



Righting Wrongful Detention

Report on people wrongfully detained
by the Department of Home Affairs

1 July 2024 – 30 June 2025

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Acknowledgement of Country

The Office of the Commonwealth Ombudsman acknowledges the Traditional Owners and Custodians of Country throughout Australia and acknowledges their continuing connection to land, waters and community. We pay our respects to the people, the cultures, and the Elders past and present.



Summary

This report is part of the Ombudsman's ongoing own motion investigation into instances where the Department of Home Affairs (the Department) has detained people it suspects to be unlawful non-citizens, but later identifies they were not unlawful and releases them from detention. It covers **30 cases of wrongful detention** the Department identified between 1 July 2024 and 30 June 2025, including the **unlawful detention of an Australian citizen who was detained for over 2 and a half years.**

Under section 189 of the *Migration Act 1958* (the Act) an officer must detain a person they 'know or reasonably suspect' to be an unlawful non-citizen. While a decision to detain a person may have been lawful because an officer held the required reasonable suspicion at the time, in each of the cases considered in this report, their detention was **wrong** because that suspicion was later found to be incorrect.

Wrongfully depriving a person of their liberty is serious

We commend the Department's commitment to continually improving its policies and procedures to mitigate the risk of wrongful detention. However, since we began monitoring the issue in 2005, we have observed the **same types of errors** are causing people to be wrongfully detained.

Following the recommendations made by our Office in our 2023–24 report, the Department has taken steps to strengthen its processes for assessing an individual's immigration status before a planned detention and has enhanced the redress pathway for people who have been wrongfully detained. This includes providing over 211 people affected by wrongful detention with written apologies. While we commend the Department's implementation of these recommendations, the cases examined in this report demonstrate that significant shortcomings remain, specifically regarding the wrongful detention of Australian citizens.

Of the 30 individuals who were wrongfully detained in this reporting period, none have filed claims seeking civil remedies for their wrongful detention.



Recommendations



Recommendation 1:

The Department work with the Minister's Office to formalise policies and procedures relating to the communication of Ministerial intervention decisions, establishing agreed-upon processes whereby:

1. Wherever possible, the Minister's Office notifies the Department ahead of time of when a decision is expected to be made.
2. The Minister's Office communicates ministerial intervention decisions to the Department on the same day the decision is made.
3. In cases where the Department has been notified that a decision is expected to be made, but is not notified of the actual decision on the expected date, the Department contacts the Minister's Office to confirm whether the decision has in fact been made.



Recommendation 2:

The Office again recommends the Department finalise all quality assurance checks of a non-citizen's visa at least 2 months (or as early as is otherwise practical) prior to their release from criminal custody, to ensure that all visa status issues are appropriately identified, prioritised and resolved prior to the person's release.



Recommendation 3:

The Department provide each affected individual (in future reporting periods) with:

1. An amended apology letter explicitly stating that the individual concerned was wrongfully detained.
2. An attached summary of the circumstances resulting in their wrongful detention including the cause of the error and any remedial actions the Department has taken/ intends to take to address the error.

A note on terminology

In 2005, the High Court held in *Ruddock*¹ that “*what constitutes reasonable grounds for suspecting a person to be an unlawful non-citizen must be judged against what was known or **reasonably capable of being known at the relevant time.***” This was later affirmed in *Thoms*² and *Pearson*³. The Department does not consider most of the cases in this report to be those of unlawful detention on the basis that they were detained “*in accordance with the obligation to do so under section 189 [of the Migration Act]*” and that any reasonable suspicion only ceased once errors were identified and confirmed.

This is why it uses the descriptor of ‘detained and later released as not unlawful’ to record when a person is found not to be an unlawful non-citizen or is later recognised as lawful and no longer detainable. We adopted this terminology in previous reports for consistency. We do not express a view in this report on whether the threshold of ‘reasonable suspicion’ was reached in accordance with the law in each case in this reporting period. This would require a much more extensive legal analysis of the facts in each case, which is beyond the scope of this investigation. We therefore agree it would be inappropriate to categorise these as cases of unlawful detention.

An exception to this approach is the detention of Australian citizen, Mx B. Following the Department’s inquiry into Mx B’s case the Department advised us that the detention was unlawful. Accordingly, we have adopted the term ‘unlawful detention’ when referring to this case.

In the cases identified in this reporting period, with the exception of Mx B, their detention may initially have been lawful because a detaining officer held a ‘reasonable suspicion’ as required by section 189 of the Act at the time. However, **in every case the detention was wrong** because the Department later found that this suspicion was incorrect. Accordingly, we have chosen to depart from the language used by the Department and instead use the phrase ‘wrongful detention’ to better reflect the impact on the detained individuals. Australia does not have a formal definition of ‘wrongful detention’⁴ but in this report it has been used as an umbrella term to capture situations where detention may (or may not) be justified under law but we still consider it was wrong or unjust.

¹ [Ruddock v Taylor](#) [2005] HCA 48 (8 September 2005) [40]–[41]

² [Thoms v Commonwealth of Australia](#) [2022] HCA 20 (8 June 2022) [21]

³ [Pearson v Commonwealth of Australia & Ors; JZQQ v Minister for Immigration, Citizenship and Multicultural Affairs & Anor; Tapiki v Micma; MHA & Anor v Pearson & Anor; Micma v Tapiki & Anor](#) [2024] HCATrans 68 (10 October 2024)

⁴ Senate Foreign Affairs, Defence and Trade References Committee, [‘Wrongful detention of Australian citizens overseas’](#) (2024), Parliament of Australia: 4–5

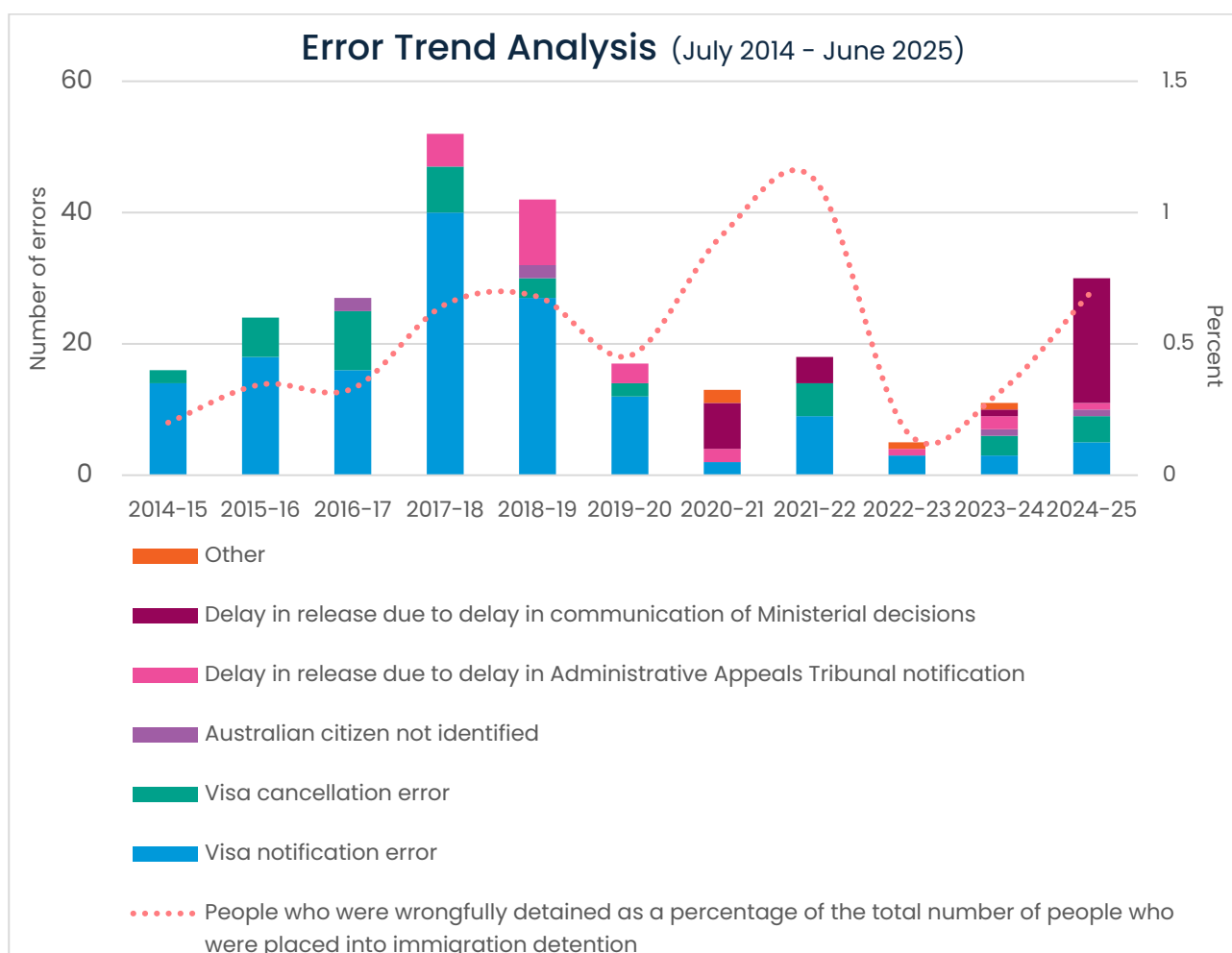


How does wrongful detention happen?

There has been an overall decline in cases of wrongful detention over the last 10 years, and general improvement by the Department since a spike in cases in 2017–18. However, 30 people were wrongfully detained out of a total of 4,247 people who were placed into immigration detention this financial year (0.7%). This was a 126% increase compared to last year and there was an 82% increase in the year before that. This year's increase was largely attributable to a single administrative error involving a delay in communication of a ministerial decision to grant 18 individuals a visa, which resulted in those 18 individuals (60% of this year's cases) remaining in detention wrongfully for one day. Nonetheless, the increase in wrongful detention cases highlights the need for the Department to continue to identify and address the systemic factors that can lead to errors⁵ causing people to be wrongfully detained.

⁵ Since July 2018, the Department has categorised errors that resulted in people being wrongfully detained as follows: errors associated with visa cancellation and refusal decisions; delay in communication of Administrative Appeals Tribunal (AAT) decisions; delay in communication of Ministerial decisions; and the detention of Australian citizens. While earlier reports grouped cases under broader headings such as defective notifications and administrative deficiencies, for comparison purposes, we have reclassified older cases according to the Department's current data groupings.





Since 2005, our Office has conducted multiple reviews and identified several common themes as to why wrongful detention can occur.⁶ Our work in this area came about as a result of the 2005 reports into the circumstances of the unlawful detention of Australian permanent resident, Cornelia Rau, and the removal of Vivian Alvarez Solon, an Australian citizen.⁷

- **Communication breakdowns:** Delays in sharing important information, such as the timely communication and receipt of tribunal decisions or ministerial intervention decisions to the Department, can result in someone remaining in detention wrongfully, despite having been granted a visa or having their visa cancellation/refusal overturned.⁸

⁶ The most substantive reports from these reviews are listed in the [Appendix](#).

⁷ Commonwealth Ombudsman, [Inquiry into the Circumstances of the Vivian Alvarez Matter](#), Report of an inquiry undertaken by Mr Neil Comrie AO APM, (2005), Report 03/2005. Commonwealth Ombudsman, Canberra. M J Palmer, [Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau](#) (2005), Commonwealth of Australia, Canberra.

⁸ Commonwealth Ombudsman, [Report on People Detained and later Released as Not Unlawful 1 July 2021 to 30 June 2022](#), (2023), Report 05/2023. Commonwealth Ombudsman, Canberra;



- **Data integrity and administrative errors:** Any outdated information or data entry errors in systems can undermine the accuracy and reliability of the data used to assess individuals' immigration status. Poor record keeping practices, the failure to reconcile inconsistent information and small administrative errors can have a significant detrimental impact on individuals.⁹
- **Failure to take personal responsibility for decision making and erroneous assumptions:** Assumptions can cause decision makers to discount relevant information or lines of enquiry or give disproportionate weight to unconvincing items of information.¹⁰ A reasonable suspicion to detain a person, whilst subjective to a detaining officer, must be based on all relevant material, including material that could be reasonably discovered in the circumstances. Lawful detention requires that Departmental officers continue to hold a reasonable suspicion that a person being detained is an unlawful non-citizen. If detaining officers do not exercise personal responsibility and judgement, and instead make assumptions based on previous decisions that have been made, then there is a risk a person will be wrongfully detained.¹¹
- **Deficient notification of visa decisions:** When the Department makes a negative visa decision, it has a legal obligation to ensure that the affected individual is informed of the decision and given the opportunity to respond if they wish to do so. If a person is subsequently detained without being properly notified of their visa cancellation/refusal decision, this constitutes wrongful detention.
- **Legal complexities:** The nature of Australia's migration regime poses significant challenges for decision makers, who must navigate complex policies, instructions and legislative provisions to make decisions that often require a level of subjective assessment. The regime is also subject to frequent litigation, legislation and policy amendments. In recent years, these changes have been accelerated by the government frequently amending migration laws in response to High Court decisions. This creates significant risk of erroneous decisions arising from misinterpretation or misapplication of the law.¹²

⁹ Commonwealth Ombudsman, [Lessons for public administration: Ombudsman investigation of referred immigration cases](#) (2007), Report 08/2007. Commonwealth Ombudsman, Canberra;

¹⁰ Ibid. Commonwealth Ombudsman, [Lessons for public administration: Ombudsman investigation of referred immigration cases](#) (2007)

¹¹ Commonwealth Ombudsman, [Report into referred immigration cases: Detention Process Issues](#) (2007), Report 07/2007. Commonwealth Ombudsman, Canberra.

¹² Ibid, Commonwealth Ombudsman (2007)



Cases of wrongful detention in this reporting period:



19 cases (63%)

were a result of a communication breakdown about Ministerial decisions



10 cases (33%)

involved planned detention operations



30 cases (100%)

were a result of errors previously known to the Department



24 cases (80%)

could have been avoided if existing policies and procedures were properly followed



7 cases (23%)

arose because officers did not take personal responsibility for forming reasonable suspicion in their own minds

Wrongful detention is on the rise

There were **30 cases** of people being wrongfully detained by the Department compared to 11 from the previous financial year. The number of people wrongfully detained as a percentage of the total number of people who were placed in immigration detention during a reporting period has also steadily increased from 0.17% to 0.7% since mid-2023. The median length of time a person was held in wrongful detention during the 2024-25 period reduced from 4 days to 1 day compared to last year. However, this median is significantly reduced by the 18 cases in which a delay in Ministerial communication resulted in detention being erroneously extended for one day, noting that some other individuals were wrongly or unlawfully detained for much longer periods.

Australian citizens continue to be wrongfully detained for extended periods of time. The Department has a duty of care to make sure that claims of Australian citizenship are investigated fully. Mx B is an Australian citizen who was wrongfully detained for a period of 945 days by the Department. Mx B made multiple claims to be an Australian citizen throughout the duration of their detention, however, the Department only confirmed they were an Australian citizen **after** they had been found to be affected by the High Court's judgement in *NZYQ* and released on a visa.¹³

In the 2023-24 reporting period, we found the issues which led to the people being wrongfully detained were, in almost all cases, not new. Rather, they reflected recurring mistakes in processes and decision-making stages that had been identified in previous years. This observation extends to the current reporting period where mistakes are still occurring at key decision-making stages.

¹³ [NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs & Anor](#) [2023] HCATrans 154 (8 November 2023)



The importance of getting the timing right: Delays in correspondence with the Minister's Office

Timely communication is particularly critical to ensuring immigration decisions affecting a person's liberty are implemented without unnecessary delay.

This reporting period recorded the largest number of wrongful detention cases attributable to communication failures since our reporting began. Between 2020–21 and 2023–24, delays in communication between the Department and the Minister's Office resulted in 12 cases of wrongful detention. In contrast, this period alone saw 19 cases. However, all 19 cases arose from the same issue, with 18 individuals affected by a single delay in communication of one day. While the Department has repeatedly stressed the importance of timely communication with the Minister's Office regarding immigration status decisions, it is concerning this issue continues to occur.

The Department has developed a flowchart outlining the *intended* process of communication between the Department and the Minister's Office when the Minister is inclined to intervene to grant an individual a visa. Under this process, the Minister's Office is expected to notify the Department through a Departmental Liaison Officer (DLO) when the Minister is inclined to intervene in a case, ideally 5 to 7 days prior to intervening. After the Minister grants a visa, the DLO should immediately advise the ministerial intervention team within the Department, who should subsequently notify the immigration detention facility to commence the release process. As of the publication of this report, it is unclear if this process has been accepted by the Minister's Office.

During this reporting period, the proposed process for communicating ministerial intervention decisions was not followed. On one occasion, the Minister made a decision to grant 18 individuals in immigration detention a visa which was not communicated to the Department until the following day. This resulted in the Department wrongfully extending their detention by one day.



Our Office sought information from the Department to provide clarification on these communication issues and the measures it has in place to mitigate delayed communication from the Minister's Office. As of the publication of this report, they have only provided our Office information on the measures it has in place to improve communication relating to ministerial intervention decisions. Consequently, it remains unclear at what stage of the communication process the breakdown occurred and where responsibility for the delay lay.

Effective communication between the Department and the Minister's Office is essential to ensuring that ministerial intervention decisions are implemented without delay.¹⁴ Even short periods of unnecessary detention can have consequences for an individual, and there is a substantial body of evidence detailing the adverse effects of immigration detention on mental health and wellbeing.¹⁵ Communication failures of this nature are therefore not merely administrative shortcomings – they can directly contribute to wrongful detention. A formalised, jointly agreed communication protocol, setting out clear responsibilities and timeframes before and after ministerial decisions have been made, could ensure visa decisions are communicated and acted upon in a timely manner.



Recommendation 1:

The Department work with the Minister's Office to formalise policies and procedures relating to the communication of Ministerial intervention decisions, establishing agreed-upon processes whereby:

1. Wherever possible, the Minister's Office notifies the Department ahead of time of when a decision is expected to be made.
2. The Minister's Office communicates ministerial intervention decisions to the Department on the same day the decision is made.
3. In cases where the Department has been notified that a decision is expected to be made, but is not notified of the actual decision on the expected date, the Department contacts the Minister's Office to confirm whether the decision has in fact been made.

¹⁴ Commonwealth Ombudsman, [Lessons for public administration: Ombudsman investigation of referred immigration cases](#) (2007), Report 08/2007. Commonwealth Ombudsman, Canberra;

¹⁵ Department of Immigration and Citizenship, *Submission 32, Supplementary*, p. 62.



Officers are not exercising responsibilities with due diligence

The Department continually revises its policies and procedures in response to these reports – whether by updating training programs and quality assurance processes, revising standard operating procedures and instructions, or conducting case-by-case reviews. In many cases of wrongful detention, however, the issue seemingly lies not in what tools or frameworks exist, but in how they are applied.

In one of our early reports on wrongful detention we found that a key error in most cases was the Department’s “failure to consider available information and take adequate steps to resolve a person’s identity and/or immigration status” prior to forming a suspicion that a person is an unlawful non-citizen under s 189 of the Act.¹⁶ This includes not conducting appropriate checks of Departmental systems, not making attempts to resolve conflicting information, and not following legislative or policy requirements. It also highlighted a tendency to rely on an isolated or minor piece of information suggesting a person was unlawful, even when there was significant evidence to the contrary.

This issue was reflected in a number of visa notification errors identified during the reporting period. In one case, an officer relied on a visa refusal notification issued in 2010 when deciding to detain an individual on their release from criminal custody in 2025. This refusal notification did not satisfy the statutory requirements of the Act because it was not clear the individual could seek merits review, and was therefore defective and invalid. We further note that the person was detained as part of a planned operation,¹⁷ providing sufficient opportunity for the officer to examine the

¹⁶ Commonwealth Ombudsman, [Report into Referred Immigration Cases: Detention Process Issues](#) (2007), Report 7/2007. Commonwealth Ombudsman, Canberra.

¹⁷ A planned detention operation refers to a coordinated activity conducted by the Department – including the Australian Border Force – to locate and detain individuals it identifies to be unlawful non-citizens. In doing so, detaining officers are responsible for assessing the person’s circumstances and resolving the issues regarding their identity and immigration status as soon as possible.



available departmental records and assess the reliability of the information being relied upon, prior to the detention occurring.

The Department advised that, given the large volume of notification templates used over time, it is neither 'possible' or 'practical' to provide officers with specific instructions or training on every historical template. However, this explanation does not fully address the underlying issue of ensuring officers critically assess the reliability and ongoing validity of historical records before relying on them to make detention decisions. Given the significant legislative changes that have occurred over the years, officers should be alert to the possibility that older notification templates may no longer accurately reflect the law or current departmental processes. Reliance on a single, outdated document without further verification is inconsistent with the level of diligence expected when making decisions that may result in a person being deprived of their liberty.

Inappropriate reliance on historical records was the cause of **all 5 visa notification errors** in this reporting period, with the most recent relating to reliance on a notification issued in December 2015. We also found that 3 of the notification errors were affected by the Federal Court's decision in *Sandor*,¹⁸ which found that refusal notification letters are defective if they do not clearly state the timeframe in which the applicant may seek tribunal review. Despite the Department identifying *Sandor* errors in previous reporting periods as far back as 2022, **these errors have continued to go unidentified by detaining officers until after the individual has been wrongfully detained.**

While we acknowledge the challenges associated with identifying historical defects as templates, legislation and administrative practices evolve over time, these errors are not isolated incidents. Rather, they have been a recurring theme since 2014 and highlight the need for stronger safeguards.

Responsibility is being deferred

The issues identified during this reporting period pointed to a tendency for officers to defer responsibility for key aspects of detention decision making.

¹⁸ *Sandor v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] FCA 434



We observed that in this reporting period, 10 cases (33%) involved planned detention operations. A planned detention operation refers to a coordinated activity conducted by the Department – including the Australian Border Force (ABF) – to locate and detain individuals it identifies to be unlawful non-citizens. As these operations are planned in advance, detaining officers have greater opportunity to assess the person's circumstances and resolve the issues regarding their identity and immigration status prior to them being detained. The Department explained that during planned operations, "officers would generally have time to consider a range of information to form the suspicion that a person is an unlawful non-citizen prior to conducting a field operation [to detain them]". In all cases, these individuals appeared to have been living unlawfully in the community for many years or were known to the Department to be apparently unlawful non-citizens in criminal custody. This implies that detaining officers had ample time to verify the individual's immigration status prior to them being detained, and therefore should have been able to avoid wrongful detention in these cases.

After a person is detained, a Detention Review Manager (DRM) conducts an initial post-detention review to check the decision is compliant with legislation and regulations. In 7 of the 10 cases involving a planned detention operation (70%), the DRM was able to identify an error within 3 days of their detention, ultimately leading to their release from immigration detention. We note that in each case, the initial detaining officer deferred the responsibility of thoroughly investigating an individual's circumstances to the DRM who was subsequently able to identify and escalate potential errors.

Our 2023-24 report suggested that a culture of 'act first, check later' – previously noted in a 2007 report – was still present amongst initial detaining officers.¹⁹ We found that only DRMs, and not initial detaining officers, were required to complete the 'Mandatory Control Point 7 – Establishing and Maintaining Reasonable Suspicion' form, which aimed to provide an additional layer of assurance that a detention decision is lawful and appropriate (and to detect errors which may have led to the detention of persons who are Australian citizens or lawful non-citizens). We were of the view that this additional layer of assurance should be undertaken by field officers before exercising detention powers to ensure the threshold of reasonable suspicion has been met. We recommended:

¹⁹ Commonwealth Ombudsman, [Righting Wrongful Detention: Report on people Detained and Later Released as Not Unlawful – 1 July 2023 to 30 June 2024](#), Report No 08/2025, Commonwealth Ombudsman, Canberra



The Department require initial detaining officers complete the 'Mandatory Control Point 7 – Establishing and Maintaining Reasonable Suspicion' form with supervisor sign off, for all planned detention operations.

The Department accepted this recommendation and has since taken steps to strengthen the processes that guide officers in establishing and maintaining reasonable suspicion before planned detention operations. This includes introducing mandatory control points to ensure that the level of assurance required after detention is also applied before detention commences. In particular, the Department has developed a 'Status Assessment Checklist' to assist field officers in identifying immigration status issues that may affect a proposed detention decision. In May 2026 the Department advised this tool has been incorporated into pre-detention checklists currently used by field officers.

We welcome the Department's implementation of this recommendation, which should provide officers with greater assurance that the threshold for detention has been met before detention powers are exercised. We will continue to monitor the implementation and effectiveness of this tool in future reporting periods to assess whether they lead to a sustained improvement in detention-related decision making.

We also acknowledge the Department was not provided with our 2023–24 report until this reporting period had ended. Because these measures were not implemented until after the 2024–25 reporting period, the issues identified in our previous report remained evident in the cases examined for this report. The cases suggest that officers continued to prioritise proceeding with detention over resolving identified uncertainties that could affect a person's immigration status, highlighting a culture that does not give sufficient weight to the risk of wrongful detention.



Quality control is lacking at critical stages

Quality assurance is fundamental to ensuring detention decisions are lawful, consistent and based on complete and accurate information. Without effective quality assurance at key decision points, errors can remain undetected, increasing the risk of unjust outcomes for the individuals involved.²⁰ Our review found that, in a number of cases, this safeguard was deficient or absent during the initial detention process, allowing notification errors to go undetected before detention decisions were made.

When conducting a detention operation, initial detaining officers use a 'Comprehensive Assessment Tool' (CAT) to determine whether there are notification errors present in an individual's case prior to detaining them. However, completion of this tool is **not mandatory** and relies entirely on an officer's discretion: they may elect not to complete the CAT at all, or complete it only in part. We identified 5 cases where notification errors were not identified because detaining officers either left relevant sections of the CAT incomplete, relied on an outdated CAT made by a previous officer, or did not complete a CAT at all when one was warranted.

These errors were compounded by the absence of a mandatory quality assurance process. Robust quality assurance processes can help to identify and avoid errors before they occur. Upon review of the CAT we noted that much of the tool was left up to the officer's discretion and that there was no mandated quality assurance of the detaining officer's judgement. This lack of oversight resulted in detaining officers not identifying notification errors that were subsequently picked up by the DRM within 3 days of reviewing the case.

The Department has since introduced a requirement for completed CATs to be reviewed and approved by a supervisor. While this strengthens oversight where a CAT has been completed, it does not address situations where an officer incorrectly determines that a CAT is not required. In one case, an officer exercised their discretion not to complete a CAT despite the visa refusal notification being relevant to an individual's substantive visa application – the very circumstances for which the CAT is

²⁰ Commonwealth Ombudsman, [Report into Referred Immigration Cases: Data problems](#) (Report No 08/2007)



designed. The DRM later identified the visa refusal notification was invalid and therefore, the individual was wrongfully detained. Had a CAT been conducted and subjected to supervisory review, the notification may have been identified before detention occurred, mitigating the risk of wrongful detention.

We further acknowledge the Department's commitment to reviewing the CAT and developing a revised, more user-friendly and effective version of the tool, to be known as the Notification Assessment Tool (NAT). The proposed changes also clarify that, where a notification relates to more than one applicant, officers should seek advice from the Status Resolution Helpdesk. This clarification is intended to reduce the risk of wrongful detention, particularly for individuals who have been refused visas as dependents of a primary visa holder.

A pilot of the NAT was expected to be finalised by June 2026. Once finalised, the Department has advised it will provide our Office with a copy of the tool. We will assess if the revised tool adequately addresses the deficiencies identified during this reporting period and monitor its implementation to determine whether it improves detention decision-making.



There are gaps in legal understanding

In 5 of the 30 cases (16%) during the reporting period, errors were caused by decision makers incorrectly interpreting and applying legislation. These errors directly resulted in 2 of **the longest cases of wrongful detention** in the reporting period, including the **detention of a lawful non-citizen for over 300 days (Mx A)**, and **the unlawful detention of an Australian citizen (Mx B) for more than 2 and a half years**.

One of the five cases (though not the cases of Mx A or Mx B) arose from the Department's delay in releasing an individual from detention after the Administrative Review Tribunal (ART) notified it that it had decided to set aside their visa cancellation. Since 2018, we have identified 6 errors relating to a delayed release by the Department following a Tribunal decision. The Department considers this case to be unique because the terms of the ART's decision were unusually drafted. The ART generally sets aside a decision and substitutes a new decision, or remits the matter to the Department for further consideration. In this case, the ART both set aside the original decision and remitted the matter to the Department. As a result, a legal officer incorrectly interpreted the effect of the decision, delaying the individual's release.

While the circumstances of the ART decision may have been unusual, given the uncharacteristic nature of the decision, the legal officer could have escalated the matter to a supervisor for clarification before any action was taken. This reflects a broader and recurring issue identified throughout our reporting: when officers are uncertain about the application of the law, there are insufficient safeguards in place to ensure advice is pursued before decisions are made.²¹

In the case of Mx A, a decision maker made their decision based on an incorrect understanding of the law. This error went unrecognised by the Department on multiple later occasions, resulting in the individual being **wrongfully detained for 304 days**.

²¹ Ibid, [Righting Wrongful Detention: Report on people Detained and Later Released as Not Unlawful - 1 July 2023 to 30 June 2024](#) (2025)



Mx A: Wrongfully detained for 304 days

In August 2009 Mx A arrived in Australia as the holder of a New Zealand passport and was granted a Special Category visa (SCV) upon entry.



In April 2023 Mx A was convicted of 3 separate offences where they received an aggregate **sentence** (comprising several shorter sentences), expressed as being a head sentence of 12 months and 3 weeks.



In August 2023 the Department cancelled Mx A's SCV because they had been sentenced to a term of imprisonment of 12 months or more. Later that month, Mx A requested the cancellation decision be revoked.



In May 2024 the Department detained Mx A on their release from criminal custody.



In January 2025 Mx A's revocation request was allocated to a case officer in the National Character Consideration Centre (NCCC).



In February 2025 it was **unclear** whether Mx A's sentence was an **aggregate sentence**. The initial view was that the mandatory cancellation decision was **not an error**.



In March 2025 the NCCC sought further advice to confirm whether a 'head sentence' would affect the validity of the Department's decision to cancel Mx A's visa.



Two days later, the Department found the decision to cancel Mx A's visa was not valid because none of the individual sentences comprising Mx A's head sentence were 12 months or more. On the same day, the Department released Mx A from immigration detention on a SCV.



A head sentence is the total maximum term of imprisonment handed down by the court for either a single or multiple sentences. These sentences can be of differing length and can be served concurrently or one after the other. When a visa holder receives a single sentence of 12 months or more imprisonment their visa is automatically cancelled under s 501(3A) of the Act. Mx A had a head sentence of 12 months and 3 weeks. However, none of their individual sentences comprised of more than 12 months. Mx A's visa should therefore not have been automatically cancelled.



Taking time while time is being served

When the Department cancels a person's visa, the person may request that the Department revoke its decision.

Mx A's case reflects a longstanding failure to resolve visa status issues while individuals remain in criminal custody. **Mx A's revocation request was not allocated to a case officer until 246 days after they were released from prison and detained.**

In the 2024–25 financial year, the average timeframe for a revocation request to be finalised from the day the request was made was between 183 to 365 days, with 157 of 918 cases (17.1%) **taking longer than 730 days to be reviewed.**²²

The Department's current case prioritisation model outlines the Department's priorities regarding revocation requests. According to this model, Mx A should have fallen into Priority Category 1, which applies to individuals serving a prison sentence of 12 months or more. The purpose of prioritising these matters is to ensure revocation requests are finalised *before* an individual's release from criminal custody and thereby avoid any unnecessary time in detention if the decision is revoked.

This outcome for Mx A is inconsistent with the Department's prioritisation framework and undermines the purpose of the model itself.

This is not an isolated error. The Office has identified the same systemic issue impacting individuals detained following their release from criminal custody across multiple reporting periods. To allow the Department sufficient time to work through any complex, unusual or unexpected issues relating to this cohort, and make appropriate referrals to other areas within the Department, we recommended in our 2022–23 report²³:

²² Statistics provided by the Department on case allocation timeframes for all revocation cases finalised in the 2023–24 and 2024–25 financial years.

²³ Commonwealth Ombudsman, [Report on People Detained and Later Released as Not Unlawful – 1 July 2022 to 30 June 2023](#), Report No 04/2025, Commonwealth Ombudsman, Canberra



The Department should finalise all quality assurance checks of a non-citizen's visa at least 2 months (or as early as is otherwise practical) prior to their release from criminal custody, to ensure that all visa status issues are appropriately identified, prioritised and resolved prior to the person's release.

The Department accepted this recommendation in-principle, citing it considered its intended purpose was being achieved through alternative measures. One of these measures included the circulation of operational instructions regarding the management of non-citizens in criminal custody amongst ABF field officers. According to the Department, the instructions require officers managing criminal custody caseloads to put appropriate arrangements in place to monitor non-citizens for changes in their circumstances, including the cancellation of their existing visa or revocation matters. Noting that Mx A's case was not allocated to a case officer for over 8 months after their release from custody, we are not confident that this measure sufficiently addresses our recommendation.

The Department's failure to implement this recommendation continues to expose individuals to the risk of wrongful detention. Revocation requests for individuals in criminal custody should be assessed and, wherever possible, finalised prior to their release. Doing so would not only improve administrative efficiency and uphold the integrity of the Department's decision-making processes, but could also reduce the risk of wrongful detention.



Recommendation 2:

The Office again recommends the Department finalise all quality assurance checks of a non-citizen's visa at least 2 months (or as early as is otherwise practical) prior to their release from criminal custody, to ensure that all visa status issues are appropriately identified, prioritised and resolved prior to the person's release.



Australian citizen unlawfully detained for 2 years and 7 months: The case of Mx B

1989

Mx B was born in Australia to New Zealand citizen parents. Mx B departed Australia and was listed as a dependent on their parent's New Zealand travel document for that departure.

1992

Mx B returned to Australia on their parent's travel document.

Following legislation changes in September 1994, Mx B was retrospectively taken to have been granted a Special Category Visa (SCV) on their return. However, as Mx B was not a New Zealand citizen, the SCV ceased immediately by operation of law.

1999

Under Australian citizenship law, children born in Australia automatically acquire citizenship on their 10th birthday if they have been residing in Australia since their birth. Accordingly, Mx B was meant to have become an Australian citizen in 1999. However, this was **not reflected on Departmental records**.

Poor record keeping

2010

Mx B was convicted of criminal offences and sentenced to imprisonment.

2018

The Department conducted a citizenship status assessment to determine if Mx B was an Australian citizen. The Department found Mx B was not an Australian citizen because they were assessed as not having been ordinarily resident for the first 10 years of their life.

While the assessment considered whether Mx B was 'ordinarily resident' in Australia throughout the period of 10 years from their birth, **officers failed to consider relevant case law about absences from Australia**.

Failure to consider all available information / reference relevant case law

2019

The Department began considering Mx B's SCV for mandatory visa cancellation under s 501(3A) of the Act because of their convictions. An officer acted on the mistaken understanding that Mx B held a SCV; however, as Mx B's visa had ceased in the 1990s, there was no visa to cancel. The officer also assumed Mx B to have been a New Zealand citizen.

2020

The Department conducted a second citizenship status assessment for Mx B which also determined they were not an Australian citizen. Officers **again failed to reference case law relevant to their absence from Australia**. It is unclear if the Department relied on previous information to form their assessment.

Sep 2022

The Department detained Mx B on their release from criminal custody. The Department subsequently referred their case for involuntary removal activities to

New Zealand. As Mx B did not hold a New Zealand travel document and was not registered as a New Zealand citizen, the Department enquired with New Zealand authorities about Mx B's citizenship. **Mx B claimed to be an Australian citizen on multiple occasions throughout their detention.**

Aug 2024

Mx B's legal representative sent the Department correspondence regarding Mx B's claimed Australian citizenship.

Oct 2024

The Department completed a further citizenship status assessment for Mx B **based on existing information in its systems.** The Department **determined they were not an Australian citizen, failing to take into account the new information indicated by Mx B's legal representative.**

Reliance on previous decision without taking steps to verify, even when presented with conflicting information/ failure to consider all available information

April 2025

The New Zealand Government advised the Department that Mx B was not a New Zealand citizen. The Department subsequently found Mx B to be affected by the outcome in NZYQ because their removal from Australia was not reasonably practicable in the foreseeable future. On the same day, the Department granted Mx B a Removal Pending bridging visa on strict conditions and released them from held detention.

Later that month, Mx B's legal representative provided additional information to the Department. The Department conducted a further citizenship assessment which concluded Mx B had been ordinarily resident in Australia throughout the 10 year period from their birth to their 10th birthday. As a result, the Department found that Mx B was an Australian citizen.



Continued detention of Australian citizens

Since 2016, 5 Australian citizens have been wrongfully detained by the Department and later released as not unlawful (in addition to the many non-citizens who have been wrongfully detained). Two of these cases involved individuals that were originally deemed by the Department not to be Australian citizens. However, after being detained, the Department subsequently determined they had acquired Australian citizenship on their 10th birthday in accordance with section 12 of the *Australian Citizenship Act 1948*. During this reporting period, we considered the sixth and longest case of detention of an Australian citizen since our reporting began. Mx B is an Australian citizen who was unlawfully detained by the Department for a period of 945 days.

Mx B was not included in the Department's 'detained and later released as not unlawful' reports to our Office. This was because their release from detention was not a result of the Department finding their detention to be wrongful. Rather, Mx B was released on a Removal Pending Bridging visa due to an unrelated court decision, 13 days before being found to be an Australian citizen. Despite this, we have decided to include their case in this report because their detention was determined to be unlawful during the current reporting period and arose from the same systemic failures identified throughout this report. We are of the view that Mx B's detention is another example of Australian citizens continuing to be unlawfully deprived of their liberty because of the same error.

Mx B's case shares similarities with 2 Australian citizens wrongfully detained in 2017 and 2023. All 3 cases relate to individuals who were born in Australia to New Zealand citizens; who held a SCV which ceased; and who were automatically granted Australian citizenship on their 10th birthday. For a person to be granted Australian citizenship on their 10th birthday by operation of law, they must be able to prove they were 'ordinarily resident' in Australia for the 10-year period from birth. In all 3 cases, issues arose in the Department's assessment of their citizenship status due to their offshore movements, while a child in the custody of their parents, during that 10-year period.

Another trend seen across these cases was that **officers did not take reasonable steps to verify departmental records** which contained incorrect information, and failed to address any gaps in the information presented before them. The Department



erroneously cancelled a visa which the individual did not hold at the time in the 2017 matter²⁴— just as the Department cancelled Mx B’s SCV when they did not hold one at the time. The Department did not conduct proper inquiries to address Mx B’s claims and relied on incorrect visa history records to support their decision to cancel their visa.

During their detention period from 2022–2025, **Mx B claimed to be an Australian citizen on multiple occasions**. Mx B was not registered as a New Zealand citizen and did not hold any New Zealand travel documents. In Mx B’s case a total of 4 citizenship status assessments were conducted with 3 of those assessments finding Mx B was not an Australian citizen. In April 2025 the last citizenship status assessment found they were an Australian citizen as they had acquired citizenship on their 10th birthday by operation of law. However, this finding only occurred after Mx B was released from immigration detention.

Following the outcome of the citizenship status assessment, the Department found Mx B’s detention was unlawful because reasonable suspicion that they were an unlawful non-citizen could not be maintained.

They also found there was **a serious failure of Departmental systems to direct attention to matters that were critically relevant** and the application of the citizenship law in Mx B’s case was not correct, or incomplete, **and further enquiries should have been made**. This mirrors the findings of the Thom review²⁵ which identified that officers consistently did not demonstrate the requisite knowledge, understanding and skills to fairly and lawfully exercise the power to detain and did not consider all relevant information or seek to resolve complexities. Even if the suspicion that Mx B was unlawful was reasonably established at the point of detention, by November 2022 it was not able to be reasonably maintained because detaining officers were on notice about Mx B’s claim to be an Australian citizen.

In the previous reporting period, the Department advised it had implemented a range of measures to mitigate the risk of detaining further Australian citizens. These included comprehensive reviews of its escalation protocols and Citizenship Helpdesk procedures, the delivery of refresher training to staff, and amendments to eLearning modules and the citizenship questionnaire.²⁶

²⁴ Ibid. Thom (2017)

²⁵ Ibid. Thom (2017)

²⁶ Ibid, [Righting Wrongful Detention: Report on people Detained and Later Released as Not Unlawful – 1 July 2023 to 30 June 2024](#) (2025)



In June 2025 the Department advised it was conducting an internal review into the matter and would report the outcome to our Office when the information became available. In January 2026 our Office reached out to the Department to determine the status of this review. As of the publication of this report, the review had yet to be finalised.

It is concerning that the same systemic errors continue to result in wrongful, and in some cases unlawful, detention of Australians.



Improving redress pathways

When government agencies make mistakes that impact people, they owe it to the people affected to develop and implement remedies that are fair, proportionate, and timely. Exercising the power to deprive someone of their liberty brings with it significant responsibilities, and it is imperative that the Department acknowledges and accepts accountability when it makes mistakes.

In our 2023–24 report, we noted the Department was not issuing apologies to the individuals it had wrongfully detained, nor was it taking the appropriate steps to notify them of pathways to seek compensation. We recommended:

The Department provide each affected individual (whether from previous or future reporting periods) with:

1. A **personal apology**, including an acknowledgement of wrongdoing and assurance as to remedial actions the Department has taken/ intends to take to ensure these errors do not occur in future, and
2. **Information about the Compensation for Detriment due to Defective Administration Scheme (CDDA)**, including how to make an application.

The Department has since implemented both recommendations, providing affected individuals with a written apology and a fact sheet detailing how claims can be made under the CDDA Scheme. **It has also provided this information to 211 previously affected individuals and continues to provide the information to people it finds to be affected.**

Of the 30 individuals who were wrongfully detained in this reporting period, none have filed claims seeking civil remedies for their wrongful detention.



Getting the communication right when the detention is wrong

The public has the right to expect a high standard of administration by government agencies, especially when addressing the consequences of their mistakes. People expect agencies to act legally, fairly and with integrity, and to be accountable, ethical and transparent.

When providing remedies for poor administration, it is important for all communication to be clear. A decision that adversely affects a person, and the reasons for it, should be explained in a manner that they (or someone acting on their behalf) can clearly understand. Agencies should always be cognisant that legislation and redress schemes or programs can be complex and not fully understood by the public or its intended recipient.²⁷

In our **2023–24 report**, we recommended that:

The Department draft a formal written factsheet, which it should provide to people it has wrongfully detained immediately upon release, which includes information in a language they understand about their rights to seek compensation through the Compensation for Detriment due to Defective Administration Scheme.

The Department has since advised they have translated the apology into some of the most common languages among people affected by wrongful detention and are in the process of developing additional translations. We commend this initiative, noting that overcoming language barriers is vital to ensuring that people have all the information they need and can clearly understand the implications of decisions that affect them.

While we regard our recommendations from the 2023–24 report²⁸ as fully implemented, we found that the phrasing of the written apology was ambiguous as to whether

²⁷ Commonwealth Ombudsman, [Factsheet: Providing Remedies](#). Commonwealth Ombudsman, Canberra.

²⁸ Ibid, [Righting Wrongful Detention: Report on people Detained and Later Released as Not Unlawful – 1 July 2023 to 30 June 2024](#) (2025)



wrongful detention had actually occurred, and would likely be difficult for recipients to understand:

"If you were wrongfully detained, the Department is sorry for what occurred and the impact this has had on you."

Clearly admitting wrongdoing is important for an apology to have meaning: any apology should endeavour to take responsibility and resolve uncertainty, rather than creating it. We also note that the fact sheet and written apology typically do not contain individualised information about the circumstances that led to their wrongful detention, or any remedial actions taken to prevent similar circumstances in arising in the future. Providing this information would allow people wrongfully detained to better understand why the Department acted or decided as it did, and better enable people to consider their options.



Recommendation 3:

The Department provide each affected individual (in future reporting periods)²⁹ with:

1. An amended apology letter explicitly stating that the individual concerned was wrongfully detained.
2. An attached summary of the circumstances resulting in their wrongful detention including the cause of the error and any remedial actions the Department has taken/ intends to take to address the error.

²⁹ Noting the Department has provided 211 people from previous reporting periods with written apologies, we have decided not to include individuals who have already received an apology to prevent causing confusion or distress.



Appendices

Appendix A – Status of recommendation implementation monitoring of reports published between 1 July 2022 and 30 June 2025

Report	Published	Recommendation	Department's actions	Status
Report on People Detained and Later Released as Not Unlawful – 1 July 2022 to 30 June 2023	May 2024	Recommendation 1: The Department should finalise all quality assurance checks of a non-citizen's visa at least 2 months (or as early as is otherwise practical) prior to their release from criminal custody, to ensure that all visa status issues are appropriately identified, prioritised and resolved prior to the person's release.	The Department agreed in principle with the recommendation and considers its intent is being achieved through the following measures. On 15 March 2025 the Australian Border Force provided operation instructions to all ABF field operations officers requiring officers to undertake identity and status checks, including the completion of a CAT. Officers managing criminal custody caseloads must put in place appropriate arrangements to monitor non-citizens for changes in	Not implemented



			their circumstances, including but not limited to: • Release on bail • Successful appeal against sentence, sentenced on additional charges, changes to parole date • Grant of visa or issue of a Criminal Justice Stay Certificate • Cancellation of existing visa or revocation of cancellation, and • Request for voluntary removal	
Righting Wrongful Detention: Report on people Detained and Later Released as Not Unlawful – 1 July 2023 to 30 June 2024	August 2024	Recommendation 1: The Department require detaining officers complete the 'Mandatory Control Point (MCP) 7 – Establishing and Maintaining Reasonable Suspicion' form and supervisor sign off for all planned detention operations.	The Department has implemented a new Status Assessment Checklist (the Checklist) to ensure national consistent processes by strengthening pre-planned detention processes that are already in place. The Checklist adds an extra layer of efficiency, accountability and assurance that righting wrongful detentions are being mitigated.	Implemented



			The Checklist was rolled out in phases, this allowed teams to adjust to the new process while maintaining operational delivery.	
		Recommendation 2: The Department provide each affected individual (whether from previous or future reporting periods) with: 1. A personal apology, including an acknowledgement of wrongdoing and assurance as to remedial actions the Department has taken/intends to take to ensure these errors do not occur in future, and 2. Information about the Compensation for Detriment due to Defective Administration Scheme, including how to make an application.	The Department has provided all individuals affected by wrongful detention, including those from past reporting periods, with a written apology and information about the Compensation for Detriment due to Defective Administration Scheme.	Implemented



		This process should be formally embedded in the Department's policies and procedures.		
		Recommendation 3: The Department draft a formal written factsheet, to be provided to people it has wrongfully detained immediately upon release, which includes information in a language they understand about their rights to seek compensation through the Compensation for Detriment due to Defective Administration Scheme.	A factsheet has been developed to provide information about how claims can be made under the Compensation for Defective Administration Scheme. This factsheet has been translated into multiple languages and has been provided to all affected individuals.	Implemented



Appendix B – Other relevant reports by the Commonwealth Ombudsman

Following the Palmer and Comrie reviews, the Australian Government referred 247 immigration detention cases covering 1993 to 2007 to the Commonwealth Ombudsman for review. The issues arising from these investigations formed the basis of 6 issues reports and 2 reports on individual cases. The reports highlighted errors made in many of the cases and pointed to systemic failures in immigration administration. These reports also formed the basis of a separate report drawing together 10 lessons for public administration.

- [Report on Referred Immigration Cases: Mr T](#) (Report No 04/2006)
- [Report into Referred Immigration Cases: Mr G](#) (Report No 06/2006)
- [Report into Referred Immigration Cases: Mental health and Incapacity](#) (Report No 07/2006)
- [Report into Referred Immigration Cases: Children in Detention](#) (Report No 08/2006)
- [Report into Referred Immigration Cases: Detention process issues](#) (Report No 07/2007)
- [Report into Referred Immigration Cases: Data problems](#) (Report No 08/2007)
- [Report into Referred Immigration Cases: Notification issues](#) (including cases affected by the Federal Court Decision in Srey (Report No 09/2007)
- [Report into Referred Immigration Cases: Other legal issues](#) (Report No 10/2007)
- [Lessons for Public Administration: Ombudsman Investigation of Referred Immigration Cases](#) (Report No 11/2007)

In 2007, after publishing the reports into the referred cases, the Commonwealth Ombudsman commenced an own motion investigation to continue monitoring the issue. Under the investigation, the Department provides six-monthly reports detailing all instances where a person has been released from immigration detention as 'detained and later released as not unlawful' during the period. Analyses of these cases has informed several reports as part of the Commonwealth Ombudsman's immigration and detention oversight activities, some of which have been made public.

- [The Department of Immigration and Border Protection: The Administration of Section 501 of the Migration Act 1958](#) (Report No 12/2016)



- **[Preventing the immigration detention of Australian citizens:](#)** Investigation into the Department of Home Affairs' implementation of the recommendation of the Thom review (Report No 07/2018)
- **[Investigation into the circumstances of the detention of Mr G:](#)** Maintaining reasonable suspicion that a person is an unlawful non-citizen (Report No 02/2018)
 - **[Did They Do What They Said They Would:](#)** Reviewing our recommendations (Report 07/2020)
 - **[Actions Speak:](#)** Department of Home Affairs implementation of recommendations from our investigation into the circumstances of the detention of Mr G (Report No 10/2024)
- **[Immigration Detention Oversight:](#)** Review of the Ombudsman's Activities in Overseeing Immigration Detention – January to June 2019 (Report No 01/2020)
- **[Monitoring Immigration Detention:](#)** Review of the Ombudsman's Activities in Overseeing Immigration Detention – July to December 2019 (Report No 06/2020)
- **[Monitoring Immigration Detention:](#)** The Ombudsman's Activities in Overseeing Immigration Detention – January to June 2020 (Report No 04/2021)
- **[Monitoring Immigration Detention:](#)** The Ombudsman's Oversight of Immigration Detention – 1 July 2020 to 30 June 2021 (Report No 01/2022)

In 2023, the Office commenced a series of standalone reports on persons detained and later released as not unlawful. This report is the most recent in the series.

- **[Report on People Detained and Later Released as Not Unlawful:](#)** 1 July 2021 to 30 June 2022 (Report No 05/2023)
- **[Report on people Detained and Later Released as Not Unlawful:](#)** 1 July 2022 to 30 June 2023 (Report No 05/2024)
- **[Righting Wrongful Detention:](#)** Report on people Detained and Later Released as Not Unlawful: 1 July 2023 to 30 June 2024 (Report No 08/2025)



Appendix C – Responses

Office of the Minister for Home Affairs

On 1 September 2026, in accordance with section 8(5) of the *Ombudsman Act 1976*, the Commonwealth Ombudsman provided a copy of the draft report to the Minister for Home Affairs, Tony Burke, to allow an opportunity to comment on the delay between the time of his decision to grant 18 individuals in immigration detention a visa and the time this decision was communicated to the Department, which resulted in the Department wrongfully extending their detention by one day. The Minister was provided 28 days from the date of this letter to provide a response.

As at publication, the Minister has not provided a formal response to the draft report.

The Department of Home Affairs

The Department's response to the draft report can be found on page 40.





Australian Government
Department of Home Affairs

SECRETARY

OFFICIAL

Our ref: EC26-004885

Mr Iain Anderson
Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601

Dear Mr ^{Iain}Anderson,

Thank you for your correspondence of 1 September 2026, providing your draft investigation report '*Righting Wrongful Detention: Report on people wrongfully detained by the Department of Home Affairs, 1 July 2024 – 30 June 2025*' (the Report).

I welcome the opportunity to respond to the Report and value the important role your office plays in providing assurance and oversight, and in driving systemic improvements across government administration. The Department has carefully considered each recommendation and accepts two in full and one in principle.

The Department's response, completed in the requested template, is at **Attachment A**.

The Department has considered the observation on page 17 of the Report that the seven cases arising from planned detention activities indicate a culture that does not give sufficient weight to the risk of wrongful detention. The Department takes the risk of wrongful detention very seriously. Each of these cases is regrettable and provides an important opportunity to learn and strengthen the Department's practices.

In publishing this observation, the Department considers it is relevant context to note that the seven cases represent 0.16 per cent of the 4,247 individuals detained and 0.42 per cent of the 1,680 planned detentions over the reporting period, and that these errors occur within a complex legislative and operational environment.

The Department remains committed to working constructively with your office to support continuous improvement in the administration of its functions.

Should your office have further questions in relation to this matter, [REDACTED] is best placed to assist.

Yours sincerely,

[REDACTED]
Stephanie Foster PSM

8 October 2026

OFFICIAL

Department of Home Affairs

Attachment A

Department of Home Affairs – Response to Righting Wrongful Detention: Report on people wrongfully detained by the Department of Home Affairs, 1 July 2024 – 30 June 2025

Recommendation	Response to recommendations and action to implementation of recommendations
Recommendation 1: The Department and the Minister's Office formalise policies and procedures relating to the communication of Ministerial intervention decisions, establishing agreed-upon processes whereby: 1. The Minister's Office notifies the Department ahead of time of when a decision is expected to be made. 2. The Minister's Office communicates ministerial intervention decisions to the Department on the same day the decision is made. 3. In cases where the Department has been notified that a decision is expected to be made but is not notified of the actual decision on the expected date, the Department contacts the Minister's Office to confirm whether the decision has in fact been made.	☒ Recommendation accepted Following the July–December 2024 reporting period, the Department introduced a number of measures to improve communication relating to Ministerial Intervention decisions. Since these measures were introduced, there have been no further cases of delayed notification. The steps taken by the Department to address the recommendation include: • Review of the Departmental Liaison Officer (DLO) handbook to ensure it outlines the time critical nature of communicating Ministerial Intervention decisions affecting individuals detained under section 189 of the <i>Migration Act 1958</i> (the Act), as DLOs are a key liaison point between the Department and Ministers' offices. • Induction of new DLOs when there is a changeover of position includes a detailed explanation of the ministerial intervention powers and associated processes. • Development of a flowchart to ensure clarity of the process for those involved in ministerial intervention workflow (provided to the Commonwealth Ombudsman in March 2025). ◦ If the Minister is minded to consider a case under sections 195A or 197AB of the Act, consistent with the flowchart process, the Minister's Office notifies the Department 5-7 days before the proposed decision date. Individual circumstances, the workload of the relevant Minister, and other external factors may result in this timeframe being reduced. • Active and regular engagement with Ministers' offices on ministerial intervention cases. Cases are tracked closely between ministerial intervention teams and Ministers' offices. Protocols in place ensure that DLOs engage with the Department to support logistical management of cases when a Minister indicates they are minded to intervene. The above ensures that Ministers' offices are well versed in the process and proactively engage with the Department regarding decision outcomes and the sequencing of steps to affect a decision. It is not possible for the Department to predict when a Minister makes a decision in a case, nor is it possible to predict how long it may take a Minister to consider a case before making a decision. Whilst advance notice is given where possible, it is not always available. Even with short notice of decision timing, the Department's processes ensure that all relevant stakeholders are aware of the decision and actions progress after a decision to grant a visa to release the individual from detention.

Department of Home Affairs

Recommendation 2: The Office again recommends the Department finalise all quality assurance checks of a non-citizen's visa at least 2 months (or as early as is otherwise practical) prior to their release from criminal custody, to ensure that all visa status issues are appropriately identified, prioritised and resolved prior to the person's release.	☒ Recommendation accepted • The Australian Border Force (ABF) monitors persons of interest in criminal incarceration for potential release and onward management. In most cases, transfer of custody (from Corrective Services to ABF) upon a non-citizen's release is classified as a planned detention. • From March 2026, ABF Field Officers commenced a quality assurance check using a Status Assessment Checklist to identify the immigration status for all pre-planned detention cases and to support the officer's decision in forming reasonable suspicion that a person of interest is an unlawful non-citizen who does not meet the tripartite test for the purposes of section 189(1) of the Act. • Quality assurance checks are completed as early as practicable, however there are limitations to how early the Status Assessment Checklist can be completed, resulting in shorter turnaround for quality assurance processes. For example: ○ short timeframe between sentencing and the release date ○ parole board notifications generally occur within two weeks of a prisoner's release date ○ completion of immigration matters (such as a cancellation process) just prior to release from prison.
Recommendation 3: The Department provide each affected individual (in future reporting periods) with: 1. An amended apology letter explicitly stating that the individual concerned was wrongfully detained. 2. An attached summary of the circumstances resulting in their wrongful detention including the cause of the error and any remedial actions the Department has taken/ intends to take to address the error.	☒ Recommendation accepted (in-principle) The Department will amend the apology letter so that it more clearly communicates the issues identified by the Ombudsman in this recommendation to the individual. There will be cases where the Department considers a response that is entirely consistent with the wording in the recommendation could prejudice the Commonwealth's position in civil proceedings. As such, the Department is committed to implementing the recommendation to ensure clarity to the client, but the specific wording may differ dependent on relevant case factors. The Department will update procedural guidance to help determine which cases can receive more fulsome information about the circumstances of their case and release from detention.

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