews and issues with delays more generally have continued to feature in the NDIA complaints received by the Office. In 2018–19 complaints about review made up 33 per cent of the NDIA complaints received.
- 1.84. In 2019, the Australian Government committed to establish and legislate a new NDIS Participant Service Guarantee (PSG), which aims to set minimum timeframes for key NDIS processes including for plan and internal reviews.

Recommendation 1: Establish standard operating procedures requiring staff to acknowledge review requests within a specified timeframe. Acknowledgement should include confirmation of the type of review (internal review or unscheduled plan review) requested, information about next steps, an expected timeframe for completion and a point of contact for enquiries.

- 1.85. The Office considers this recommendation partially implemented. The Office notes the NDIA has established procedures for staff to acknowledge plan and internal review requests within 14 days of the request.
- 1.86. However, it is unclear whether young people in residential aged care who seek an internal review receive acknowledgement of their request, and if so, in what timeframe. The Standard Operating Procedure (SOP) indicates these review requests are managed by another part of the NDIA.
- 1.87. The SOP also states where a request is more than 75 days old, no letter should be sent and a phone call made to the participant or their representative. We are concerned about the possibility some participants do not receive the letter within the required timeframe and could wait up to 75 days or more for the NDIA to contact them.
- 1.88. To consider this recommendation as implemented the Office would expect to see evidence of standard operating procedures requiring staff to acknowledge internal review requests of young people in aged residential care, or the timeframe such acknowledgement should fall within.

Recommendation 2: Establish standard operating procedures to guide contact centre, complaints and frontline staff in responding to requests for updates on review requests

- 1.89. The Office considers this recommendation implemented. The Office reviewed NDIA’s enhanced practice guides and standard operating procedures relating to unscheduled plan reviews, which provide guidance for contact centre and frontline staff on how to determine the status of active reviews.

Recommendation 3:

- a) Review its Operational Guidelines on reviews, to require staff to clarify with the participant whether they are seeking an internal review of decision or a reassessment of their plan.
- b) Review decision letter templates to ensure participants are explicitly advised of the type of ‘review’ that has been undertaken and the resulting review rights.

- 1.90. The Office considers this recommendation implemented. The Office reviewed the NDIA’s updated Operational Guidelines, which include a requirement for the NDIA to contact a participant to clarify the nature of their review request and explain their review options. The Office notes the NDIA has also amended review decision letters to include in the subject line the type of decision being made and the type of review that was undertaken. The letters now include a reference to external review rights that are available through the Administrative Appeals Tribunal (AAT).

Recommendation 4: Implement a standard operating procedure requiring staff to advise participants of decisions to conduct plan reviews, either by telephone contact or a letter template. The contact should occur in a specified timeframe and advise the participant of the next step in the review process, an expected timeframe and provide a point of contact for enquiries.

- 1.91. The Office considers this recommendation implemented. The Office reviewed NDIA’s revised SOP—Participant Review Request, Initiate Unscheduled Plan Reviews, as well as its Practice Guide for Scheduled and Unscheduled Plan Reviews, and associated letter templates. The guidance requires the delegate to communicate to the participant within three days the delegate’s decision that a plan review will be undertaken. Call scripts and process documents for the National Contact Centre guide staff to provide a point of contact within the NDIA and advise participants that a decision will be made as soon as possible.

Recommendation 5: Amend the decision letter template to require staff to state explicitly the relevant assessment criteria and explain how the decision maker applied that criteria with specific reference to the request.

- 1.92. The Office considers this recommendation implemented. The Office reviewed copies of revised decision letter templates which provided the assessment criteria used by the decision maker. The NDIA advised it instructs officers to include a link to the specific section of the Operational Guidelines used to support a decision.

Recommendation 6: We note that the Operational Guidelines–Planning (section 15.2) provides four (4) general assessment criteria for determining whether the NDIA will accept a request and each criterion has several parts. The NDIA should incorporate this information into the letter template as appropriate.

1.93. The Office considers this recommendation implemented. The Office reviewed copies of updated letter templates in relation to internal and external review requests. These updated templates now include the general assessment criteria used by the NDIA to determine whether a review request will be accepted.

Recommendation 7: Instead of providing a link to the entire Operational Guidelines, decision-makers should refer the participant to the specific parts relevant to their decision. Alternatively, the decision-maker could provide excerpts from the Operational Guidelines in the letter text or as an attachment.

1.94. The Office considers this recommendation implemented. The Office reviewed the revised review letter templates, which included either a link to, or quotations from specific sections of, the Operational Guidelines or both.

Recommendation 8: Review the information available to Contact Centre and other frontline staff to ensure it provides clear, simple guidance about the review rights that are available for different types of decisions.

1.95. The Office considers this recommendation implemented. The Office reviewed the NDIA's revised practice guides, operating procedures and National Contact Centre process documents in relation to requests for scheduled and unscheduled reviews. These documents included clear information and guidance for staff about the review rights available for different types of decisions, including the timeframe for making an application to the AAT and possible outcomes of reviews.

Recommendation 9: Prioritise the update to the ICT system to override the current manual 'workaround' needed to record internal review decisions.

1.96. The Office considers this recommendation partially implemented. The NDIA advised initial CRM improvements have been made to further enable the changes required to remove manual workarounds. However, the NDIA subsequently advised the mapping of necessary ICT system changes would be completed by December 2019, with an anticipated completion date of December 2020. For this recommendation to be implemented, the Office would expect to see the ICT system change implemented.

Recommendation 10: Pending the ICT update, review the Operational Guidelines and task cards to stress the importance of ensuring only one (correct) letter is sent to participants following an internal review decision.

1.97. The Office considers this recommendation implemented. The NDIA advised the Operational Guidelines and internal work instructions were revised so a single, correct letter template is used to inform participants about the internal review decision. The Office reviewed copies of the revised documents.

Recommendation 11: Update the template to specify that the review is an internal review of a reviewable decision pursuant to s 99 and s 100 of the Act. In addition, the letter should include clear information about how to make a request for review, either within the text or by including an attachment.

1.98. The Office considers this recommendation implemented. The Office reviewed NDIA's revised letter templates used for advising participants that a decision has been made not to conduct an unscheduled plan review. The revised templates include advice to participants that they may seek an internal review of the decision within three months of the decision and information about how to seek an internal review.

Recommendation 12: Include the AAT website address and telephone number in its letter template. Add links to the relevant parts of the Operational Guidelines (such as section 6 of Review of Decisions) and the Act, relevant to the external review process. Alternatively, the NDIA could attach key information as a factsheet or FAQs.

1.99. The Office considers this recommendation implemented. The Office noted the NDIA's revised template letter now includes the website address for the AAT and its telephone number.

Recommendation 13: Review Operational Guidelines and relevant task cards to require staff to issue review decision letters on the date of decision or within a specified period following the decision.

1.100. The Office considers this recommendation implemented. The Office noted the revised Practice Guide—Review of Decisions was updated to include a requirement for the agency to send a decision letter and review report on the date the decision is made.

Recommendation 14: Update Operational Guidelines and task cards to make it clear that plans resulting from an internal review decision are reviewable by the AAT (instead of a further internal review) and communicate this to staff.

1.101. The Office considers this recommendation implemented. The Office reviewed the NDIA's revised Operational Guidelines that now include a statement that 'a participant plan that results from an internal review decision is reviewable by the Administrative Appeals Tribunal'.

Recommendation 15: Review any scripts, task cards or other materials which guide staff and contracted providers' discussions with participants about their review rights to ensure they require staff to: a) make it clear to participants they have a right to seek a review if they are not satisfied with a decision or their circumstances have changed, and b) guide staff to explain that all elements of the participants' plan will be considered in an unscheduled plan review.

1.102. The Office considers this recommendation implemented. The Office reviewed the NDIA's practice guide for unscheduled and scheduled reviews, which makes it clear participants can seek a review if they are not satisfied with a decision or where their circumstances have changed. The Office reviewed the NDIA's updated SOP for initiating unscheduled plan reviews to include a statement that staff should clearly communicate to participants that all elements of the plan will be reviewed as part of an unscheduled plan review.

Recommendation 16: Reference triage principles in sections of the Operational Guidelines or in task cards that specifically focus on triaging reviews.

1.103. The Office considers this recommendation implemented. The NDIA advised it developed and implemented a risk and prioritisation matrix, which has been incorporated into internal instruction documents, including its planner risk assessment document and the review of decision operational guidelines. The Office noted the internal documents also contain guidance on how to receive and manage review requests, including how they should be triaged. The triage principles are outlined in the standard operating procedure for the intake and assessment of a request.

Recommendation 17: Amend the Operational Guidelines and task cards to make it clear to staff that plan reviews must be (at least) allocated within 14 days after being accepted for review, to ensure the agency complies with its legislative obligations.

1.104. The Office considers this recommendation implemented. The Office reviewed copies of internal guidance which highlights the need to facilitate these reviews within 14 days. The NDIA explained to the Office that the review requests that are accepted are allocated to the appropriate service delivery team within three business days of making the decision to grant the plan review.

Recommendation 18:

- a) Obtain legal advice regarding its obligation and/or capacity to decide reviews of plans that have ended by the time a decision maker considers them.
- b) Develop guidance for planners and Local Area Coordinators to consider the content of recent or live review requests from a participant when developing a new plan.

1.105. The Office considers this recommendation implemented. The Office reviewed a number of documents provided in support of this recommendation and is satisfied both parts of the recommendation are implemented.

Recommendation 19: In the immediate term:

- a) Identify a clear course of action and timeframe for clearing the existing backlog, including but not limited to increase resourcing for the national backlog team.
- b) Pending completing of the existing backlog, provide guidance to Contact Centre and other frontline staff about how to communicate likely review timeframes to participants lodging new reviews and participants seeking updates on existing reviews. (This is an extension of the recommendation made under 'acknowledging requests for review')
- c) Make information about current average timeframes for reviews publicly available

1.106. The Office considers this recommendation partially implemented.

1.107. The NDIA advised it has addressed the backlog in s 100 reviews and is on track to complete all lapsed plan reviews by December 2019.

- 1.108. The Office reviewed draft guidance for enquiries relating to s 100 review requests which includes anticipated timeframes for completion. The NDIA further advised it anticipates the proposed Participant Service Guarantee will include legislative timeframes for completing plan reviews. The Office would expect to see guidance to Contact Centre and other frontline staff about how to communicate likely review timeframes to participants lodging new reviews and participants seeking updates on existing reviews to consider this recommendation implemented.
- 1.109. The Office has considered the information released in the COAG Disability Reform Council Quarterly Report for Quarter 2, 2019–20. While the COAG report contains some data on section 48 and section 100 review request timeframes, this does not meet the intent of the recommendation which was to provide participants with clear information on average review timeframes. We note the proposed Participant Service Guarantee is expected to include clear timeframes for completing both plan reviews and internal reviews. The Office would expect to see evidence of participants being provided with clear information on these review times in order to consider this recommendation implemented.

Recommendation 20: In the longer term:

- a) Establish KPIs or agreed service standards for completion of unscheduled plan reviews and internal reviews, and communicate these publicly, and
- b) Develop its data collection capability to boost capacity to analyse review volumes, timeframes, drivers and outcomes and use this intelligence to inform its practice and improve performance.

- 1.110. The Office considers this recommendation partially implemented.
- 1.111. The Office notes the NDIA has established internal KPIs for s 48 and s 100 reviews. The NDIA advised us these KPIs are being considered for inclusion in the proposed Participant Service Guarantee. To consider this recommendation as implemented the Office would expect to see publicly communicated KPIs or agreed service standards for all unscheduled plan reviews and internal reviews.
- 1.112. The NDIA advised us it has developed data which has been used to effect operational changes. To consider this recommendation as implemented, the Office would expect to see evidence of how the NDIA uses intelligence from enhanced data collection capability to inform its practice and improve performance.

SUMMARY

1.113. On the basis of our analysis of the NDIA’s self-assessment and supporting documentation, the Office considers 16 recommendations implemented and four recommendations partially implemented.

Recommendation 1	→	Partially Implemented
Recommendation 2	→	Implemented
Recommendation 3	→	Implemented
Recommendation 4	→	Implemented
Recommendation 5	→	Implemented
Recommendation 6	→	Implemented
Recommendation 7	→	Implemented
Recommendation 8	→	Implemented
Recommendation 9	→	Partially Implemented
Recommendation 10	→	Implemented
Recommendation 11	→	Implemented
Recommendation 12	→	Implemented
Recommendation 13	→	Implemented
Recommendation 14	→	Implemented
Recommendation 15	→	Implemented
Recommendation 16	→	Implemented
Recommendation 17	→	Implemented
Recommendation 18	→	Implemented
Recommendation 19	→	Partially Implemented
Recommendation 20	→	Partially Implemented

PART 6: DEPARTMENT OF VETERAN AFFAIRS

Investigation into the Actions and Decisions of the Department of Veterans' Affairs in Relation to Mr A

- 1.114. In February 2016, the Office began an investigation into the actions and decisions of the Department of Veterans' Affairs (DVA) in relation to Mr A, a former member of the Royal Australian Navy. The investigation was in response to a complaint made to the Office by Mr A, who experienced multiple administrative deficiencies resulting in multiple debts totalling in excess of \$100,000 followed by an underpayment of more than \$500,000. The investigation examined DVA's record-keeping, quality assurance and internal review processes, with a focus on incapacity payments to members transitioning from permanent service to the Defence Reserves.
- 1.115. In July 2018 the Office released its investigation report, making six recommendations, all of which DVA accepted.
- 1.116. In July 2019, the Office became aware of a subsequent issue regarding the calculation of Mr A's incapacity payments. In October 2019, DVA notified Mr A that his incapacity payment had previously been calculated against an incorrect payment tier and it had reassessed his entitlements from 1 September 2007 resulting in a back-payment to cover monies owed to him.
- 1.117. This recent issue was not subject to an investigation by the Office, although DVA advised the Office during the course of this review that the most recent issue occurred because DVA had not been advised of a Defence Pay Determination which commenced in August 2007. DVA advised the Determination affects a small group of Defence members and it has commenced a review of all incapacity payments for this group to determine if any other clients have been affected and are entitled to a back-payment.

Recommendation 1: The Ombudsman recommends that DVA ensure that appropriate quality assurance processes are implemented in the following areas:

- the determination of Defence member serving status when applying offsetting decisions
- the determination of Commonwealth Superannuation Corporation (CSC) payments affecting DVA entitlements
- the determination of overpayments and the commencement of debt recovery action.

- 1.118. The Office considers this recommendation implemented. The Office notes that DVA has taken steps to obtain more accurate data from Defence and Commonwealth Superannuation Corporation (CSC), and has taken initial steps to implement a 'pre-decision' process to further ensure quality assurance. DVA also provided evidence of a quality assurance checklist that, if used as intended, would assist DVA to ensure all relevant information is considered when making payment decisions.

Recommendation 2: The Ombudsman recommends that DVA continue to work with the Australian Defence Force (Defence) and CSC on the enhancement of data exchange regarding Defence member serving status and linked superannuation payments.

- 1.119. The Office considers this recommendation partially implemented. The Office notes DVA has taken steps to enhance data exchange with Defence and CSC.
- 1.120. Currently, Reserve data does not feature in the automated process of data extraction from Defence and the current manual method of extracting data is not delivering an acceptable level of accuracy. Implementation of an automated data extraction process for reserve data is required and is currently being progressed consistent with Defence's project timeline. When this is achieved, the Office anticipates being able to assess this recommendation as implemented.
- 1.121. There has been increased collaboration between agencies through the creation of working groups which should enhance DVA's ability to receive accurate data.

Recommendation 3: The Ombudsman recommends the development of a simplified template for offsetting and overpayment decisions to assist affected veterans in better identifying the determining factors in DVA decisions, particularly those involving:

- CSC and other compensation payments
- determination of the Defence member serving status
- any paygrades, loadings and other employment related determinations affecting rate of payment
- any other payments or liabilities as appropriate
- information about the calculations applied.

- 1.122. The Office considers this recommendation implemented. The Office reviewed a number of old and updated letter templates relating to incapacity payments and found letter templates for incapacity payments have been simplified to display critical details more clearly.

Recommendation 4: The Ombudsman recommends that DVA, if it has not already taken this step, identify all cases that may have been affected by the same misapplication of offsetting legislation and policy as occurred with Mr A's Military Rehabilitation and Compensation (MRCA) payments, with particular focus on those members transitioning from permanent service to reserves, and conduct a review of those cases. DVA may also wish to consider alerting veterans to this issue through its usual public notification processes.

- 1.123. The Office considers this recommendation implemented. DVA provided the Office with a summary of its review of 393 cases that were identified as being similar to Mr A's. This review was completed in November 2018. The Office considers DVA has taken steps to identify cases which may have been affected by the same misapplication of offsetting legislation and policy.

- 1.124. The Office considers there is scope for DVA to provide additional assurance it has taken all reasonable steps by alerting veterans to this issue through its usual public notification processes, as suggested in the recommendation.

Recommendation 5: The Ombudsman recommends that DVA consider amending its current policy on the recovery of overpayments to waive any taxation component.

- 1.125. The Office considers this recommendation partially implemented. DVA advised, at the time of this report's publication, a draft debt recovery manual is incomplete. DVA advised the

manual will provide decision-makers with advice on the legal requirements under DVA's legislative framework and include information on discretionary powers and write off and waiver provisions. To assess this recommendation as implemented the Office would expect the debt recovery manual to be finalised.

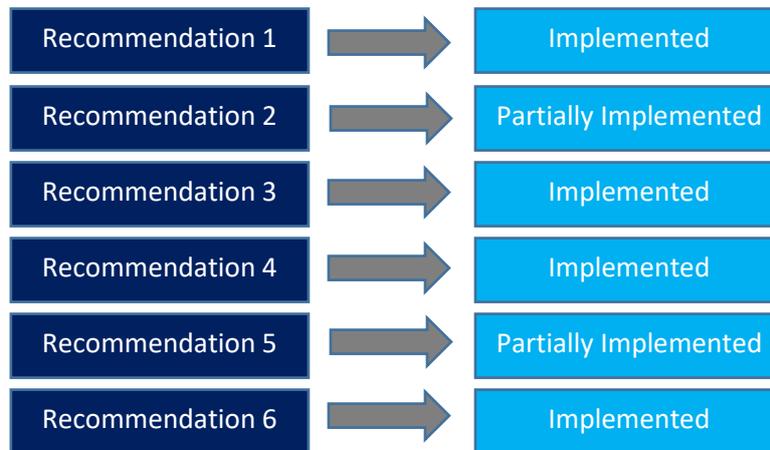
Recommendation 6: The Ombudsman recommends that DVA:

- apologise to Mr A
- waive his current debt of over \$17,000
- give an undertaking not to raise any further overpayment debts, unless they arise from an error on the part of Mr A
- if DVA forms the opinion that Mr A has suffered loss, it take steps, informed by precedent, to offer appropriate financial restitution.

1.126. The Office considers this recommendation implemented. DVA advised it could not guarantee it would not raise further debts against Mr A, but it would consider options such as debt waivers if a debt is raised in the future.

Summary

1.127. On the basis of our analysis of DVA's self-assessment and supporting documentation, the Office considers four recommendations implemented and two recommendations partially implemented.



APPENDIX: RESPONSES FROM AGENCIES



28 July 2020

Bupa Australia & New Zealand
Office of the Chief Executive Officer
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Melbourne VIC 3000
T +61 3 9937 4335
W bupa.com.au

Dear Mr Manthorpe,

Re Draft Report – Reviewing our Recommendations: Did they do what they said they would do?

Thank you for your letter and the opportunity to review your draft report. We found it to be an accurate reflection of the situation and therefore have no suggested amendments.

I appreciate the recognition provided in your letter of our commitment to provide enduring systemic improvement. While of course we would have preferred that this issue never occurred, nonetheless, we have fully embraced the learnings and, despite the complexity of health insurance, we are committed to being clearer in our communications with customers.

Please reach out if you require any further information.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Hisham El-Ansary", is positioned below the "Yours sincerely," text.

Hisham El-Ansary
Chief Executive Officer
Bupa Australia and New Zealand



Australian Government
Department of Home Affairs

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

Dear Mr Manthorpe

Thank you for your letter to the Secretary dated 6 July 2020, providing your draft report: *Reviewing our Recommendations: Did they do what they said they would?*

The Department of Home Affairs (the Department) values your observation of the considerable commitment by the Department to achieving enduring systemic improvements and welcomes the opportunity to respond to the parts of the draft report relating to the Department.

Please find the Department's response at **Appendix A**. The Department has made further progress with implementing the majority of partially implemented recommendations since the Preliminary View stage of this report and remains committed to implementing those recommendations in full.

[REDACTED]

Should you wish to discuss any aspects of the Department's response, please contact [REDACTED]

[REDACTED]

Yours sincerely

A handwritten signature in black ink, appearing to read '3U-11'.

Ben Wright
First Assistant Secretary
Integrity, Security and Assurance

6 August 2020

Department of Home Affairs' response

The Department of Home Affairs (the Department) welcomes the Commonwealth Ombudsman's Report: *Reviewing our Recommendations: Did they do what they said they would?*

For the Department, the Ombudsman followed up the implementation of recommendations made in the following reports:

- *Delays in processing applications for Australian Citizenship by conferral*
- *Investigation into the circumstances of the detention of Mr G*
- *Preventing the immigration detention of Australian citizens: Investigation into the Department of Home Affairs' implementation of the recommendations of the Thom Review*
- *Investigation into delays in processing inbound Containerised Sea Cargo.*

Across the four reports the Ombudsman made 32 recommendations, including one joint recommendation to the Department and the Department of Agriculture and Water Resources. Of the 31 recommendations directed solely to the Department, 27 were accepted in full and four in part. Of the 27 recommendations accepted in full, 21 recommendations have been fully implemented, and five partially implemented, demonstrating considerable commitment by the Department to achieving enduring systemic improvement.

The Department has made further progress with implementing the majority of partially implemented recommendations since the Preliminary View stage of this report and remains committed to implementing those recommendations in full.

Delays in processing applications for Australian Citizenship by conferral

The *Delays in processing applications for Australian Citizenship by conferral* report made four recommendations aimed at improving the quality of information available to delegates in the Australian Citizenship Instructions in order to achieve greater certainty and timeliness in complex identity and character assessments.

The Department accepted the four recommendations, fully implemented three, and partially implemented one (recommendation two).

The Department is committed to full implementation of recommendation two which will be achieved with the finalisation of *Procedural Instruction: Guide to making intelligence informed visa and citizenship decisions*.

Investigation into the circumstances of the detention of Mr G

The *Investigation into the circumstances of the detention of Mr G* report made four recommendations aimed at improving the Department's processes.

The Department accepted the four recommendations, noting that the implementation of recommendations one, two and three would depend on the outcome of litigation relating to other individuals who raised similar issues.

The Department agrees with the Ombudsman that recommendations one and four are fully implemented, and recommendation two is partially implemented. The Department is committed to full implementation of recommendation two which will be achieved with the finalisation of *Procedural Instruction: Establishing and Maintaining Reasonable Suspicion* and accompanying training materials.

The Department disagrees that recommendation three is only partially implemented. The Department completed a formal legal review into the lawfulness of Mr G's detention, and while the Department acknowledges the circumstances of Mr G's detention, the Department does not consider it appropriate to offer Mr G redress at this time. The Department considers this recommendation fully implemented.

Preventing the immigration detention of Australian citizens

The *Preventing the immigration detention of Australian citizens* report made 15 recommendations to the Department offering guidance on ways to ensure the recommendations of the *Independent review for the Department of Immigration and Border Protection into the circumstances of the detention of two Australian citizens* were implemented effectively.

The Department accepted 14 of the Ombudsman's recommendations in full, and one in part. The Ombudsman assessed that two recommendations accepted in full are partially implemented (recommendations five and six), with all other recommendations accepted by the Department implemented in full.

The Department agrees with the Ombudsman's assessment, except in relation to recommendation five. Since the Preliminary View stage of this report, wording to explicitly caution against relying solely on information in departmental systems has been incorporated in the 'Located Person Interview' Standard Operating Procedure. The Department also provided evidence to the Ombudsman's office of a review of the Located Person Interview. The Department considers this recommendation fully implemented.

The Department remains committed to full implementation of recommendation six, which will be achieved with the finalisation of *Procedural Instruction: Managing Non-Citizens in Criminal Detention Criminal Detention*.

Investigation into delays in processing inbound Containerised Sea Cargo

The *Investigation into delays in processing inbound Containerised Sea Cargo* report made eight recommendations to the Department, and one joint recommendation to the Department and the Department of Agriculture and Water Resources, aimed at reducing delays at Cargo and Container Examination Facilities.

The Department accepted the eight recommendations directed solely to the Department, five in full and three in part.

Of the five recommendations accepted in full, the Ombudsman assessed one recommendation as fully implemented (recommendation five), three as partially implemented (recommendations two, six and eight), and one as not implemented (recommendation one).

The Department agrees with the Ombudsman's assessment, except in relation to recommendation six, and provided further evidence to the Ombudsman regarding the support available to officers in providing advice to complainants about available compensation schemes. The Department considers recommendation six fully implemented.

The Department is committed to full implementation of recommendations two and eight, which will be achieved through Integrated Cargo System improvements, and provision of advice to industry regarding improvements that have been made to the functionality and user-friendliness of the Department's website.

Funding to allow for the possible implementation of recommendation one is subject to Australian Government approval.

Of the three recommendations accepted in part (recommendations three, four and seven), the Department considers recommendation three partially implemented, with full implementation to be achieved with delivery of Australian Border Force's Alternative Intervention Approach. The Department also considers recommendation seven partially implemented, with full implementation to be achieved via further improvement to the Department's methodology to assess asbestos risk to reduce repeat targeting of importers with history of compliance.

The Department is not able to implement recommendation four. Recommendation four was accepted in part, with advice that the Australian Border Force did not have the data available in core systems to report against the entire end-to-end process for cargo clearance. To date, it has not been feasible for the Department to make the investment required to undertake the necessary IT changes to implement this recommendation.

Recommendation nine was a joint recommendation to the Department and the Department of Agriculture and Water Resources. The Department considers this recommendation partially implemented as both Departments continue to work together and increase collaboration regarding container inspections.



Australian Government
**Department of Agriculture,
Water and the Environment**

**ANDREW METCALFE AO
SECRETARY**

27
23 July 2020

Mr Michael Manthorpe PSM
Commonwealth Ombudsman
GPO Box 442
Canberra ACT 2601

Dear Mr Manthorpe

Michael

Thank you for your letter of 6 July 2020 providing the Department of Agriculture, Water and the Environment (the department) the opportunity to review the draft report *Reviewing our Recommendations: Did they do what they said they would?* .

I have asked my department to continue their work towards implementing the recommendations made from your May 2018 *Investigation into delays in processing inbound Containerised Sea Cargo* report. For recommendation 9, this will involve continuing strategic discussions and collaboration with the Department of Home Affairs, noting that differing legislation administers our respective inspection activities. My department will be seeking to discuss opportunities for stronger collaboration at upcoming meetings involving senior officials from both departments.

For recommendation 10, my department will continue to review the Cost Recovery Impact Statement to ensure the approach for allocating expenses across the department's cost recovery arrangements are consistent and fees are revised accordingly.

Thank you again for the opportunity to respond to this report.

Yours sincerely

Andrew Metcalfe AO

Mr Michael Manthorpe PSM
Commonwealth Ombudsman

[Redacted]

Dear Mr Manthorpe

Thank you for the opportunity to consider and respond to the draft Commonwealth Ombudsman report – *Reviewing our Recommendations: Did they do what they say they would?* The National Disability Insurance Agency (NDIA) appreciates your recognition of the commitment we have made to achieve systemic improvement in relation to the Commonwealth Ombudsman’s report on the *Administration of Reviews under the National Disability Insurance Scheme Act 2013*.

The NDIA agrees with the facts and has not identified any omissions in the draft report. The NDIA has fully considered the 20 recommendations made in the original report, and notes 16 of the recommendations are considered to be implemented. The NDIA accepts the assessment that the remaining four recommendations are partially implemented.

Thank you for your letter and update to the NDIA. We are focussed on getting the NDIS right for all people with disability and improving participant outcomes and experience. Please contact me at any time to discuss these important matters.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Martin Hoffman', with a long horizontal flourish extending to the right.

Martin Hoffman
Chief Executive Officer
National Disability Insurance Agency

27 July 2020

[Redacted]



Australian Government
Department of Veterans' Affairs
OFFICE OF THE SECRETARY
PRESIDENT REPATRIATION COMMISSION

EC20-000666

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

Dear Mr Manthorpe

Michael.

Thank you for your letter of 1 July 2020, outlining your intention to publish the Office of the Commonwealth Ombudsman's first biennial report on the implementation of recommendations made in reports published between July 2017 and June 2019.

I note that in this report, '*Reviewing our Recommendations: Did they do what they said they would,*' your Office has followed up the implementation of six recommendations made in the July 2018 investigation into the actions and decisions of DVA in relation to Mr A.

I appreciate the opportunity to comment on the draft report and can confirm that DVA concurs with the assessment made by your Office and has not identified any errors of fact or omissions.

As you know, DVA has undertaken a significant change agenda in recent years to put veterans and their families first. The implementation progress reflected in the draft report prepared by your Office mirrors the broader journey of reflection and continuous learning and improvement that has characterised our organisational transformation. This effort continues in all aspects of our business through our philosophy of Know, Connect, Support, and Respect.

I wish to offer my thanks for the professional approach taken by your Office to working with DVA on the Mr A case, including the preparation of this report. Please regard this letter as the formal response you have requested for publication as an appendix to the final report.

Thank you also for your commitment to providing a copy of the DVA section of the draft report to Mr A to allow him to raise any concerns with its public release.

Yours sincerely

Liz Cosson AM CSC
Secretary

31 July 2020