

Department of Immigration and Citizenship

REPORT INTO REFERRED IMMIGRATION CASES:
DATA PROBLEMS

June 2007

Report by the Commonwealth and Immigration Ombudsman,
Prof. John McMillan under the *Ombudsman Act 1976*

REPORT NO. **08|2007**

Reports by the Ombudsman

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PART 1—REPORT OVERVIEW

1.1 In 2005 and 2006, the Australian Government referred 247 immigration detention cases to the Commonwealth Ombudsman for investigation. This report deals with 45 cases in which a data recording error occurred at some stage during the detention of a person under the *Migration Act 1958* (the Migration Act), during the period 2002 to 2005. In three of the cases, the person detained was an unlawful non-citizen at the time of detention, and was therefore liable to be detained. In the other 42 cases the persons detained were lawful non-citizens at the time of detention and were therefore entitled to live unrestrained in the community; one person was a permanent resident and the others held valid bridging visas.

1.2 Data errors occur in all areas of government, not just immigration administration. An important difference, however, is that a seemingly small data error in immigration administration can result in the detention of a person who has a lawful right to live in the community. There is a corresponding duty to ensure that immigration status data is accurate, and checks and safeguards are in place to counteract data problems.

1.3 Three categories of data error are discussed in this report.

- **Data recording errors**—omitting to enter data on a system, failing to correct inaccurate data, recording incorrect data, and a breakdown in inter-agency exchange of data.
- **Inadequate data checking prior to detention**—failing to reconcile inconsistent data before detaining a person, making inadequate prior enquiries, and placing too much reliance on faulty data systems.
- **Unresolved status issues during detention, leading to prolonged detention**—failing to actively manage detention cases, delay in conducting interviews, and delay in responding to information provided by migration agents or relatives that supports a person's lawful status.

1.4 This report concludes that the Department of Immigration and Citizenship's¹ (DIAC) data recording practices were flawed and that officers failed to check and collect reliable data. In most of the cases in this report the detention of a person was inexcusable: the department already held sufficient information that established a person's lawful status. These failings in departmental administration partly stemmed from insufficient training and policy guidance on the detention provisions of the Migration Act, the bridging visa regime, and the procedures for compliance checks of client files and other data. Many of the detentions may not have occurred or could have been resolved more quickly had a proper quality assurance approach to data management been in place.

1.5 Since these investigations commenced, DIAC has undertaken a substantial reform program and implemented a number of recommendations made in previous reports. Those reforms address many of the problems identified in this report and include:

¹ During the period covered in this report, DIAC was known as the Department of Immigration and Multicultural and Indigenous Affairs, and then the Department of Immigration and Multicultural Affairs.

- the establishment of the College of Immigration to train staff
- the development of a new computer system, *Systems for People*
- implementation of a policy for the timely interview of persons prior to detention
- a centralised contact area within DIAC that can be used by police services to check the immigration status of persons of interest.

1.6 The recommendations made in this report take account of those reforms, however, there is still much work to be done. This report should provide further assistance to DIAC in its reform program, particularly relating to data management and use.

PART 2—SCOPE OF INVESTIGATION

2.1 The Ombudsman's office agreed to investigate and report to DIAC on each of the detention cases referred to the office. The investigations were conducted under the Ombudsman's power to conduct an own motion investigation, as provided for in s 5 of the *Ombudsman Act 1976*.

2.2 Each investigation sought to establish what information was available to DIAC officers about those people who were detained. The investigation process also examined the guidance available to DIAC officers and the nature of the interaction between DIAC and related agencies.

2.3 The 45 cases covered by this report were those in which a person was detained as an unlawful non-citizen, yet there appeared to be a problem either in the accuracy of data in DIAC records or with the processes used to store and interrogate data. An analysis of each case was prepared and provided separately to DIAC. This report contains summaries of selected cases.

2.4 The investigations were conducted largely on the basis of records relating to individual cases. The methodology included examining DIAC's Migration Series Instructions (MSIs), and the relevant provisions of the Migration Act and Migration Regulations 1994, as well as examining for all individual cases investigated:

- DIAC client files
- 'screen dumps' from DIAC's databases
- detention dossiers, where applicable
- compliance notebooks, where applicable.

2.5 In one case, where multiple data errors were found, the Ombudsman's office interviewed the relevant DIAC officers and the person who had been detained.

2.6 The Migration Review Tribunal and the Refugee Review Tribunal (the tribunals) provided client files and other information. DIAC and the tribunals provided advice on the processes that were in place for inter-agency exchange of information. They also provided information on a joint project aimed at improving communication and data exchange between DIAC and the tribunals. The tribunals have agreed that they must continue to work closely with DIAC to ensure sound data exchange and have implemented a number of strategies to achieve better communication.

PART 3—CONTEXT FOR DATA ERRORS

3.1 This section outlines some key concepts² necessary to understanding how errors in data management can lead to wrongful detention. The issues covered are the detention power in s 189 of the Migration Act, the bridging visa regime, the interaction between bridging visas and tribunal and judicial review, DIAC's framework of policy guidance for officers, and DIAC's main data systems.

Power to detain—s 189 of the Migration Act

3.2 Section 189 of the Migration Act provides for mandatory detention of unlawful non-citizens. The section provides:

If an officer knows or reasonably suspects that a person ... is an unlawful non-citizen, the officer must detain the person.

3.3 The obligation cast by s 189 on officers to form and continue to hold a 'reasonable suspicion' is a vital protection against arbitrary detention.

3.4 This statutory requirement was considered by the Full Federal Court in *Goldie v Commonwealth* (2002) 188 ALR 708. A majority of the Court held that s 189 imposed an obligation upon officers to investigate and resolve conflicting facts and information about a person's immigration status. If there is conflicting information about a person's immigration status, it may not be reasonable simply to discard that conflicting information and form a suspicion on the basis of a single fact capable of supporting the suspicion. This point is especially relevant to many of the data cases, where information was available to DIAC that contradicted the suspicion that a person was an unlawful non-citizen.

Bridging visas

3.5 A bridging visa allows a person who would otherwise be an unlawful non-citizen (for example, because their original temporary visa expired) to remain in the community rather than be taken into immigration detention. There are seven types of bridging visa; most are granted in conjunction with an application for a substantive visa. The type of bridging visa granted depends on the immigration status of the non-citizen at the time they applied for a substantive visa.

3.6 Generally, a valid application for a substantive visa in Australia is also a valid application for a bridging visa. In such circumstances a bridging visa provides lawful status to an applicant until either their substantive visa is granted or 28 days has elapsed after notification of a final refusal decision on their application for a substantive visa.

Bridging visas during tribunal review

3.7 If an applicant who has been refused a substantive visa applies, within the required timeframe, for review by the Migration Review Tribunal (MRT) or the Refugee Review Tribunal (RRT), the bridging visa 'rolls over' until 28 days after notification of the relevant tribunal's decision.

² Some of these are discussed in greater detail in other Commonwealth Ombudsman reports, see in particular *Report on referred immigration cases: Mr T*, Report No 4/2006.

3.8 In practice this means that a bridging visa holder does not need to apply for another bridging visa if they apply for tribunal review of the decision to refuse them a substantive visa. They are also not required to inform DIAC that they have made a tribunal application. Instead, DIAC relies on the tribunals for advice that a review application has been made.

3.9 If a tribunal fails to notify DIAC, is slow in informing DIAC, or DIAC fails to record that a review application was made, the person may incorrectly become recorded as an unlawful non-citizen on DIAC's systems and therefore be at risk of being detained under s 189.

Bridging visas during judicial review

3.10 If an applicant seeks judicial review of a decision refusing to grant a substantive visa, the applicant must apply for a further bridging visa. A bridging visa is generally granted if the person applies for judicial review within the statutory time limits. A bridging visa granted in this situation remains in effect until the judicial proceedings (including any proceedings on appeal) are completed.

3.11 If there is an appeal to a higher court, there is no requirement under the Migration Act for the appellant to notify DIAC of the appeal, though Court rules require an appellant to serve DIAC with notice of an appeal. In practice, few people serve DIAC and DIAC learns about judicial review applications in various ways, for example, via the Federal Court registry or through an appellant's migration agent or lawyer.

3.12 If DIAC is not notified of, or fails to record, an appeal to a higher court, the person's bridging visa may incorrectly show on DIAC's systems as having ceased.

Policy guidance

3.13 The MSIs are the main guidance to DIAC officers on, amongst other things, the use of systems information, the formation of 'reasonable suspicion' regarding a person's migration status, and procedure and practice concerning detention. The main MSIs relevant to the cases covered by this report were:

- **MSI 234: *General detention procedures***
Introduced in June 1999, this MSI provides information on general procedures in relation to the exercise of detention powers under the Migration Act. The MSI emphasises the strict limitations on the power to detain, the need for objective evidence to support a detention decision, and the importance of regular review where detention is prolonged.
- **MSI 321: *Detention of unlawful non-citizens***
Introduced in July 2001, this MSI provides guidance to DIAC officers on forming a 'reasonable suspicion' on which to ground the decision to detain a non-citizen. The MSI emphasises the use of objective evidence and giving a person a reasonable opportunity to provide appropriate evidence.
- **MSI 329: *Unlawful non-citizens***
Introduced in August 2001, this MSI stipulates procedures for establishing the status and identity of a non-citizen, the meaning of 'unlawful non-citizen', the circumstances in which a non-citizen becomes unlawful, and the effect of becoming an unlawful non-citizen.

3.14 DIAC has accepted that the advice provided in these MSIs was inadequate and has now issued enhanced instructions, particularly relating to the application of s 189 and what constitutes the formation of a 'reasonable suspicion'.³

DIAC databases

3.15 The Integrated Client Services Environment system (ICSE) is a single reference point for all records of a client's contact with DIAC. The system supports onshore processing for citizenship, visas, assurance of support, sponsorship, nomination and compliance.

3.16 Two other databases also featured in the cases investigated:

- The Travel and Immigration Processing System (TRIPS) is a broad collection of mainframe computer systems storing all records of Australian visas granted and all travel movements in and out of Australia.
- The Total Records Information Management system (TRIM) is DIAC's corporate records management system for paper and electronic records. One of its uses is to record the location and movement of files. This is particularly relevant to this report regarding file movements between DIAC and the tribunals. TRIM can be accessed through ICSE.

Automatic triggers

3.17 Through a complex technical process, ICSE interfaces with TRIPS and displays information based on data from both systems. In the context of this report, an important function of ICSE is that it displays the immigration status of a client as 'lawful' or 'unlawful' based on the status of any visa held by the client. That is, if a non-citizen's visa has expired or been cancelled, their immigration status will be shown on ICSE as 'unlawful'.

3.18 Importantly, the immigration status will automatically change at the time the visa expires unless an 'event' is recorded that overrides that change. For example, if a client lodges a valid application with a tribunal for review of a DIAC decision, the application must be recorded as an 'event' in ICSE. This prevents the client's bridging visa from showing as expired until a prescribed period after a tribunal decision.

³ See the recommendations and DIAC's responses to the following Commonwealth Ombudsman reports:

- *Report of Inquiry into the Circumstances of the Vivian Alvarez matter*, Report No 03/2005
- *Report into 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.

See also *Report of Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, report by Mr Mick Palmer AO APM, July 2005.

Summary screen

3.19 ICSE consists of multiple levels of data accessible through layers of 'screens'. The first screen of ICSE is the client details screen. This screen provides summary information only, including a person's immigration status, shown as 'lawful' or 'unlawful'. Additional information is not immediately apparent or automatically retrieved, particularly anything recorded as a 'note'.

PART 4—PROBLEMS IDENTIFIED IN DATA CASES

4.1 Three categories of data-related error were identified in the 45 cases covered by this report:

- data recording errors
- inadequate data checking prior to detention (application of s 189)
- unresolved status issues during detention, leading to prolonged detention.

4.2 In some cases there were multiple errors. Each of the errors can result in a person who is a lawful non-citizen being wrongly detained or kept in detention under s 189.

Data recording errors

4.3 In 42 of the cases investigated, the underlying reason for a person's detention was that the data on ICSE was incorrect. In the other three cases, although some of the data was incorrect, the person detained was an unlawful non-citizen at the time of detention, and was thus liable to be detained. The following section briefly outlines the data recording failures and provides case examples.

Failure to record and enter data correctly

4.4 In many cases, DIAC either failed to record data, recorded data incorrectly or recorded information that was inaccurate. Examples include:

- information was recorded as a note rather than an event on ICSE
- the wrong date of an event was recorded on ICSE
- the wrong method of notification of a refusal decision was recorded on ICSE
- the wrong visa conditions were recorded
- duplicate ICSE records were created.

4.5 As a result of those data errors, the visa in each case erroneously showed as having ceased on ICSE and the system's automatic triggers reflected the person's immigration status as 'unlawful non-citizen'.

Case study: Bridging visa not properly recorded

Mr A was granted a bridging visa. This should have been recorded on ICSE as an 'event', but was wrongly recorded as a 'note'. This meant that Mr A incorrectly showed as an unlawful non-citizen in the main client details screen on ICSE for almost three years until he was detained. His bridging visa would not have been evident unless the note was read. Mr A was detained for two calendar days.

Errors in recording applications for tribunal review

4.6 In 30 of the 45 cases investigated, the person had applied to an immigration tribunal for a review of DIAC's decision to refuse them a visa or cancel their existing visa. In 28 of these cases a data error occurred when DIAC was recording or processing the person's application. In the other two cases the error rested with the tribunals. The most common errors identified were:

- In 20 cases DIAC was advised of a tribunal review application but did not record this on ICSE.
- In five cases DIAC recorded the tribunal application after the person's bridging visa had automatically showed as having ceased on ICSE. In these cases DIAC failed to reinstate the person's visa on ICSE when the application was recorded.

4.7 The case of Mr B provides an example.

Case study: Tribunal review not recorded

Despite receiving notice of an RRT review on five occasions over a six-week period, DIAC failed to record Mr B's review on ICSE. As a consequence, ICSE incorrectly showed that he was an unlawful non-citizen. DIAC then sent Mr B's file to the RRT but, again, did not record the review.

Mr B was detained for three calendar days while he was the holder of a bridging visa. At the time, DIAC's TRIM system showed that his file was with the RRT; a prompt enquiry would have immediately verified his lawful status.

4.8 While most of the administrative deficiencies occurred in DIAC in its failure to process information about tribunal proceedings, there were a few instances of delay or breakdown in communication between DIAC and the tribunals.

4.9 An application by a person for tribunal review is subject to strict time limits. The Migration Act requires the tribunals to advise the Secretary of DIAC, in writing, of an application for review as soon as practicable after the application is received. The Act also requires the Secretary to provide the tribunals with specific information about the department's decision within 10 working days of being notified of an application. During the period covered by this report, the systems for communication between DIAC and the tribunals lacked coordination and rigour. Neither the tribunals nor DIAC had systems to ensure their responses complied with these time limits.

- In five cases DIAC did not provide files when requested by the tribunals and the tribunals did not follow up those requests for more than three months.
- In eight cases the MRT took more than 10 days to provide notice to DIAC of an application for review. In five of those cases the delay resulted in the immigration status of the person incorrectly altering on ICSE from lawful to unlawful non-citizen.
- In three cases a tribunal recorded incorrect or insufficient details of the applicant.
- In one case there was a backlog of several weeks at the MRT in registering applications for review.

Case study: Delay in the tribunal advising DIAC of an application

Mr C applied to the MRT for a review of DIAC's decision not to grant him a visa. When Mr C lodged his application there was a backlog of several weeks at the MRT in registering applications. This resulted in DIAC not being advised of Mr C's application. As a result ICSE was not updated and Mr C was detained. Prior to Mr C's detention, DIAC called the tribunal to check if Mr C had applied for a review. However, the officer was incorrectly advised by the MRT that Mr C had not lodged a review application.

4.10 DIAC and the tribunals have since acted on a recommendation in the Rau report⁴ to improve data exchange. Steps taken include:

- DIAC and the tribunals undertaking a data exchange project and implementing an automated data exchange system
- the tribunals implementing a 24 hour advice line to enable DIAC officers to access tribunal registry information
- DIAC implementing a central processing area for the receipt of all advice and file requests from the tribunals
- the tribunals have implemented a new case management system to bring about more efficiency.

4.11 These measures will assist in preventing the type of errors identified in this report. It nevertheless remains important for DIAC to continually emphasise to its officers the importance of data accuracy. The integrity of the compliance and detention role depends on this vigilance. For example, an officer who receives advice of a tribunal review application from a tribunal registry needs to ensure that the application is properly recorded in ICSE and that the applicant's immigration status is correctly stated. Similarly, an officer transferring a file from DIAC to a tribunal has a role in confirming that the application has been recorded in ICSE.

Errors in recording court proceedings

4.12 There were similar data recording problems in five cases that involved an appeal from a court decision. DIAC was aware in each case that an appeal had been lodged, but failed to properly process or record the proceedings on the immigration database. There appear to be two causes for this failure: officers did not accept the evidence of the appeal provided by the applicant, and officers who were provided with evidence of appeals failed to adequately record them on ICSE. File notes for these cases suggest that officers relied on DIAC's legal branch to do this.

4.13 MSI 350: *Bridging visa overview*, states that a certified copy of a court form is the only evidence of court proceedings an appellant can provide. The MSI instructs officers that if an appellant is unable to produce this form of evidence, and the legal branch cannot verify the appellant's claim, the person is an unlawful non-citizen and detention may be warranted.

⁴ *Report of Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, report by Mr Mick Palmer AO APM, July 2005.

4.14 A problem with that instruction is that it can lead to the unwarranted detention of a lawful non-citizen. Other evidence can be provided of court proceedings having been instituted, and DIAC officers may need to undertake further enquiries before concluding that a person who fails to provide a certified copy of a court form is an unlawful non-citizen.

4.15 Another shortcoming in MSI 350 is that it does not provide adequate guidance about appeal proceedings. The MSI focuses on judicial proceedings in the first instance and does not mention proceedings on appeal. Yet a bridging visa 'rolls over' when there is an appeal to a higher court. DIAC should therefore consider revising MSI 350 to specify what constitutes evidence of appeal proceedings.

Case study: Appeal not properly recorded

Mr D held a bridging visa in association with a proceeding in the Federal Court that was ultimately dismissed. He appealed to the Full Federal Court. The initial bridging visa remained valid until the appeal was heard. When he lodged his appeal, Mr D unnecessarily applied to DIAC for a bridging visa to cover the ongoing judicial proceedings. Without contacting DIAC's legal branch to verify Mr D's claims about his appeal, the officer recorded that Mr D had no outstanding matters and granted him a bridging visa so he could prepare to leave Australia.

Mr D's migration agent also contacted DIAC on two occasions and provided a copy of the Notice of Appeal and a computer print-out of the Federal Court case management system. ICSE was not updated and there is no record of the officer contacting the legal branch. Mr D's bridging visa subsequently showed as having ceased and he was detained.

Two days after Mr D was detained, the Federal Court registry advised DIAC by fax of Mr D's appeal. The appeal was then recorded in ICSE, yet Mr D's initial bridging visa was not reinstated on ICSE for a further 13 days: he remained in detention for that period.

Failure to correct existing data

4.16 In many cases incorrect data went unnoticed or uncorrected for lengthy periods. In some cases, DIAC missed the opportunity to correct data despite repeat interactions with the client over a period of months, and even years. In one case a duplicate ICSE record was created and used concurrently for four years. During this period the two records were not merged. When the person was located officers relied on only one of the records, which incorrectly showed the person was an unlawful non-citizen.

4.17 Sometimes correct data was entered, but conflicting data on ICSE was not adjusted or corrected. In five cases, the person was already incorrectly recorded on ICSE as an unlawful non-citizen by the time DIAC recorded that an application for tribunal review had been lodged. DIAC failed in those cases to reinstate the person's lawful status. In other instances, after a person had been released from detention as not unlawful, ICSE was not updated to reflect the person's valid visa for months and sometimes years, leaving the person at risk of further detention.

4.18 Failure to correct data usually meant that the summary screen in ICSE reflected wrong information about a person's immigration status.

4.19 The following case study of Mr E illustrates some of those data recording errors.

Case study: Multiple data errors

Mr E was granted a permanent residence visa in 1989 by the Australian Embassy in Cairo; he later travelled with his family to Australia. The Embassy incorrectly entered his permanent visa as effective for six months only. After this period, his visa incorrectly showed as ceased on ICSE and his immigration status showed as unlawful non-citizen.

In 1999, Mr E was issued with a Certificate of Resident Status. DIAC officers missed the opportunity to notice the incorrect ICSE entry.

Five years later, when Mr E came to the attention of the police, DIAC was contacted. After a basic search of ICSE, which gave an incorrect immigration status for Mr E, DIAC requested that he be detained. These searches should have alerted DIAC to the fact Mr E was a permanent resident because the code of his visa on ICSE was that of a permanent visa. He was not interviewed before he was detained.

Mr E was released after two calendar days in detention when his sister was able to produce evidence of his permanent resident status.

Inadequate data checking prior to detention

4.20 As discussed earlier in this report, a decision under s 189 of the Migration Act to detain a person is conditional upon an officer knowing or forming a reasonable suspicion that a person is an unlawful non-citizen. It is implicit in this requirement that an officer must conduct sufficient enquiries to establish reasonable suspicion before detaining a person. This should occur even if—as in a majority of the cases in this report—there was no opportunity for the officer to pre-check DIAC files and records prior to a person coming to the officer's attention. Seventeen of the 45 cases arose from referrals to DIAC from police services, and 20 other people were located during general field compliance operations. In those situations, DIAC officers should still conduct adequate enquiries before forming a reasonable suspicion that a person is an unlawful non-citizen.

4.21 During the period under investigation, MSI 321: *Detention of unlawful non-citizens* provided guidance about establishing knowledge or reasonable suspicion of unlawful status. The MSI emphasised that officers should base their decision on objective evidence and advised officers:

- to check information held in departmental records
- to use credible information, including from third parties
- not to presume that a person is an unlawful non-citizen simply because they are unable to produce appropriate evidence immediately
- to take account of any credible explanation the person provides which can be checked against DIAC records.

4.22 MSI 329 reminded officers of their significant detention powers under the Migration Act and the need for a responsible and lawful exercise of those powers.

4.23 Officers appeared to lack understanding of those obligations and failed to comply with the departmental guidelines. In a number of cases there was a failure by

DIAC officers to conduct sufficient checks of information and a failure to reconcile inconsistent data before making a decision to detain a person. Persistent themes in the cases were an over-reliance on a narrow range of DIAC data when other avenues of information were available, and the absence of systems to ensure quality assurance and accountability.

Cursory searches of ICSE

4.24 A frequent and avoidable error prior to detention was the failure by DIAC officers to check beyond the front screen of ICSE that provides the client details and immigration status. This screen provides summary data only and the structure of ICSE means that additional information is not readily apparent. In most cases ICSE held further information that should have been investigated. More rigorous checks in 28 of the cases would have disclosed data on various DIAC systems that clarified a detained person's status or at least alerted the officer to other possibilities (for example, that an application to a tribunal or court was underway, or that an incorrectly recorded, and therefore unnoticed, MRT decision upheld a person's lawful status).

Failure to use other avenues to check immigration status

4.25 Frequently, information outside of ICSE was not sought. A particular failure was that DIAC officers did not speak directly to the person prior to their detention in any of the cases where police referrals were involved.⁵

Case study: Insufficient checks

DIAC failed to record Mr F's MRT application on ICSE. When he was located, DIAC did not undertake adequate system checks before forming the suspicion that he was an unlawful non-citizen. File movements recorded on TRIM showed Mr F's file was at the MRT, but officers did not check TRIM records. Mr F was not given the opportunity to provide information, as DIAC did not interview him before instructing police to detain him. Mr F was detained for four calendar days, including a weekend.

4.26 MSI 329 advises officers, before detaining a person, to carefully check and substantiate information as far as practicable to establish a non-citizen's immigration status. This guidance does not appear to have been applied in some cases, notably in five cases of targeted compliance activity that were marked by inadequate checks and lack of preparation. A DIAC officer who refers a matter to the compliance section for action needs to have conducted a thorough examination of existing records to satisfy themselves that the referral is warranted. Nor are compliance officers absolved of the obligation to conduct enquiries before undertaking a targeted compliance activity.

4.27 The following case study of Mr G shows how inadequate preparation for compliance activity can lead to an unjustifiable detention. In this case, there were errors or oversights at four different stages of the compliance and detention process.

⁵ This issue was the subject of Recommendation 1 in *Report into Referred Immigration Cases: Mr G*, Report No 06/2006. DIAC accepted that recommendation.

Case study: Compliance referrals and activity

While the holder of a valid bridging visa, Mr H's file was forwarded to DIAC's compliance section for action. This occurred after DIAC refused his application for a substantive visa. Following the refusal of his substantive visa, Mr H lodged an application for review with the MRT. This application was not recorded on ICSE and as a result his bridging visa erroneously showed as having ceased.

Six months after the file was forwarded to the compliance section, officers obtained a search warrant and attended Mr H's home. Had the officers involved in granting the warrant or conducting the field visit consulted TRIM, it would have shown that Mr H's file was at the MRT. This would have alerted officers to Mr H's lawful status.

Mr H was detained despite providing information that showed he was the holder of a valid bridging visa. The field visit report noted Mr H's claim of having made an MRT application.

On five separate occasions during his detention, DIAC was told or given information by Mr H and his solicitor about Mr H's MRT review. It appears that none of the officers acted promptly on this information. Mr H was detained for four calendar days.

4.28 In summary, in 42 of the data cases there were other avenues that could have been checked to determine a person's immigration status before they were detained. These included:

- interviewing the person of interest prior to their detention
- checking DIAC records, such as personal files
- checking the database that records movements in and out of Australia including travel documents, visa and citizenship details
- interrogating DIAC's TRIM database, which records file movements to the tribunals
- contacting the tribunals
- consulting DIAC's Legal Services and Litigation Branch (in cases where court action was a possibility).

4.29 Such checks would have alerted DIAC that the circumstances warranted further investigation.

Reconciling conflicting information

4.30 The case of Mr H above provides an example of where officers failed to resolve a conflict in the data they found in ICSE and other sources. The circumstances and records relating to Mr H's detention indicate that officers relied solely on the information that supported the decision to detain. There were other examples of the same failure, as illustrated in the following two case studies.

Case study: Failure to reconcile conflicting information

If a bridging visa holder applies to a tribunal for review of a refusal decision within the required timeframe, DIAC must accept that the existing bridging visa continues. However, in the case of Mr J, it was wrongly recorded on DIAC's system that his application to the tribunal was out of time and invalid. This caused him to erroneously show as an unlawful non-citizen. ICSE also contained information that contradicted that assumption. The officers who detained Mr J failed to reconcile or adequately explore this information before deciding to detain him, and instead relied on the ICSE screen that showed him to be an unlawful non-citizen.

Case study: Data error concealed

Mr K had been granted several bridging visas while pursuing an application for a protection visa through the RRT and the courts. When he was found working in contravention of a bridging visa condition, DIAC cancelled Mr K's bridging visa and detained him. He was released when the MRT set aside DIAC's decision to cancel Mr K's bridging visa. DIAC did not record the MRT decision or reinstate the bridging visa.

More than two years later, Mr K was located during a DIAC field action. He was again detained despite the fact that his former bridging visa remained current due to the MRT decision.

At the time, ICSE displayed incorrect and conflicting information. It showed that Mr K was an unlawful non-citizen; that he was already in detention; and that he had been released with a bridging visa. The case officer responsible for Mr K's detention did not consider this conflicting information or the questions it raised about Mr K's detention, migration history and status.

Mr K's migration agent applied for a new bridging visa on his behalf in the mistaken belief this was required. Only then did a DIAC officer examine the file, discover the data errors and arrange for Mr K to be released. He had spent 31 calendar days in detention.

Neither Mr K nor his agent was advised of these data errors. Rather, in an internal email exchange about Mr K's case, a DIAC officer who noted the recording error that led to Mr K's detention concluded that 'as Mr K's migration agent was not aware of his client's true status it was not expected that he would make a fuss'.

Unresolved status issues during detention

4.31 The data errors that led to wrongful detention were compounded in some cases by inadequate efforts to review the immigration status of those in detention. As a consequence there were some instances of unnecessarily prolonged detention. The above case of Mr K, who was detained for 31 calendar days, is a stark example.

4.32 Among the errors noted in the cases were:

- failure to hold a direct interview with a person in detention, therefore losing the opportunity to obtain first-hand information about the person's status and circumstances
- slow response to information that contradicted the assumption of unlawful status

- failure to accept valid information—for example, DIAC required documentary evidence of lawful status before they would release a detainee, rather than accepting or following up on information received from a reputable source such as a migration agent
- no ‘out of hours’ processing—in 16 of the 45 data cases the detention was prolonged because it coincided with a weekend or holiday period and no processing took place.

4.33 The following case study of Mr L provides an example of multiple errors both before and during Mr L’s detention. Information was incorrectly recorded on ICSE, record keeping was inadequate, there was delay by DIAC in contacting Mr L following his arrest by police, information was not checked sufficiently, there was a lack of urgency to resolve his status, and there was delay in releasing him from detention.

Case study: Multiple failures to prevent and resolve detention

Mr L applied to the MRT to review DIAC’s decision to refuse his application for a student visa. His bridging visa would remain valid until 28 days after he was notified of the MRT’s decision. DIAC incorrectly recorded the MRT application and, as a result, his ICSE record incorrectly showed that he was an unlawful non-citizen. DIAC later notified the police that Mr L was an unlawful non-citizen and asked the police to refer him to DIAC if the police located him.

Mr L attended a police station in response to a request by the MRT for more information on his previous interaction with police (when he had reported his car stolen). The police contacted DIAC, a check was conducted of Mr L’s immigration status and DIAC requested that police detain him under s 189.

The next day, Mr L was interviewed by a DIAC officer who authorised the detention. Mr L advised, and his migration agent later confirmed, that he held a bridging visa and had an appointment with the MRT that day. The DIAC officer failed to act on that information, apart from advising the migration agent that documentary evidence had to be supplied. The DIAC officer did not attempt to contact the MRT.

The migration agent faxed evidence to DIAC later that day (Friday.) The migration agent informed this office that when he telephoned the DIAC officer to confirm the arrival of the fax, the officer advised that he was leaving the office for the day and could not look at it until after the weekend. This was denied by the DIAC officer at interview. No further action was taken until the following Monday when the DIAC officer considered the information contained in the fax and contacted the MRT for confirmation. The officer then contacted the migration agent to apologise. Mr L was released after being detained for five calendar days.

4.34 Earlier reports by the Ombudsman’s office have drawn attention to prolonged detention coinciding with a weekend or holiday period. DIAC has taken steps to address that problem. The following case of Mr M provides a further reminder of the problem.

Case study: Christmas detention

Mr M had been in Australia lawfully for three years. He had lodged a request for the Minister to intervene in his case and grant him a visa. While the Minister was considering this request, Mr M was granted a second bridging visa but this was not recorded on ICSE.

On 24 December 2003, while waiting at Melbourne airport for a friend, Mr M was detained and transferred to a detention facility. Even though a review of Mr L's records could have readily clarified his status, he remained in detention for seven calendar days until DIAC officers returned from their Christmas/New Year break and reviewed his case.

PART 5—CONCLUSIONS

5.1 There were data errors in each of the 45 cases covered in this report. In 42 of those cases the person detained was a lawful non-citizen at the time of detention. In the other three cases, although some of the data was incorrect, the person detained was an unlawful non-citizen at the time of detention, and was therefore liable to be detained. It is inexcusable that there was such frequency of error leading to the detention of people who had a lawful right to live unrestrained in the community.

5.2 This report does not express a view on whether there was a period of unlawful detention in any of the cases under investigation. A condition of lawful detention under s 189 is that an officer knew or held a 'reasonable suspicion' that the person being detained was an unlawful non-citizen. It is doubtful if that requirement was met in many of these cases, when the decision to detain was based on incorrect information and inadequate enquiry. However, a more extended analysis would be required to reach a concluded view on that issue; and it rests ultimately with a court of competent jurisdiction to decide if there was a period of unlawful detention. In each individual case the Ombudsman's office recommended to DIAC that it give further consideration to this issue for the purpose of considering whether a remedy should be provided to the person to acknowledge or redress any suspected unlawful action.

5.3 It is useful for future guidance to summarise the errors that were identified in the 45 cases in this report.

Data recording errors

5.4 The errors included:

- data was not recorded, inaccurate data was recorded, or data was entered incorrectly into ICSE
- the data systems were not fully understood by staff
- data recording practices were inconsistent and flawed.

5.5 Those errors were caused by:

- human error and individual lack of care and attention to detail
- insufficient guidance and training provided to DIAC officers
- inconsistent and uncoordinated communication between DIAC and the tribunals.

Inadequate data checking prior to detention

5.6 It appears to the Ombudsman's office that in most cases, at the time a person was detained, DIAC already held sufficient information either confirming their lawful status or creating doubt that the person was an unlawful non-citizen. The errors could be summarised as follows:

- DIAC officers failed to conduct adequate checks of available information prior to making a decision under s 189 to detain a person

- the officers did not appear to understand fully their obligations under s 189 to form and continue to hold a 'reasonable suspicion' to justify a person's detention
- departmental instructions set out in the MSIs regarding the checking of information were not followed
- inadequate policy guidance was provided to officers in some areas, especially in relation to the application of s 189
- inadequate training and supervision was provided to officers on administering DIAC's policy.

Errors in resolving status during detention

5.7 In many cases a person's detention was prolonged unnecessarily. The causes included:

- the detention coincided with a weekend or holiday period
- DIAC gave primacy to information contained on ICSE (or parts of ICSE) over other sources of information
- DIAC officers failed to consider or promptly respond to additional information provided to them regarding a detainee's immigration status
- DIAC officers delayed or did not conduct interviews with suspected unlawful non-citizens in detention.

A culture of accountability

5.8 These data errors in the 45 cases reflect the following weaknesses in DIAC systems and processes at the time:

- staff did not take proper personal responsibility for decision making and for ensuring that errors were corrected
- there was inadequate quality checking, control and timely review of compliance and detention activity
- data collection, analysis and management was degraded by ad hoc processes and poor coordination
- there was inadequate training and policy guidance for officers.

5.9 DIAC has now implemented reforms to address those weaknesses. Part of the new challenge is for DIAC to engender a strong culture of accountability and professionalism among officers at all levels. Ultimately, effective data management rests upon individual officers understanding their role and responsibilities in managing information.

PART 6—RECOMMENDATIONS

6.1 Most of the issues raised in this report have earlier been raised in other Ombudsman reports.⁶ The recommendations in those reports have been accepted by DIAC and are currently being implemented. It is recommended that DIAC, as part of that process of reform, note the contents of this report and ensure that adequate measures are implemented to address the following problems identified in this report.

- Data management needs to be strengthened, including better training and supervision of officers in data systems and practices, and prompt correction of inaccurate data.
- Officers require better guidance on administering s 189, particularly as to forming a 'reasonable suspicion' and checking data.
- All staff must be made aware of their responsibility to support the integrity of the compliance function. This includes ensuring that data is properly and accurately recorded and immigration status information is properly checked so that any compliance activity is based on up to date and accurate information.
- DIAC and the tribunals must continue to work closely to ensure sound data exchange.

6.2 MSI 350: *Bridging visa overview* should be revised to provide clearer guidance on the continuation of bridging visas during appeals to courts, and the types of information that will constitute evidence of a person's involvement in judicial proceedings (such as information provided by solicitors and court documents).

⁶ See the Ombudsman's reports referred to in footnote 3.

APPENDIX A—RESPONSE FROM DIAC

Dear Dr Thom

Thank you for the opportunity to comment on your draft *Report into Referred Immigration Cases: Data Issues*. The department agrees with the recommendations in your report and the response to your specific recommendations is attached. As I have said in responses to you on other reports, your findings, and the observations that you make, demonstrate the serious errors that have occurred in the past, which have directly impacted on many peoples' lives. They are very clear reminders of the importance of my department maintaining direction with the substantial changes it has made, and continues to make, aimed at preventing such mistakes recurring.

The central theme in your report is the importance of data management to good public administration. As you know, the department has embarked on the development of its new integrated client information system – *Systems for People* – which will provide a single view of the client, improved record-keeping and better quality data for decision makers.

In highlighting the serious consequences of poor data management, your report also reinforces my commitment to strong quality assurance practices to ensure accountability and transparency about the way our business is conducted. Quality assurance processes (for example, automated reporting systems, internal and external audits) have recently been strengthened by the development of a principles-based National Quality Assurance Framework. I have also issued an instruction identifying roles and responsibilities in relation to quality assurance practices, including the responsibility of my Governance and Assurance Branch in monitoring the implementation of quality assurance processes throughout the department.

A fundamental basis of the department's change agenda is to learn from the problems of the past to ensure that we meet our objectives of being open and accountable, having fair and reasonable dealings with clients and well trained and supported staff. With this in mind, I have also asked that the case examples provided in your report be used to inform future case studies in the training curriculum for the College of Immigration.

While you have not recommended any action in relation to individual officers involved in these cases, I would like to reassure you that I have asked that the cases noted in your report be considered and, where appropriate, action be taken to address any inappropriate conduct. As I have said before, I expect staff to treat clients fairly, reasonably and with respect.

Yours sincerely

(Andrew Metcalfe)

Attachment to Secretary's letter

The department agrees with the recommendations of this report, and is already addressing them in its established program of reform. As part of its business transformation process, steps being taken to address the recommendations include the following:

- As discussed in responses to previous reports, the department has commenced implementation of its extensive information management environment - *Systems for People*. Major system enhancements that are being progressively released between now and 2010 will build the department's capacity to improve data management and quality. The requirement to map business rules as a part of the design process will aid the development of systems designed to capture accurate and relevant information.
- As part of its commitment to dealing fairly and reasonably with clients, DIAC has made a major commitment to strengthening staff competence in responsible management of client information. In addition to department-wide initiatives highlighted in other responses to recent Ombudsman reports (eg, the revision of the Recordkeeping Policy and Guidelines, and the distribution of a Managing Records booklet) further measures have been implemented to reinforce timely and accurate data recording among DIAC staff, including:
 - the current development of a departmental *Record Keeping Strategy*;
 - comprehensive Compliance Quality Assurance guidelines for compliance managers overseeing the information management practices of staff;
 - instructions for Compliance Officers ensuring the timeliness and quality of data recording; and
 - the departmental Secretary, on several occasions, reinforcing with all staff the importance of good record-keeping practices, and the serious outcomes for clients of poor record-keeping.
- DIAC also recognises that the rigorous and responsible checking and review of data is important, particularly in relation to the application of s189 of the *Migration Act 1958*. Revised procedural guidance will reinforce the need for compliance officers to retrieve and examine in detail all relevant files and information held on departmental databases, before planning compliance activities. Compliance officers are also required to check systems in the process of establishing reasonable suspicion while completing the Compliance Field Interview Form. The department's *s189 Training Package*, incorporating practical case examples and problem-solving, is regularly updated to better enable officers to understand the significance of thorough data checking in the context of forming and maintaining a reasonable suspicion. College of Immigration training also emphasises the importance of compliance officers accessing all available sources of information when making a decision to detain.
- The department is also continuously improving its data relationships with other key agencies. For example, DIAC's Central Processing Office receives daily notification of all review applications that are lodged with the Tribunals that day, so that departmental records can be promptly updated. Protocols have been negotiated with the Tribunals to improve timeframes for file and decision-record transfers. Arrangements have also been introduced for the Federal Court and Federal Magistrates Court to provide copies of all judicial review applications to

the department daily, so that client records can be updated within a working day.

- The department's instruction - *Bridging Visa Overview* - has been revised to provide clear guidance on the continuation of bridging visas during court appeals. It also broadens the types of information that DIAC takes as evidence of a client's involvement in judicial proceedings. As a further measure, procedures are being revised to ensure that where a client indicates they are involved in judicial review, but there is no departmental record of this and the client has no documentation, the department will still contact the Courts to confirm whether an application has been received.
- In the past two years, the department's training strategy has focussed on strengthening training for compliance and detention officers. The department has considered the base level training needs of new staff more generally. As a result of this, for example, the department has recently strengthened the induction programme to include a core module of Record Keeping and Information Management.

APPENDIX B—GLOSSARY OF ACRONYMS

DIAC	Department of Immigration and Citizenship
ICSE	Integrated Client Services Environment
MRT	Migration Review Tribunal
MSI	Migration Series Instruction
RRT	Refugee Review Tribunal
s 189	Section 189 of the <i>Migration Act 1958</i>
Migration Act	<i>Migration Act 1958</i>
the tribunals	Migration Review Tribunal and Refugee Review Tribunal
TRIPS	Travel and Immigration Processing System