



Australian Government

Department of Immigration and Border Protection

Attachment A

DECISION RECORD

**Request Details**

FOI Request FA14/07/01182

File Number ADF2014/26356

**Scope of request**

*"I write seeking information under the Freedom of Information Act, specifically the KPMG report, audit 4, on Community Detention and Bridging Visas for UMAs."*

**Documents in scope**

1. Internal Audit report – Community Detention & Bridging Visas for IMAs – 28/2/2014

**Authority to make decision**

I am an officer authorised under section 23 of the FOI Act to make decisions in respect of requests to access documents or to amend or annotate departmental records.

**Information considered**

In reaching my decision, I have considered the following:

- The *Freedom of Information Act 1982*;
- Departmental files and/or documents (identified above); and
- The Australian Information Commissioner's guidelines relating to access to documents held by government.

**Reasons for decision**

I have considered the files within the scope of your request and applied exemptions in part or in full to documents as detailed in the Schedule of Documents. You should read the schedule in conjunction with the exemptions below.

**22 Access to edited copies with exempt or irrelevant matter deleted**

*Scope*

(1) *This section applies if:*

(a) *an agency or Minister decides:*

(i) *to refuse to give access to an exempt document; or*

(ii) *that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and*

(b) *it is possible for the agency or Minister to prepare a copy (an **edited copy**) of the document, modified by deletions, ensuring that:*

(i) *access to the edited copy would be required to be given under section 11A (access to documents on request); and*

(ii) *the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and*

(c) *it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:*

(i) *the nature and extent of the modification; and*

(ii) *the resources available to modify the document; and*

(d) *it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.*

*Access to edited copy*

- (2) *The agency or Minister must:*
- (a) *prepare the edited copy as mentioned in paragraph (1)(b); and*
  - (b) *give the applicant access to the edited copy.*

*Notice to applicant*

- (3) *The agency or Minister must give the applicant notice in writing:*
- (a) *that the edited copy has been prepared; and*
  - (b) *of the grounds for the deletions; and*
  - (c) *if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.*
- (4) *Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.*

**Deletion of exempt or irrelevant material under s.22 of the FOI Act**

Section 22(2) of the FOI Act provides that, where an agency reaches the view that a document contains exempt information or material that is irrelevant to the request **and** it is possible for the agency to prepare an edited copy of the document with the irrelevant or exempt material deleted, then the agency must prepare such a copy.

This edited copy must be provided to the applicant. Further, the decision maker must advise the applicant in writing that the edited copy of the document has been prepared and of the reason(s) for each of the deletions in the document (s.22(3) of the FOI Act).

Exempt material is deleted pursuant to s.22(1)(a)(i) and irrelevant material is deleted pursuant to s.22(1)(a)(ii) of the FOI Act. The irrelevant material within the document relates to information not included in the scope and information outside of the specific date range within the scope of the request. Staff names have been redacted as being irrelevant to the scope.

**47 Documents disclosing trade secrets or commercially valuable information**

- (1) *A document is an exempt document if its disclosure under this Act would disclose:*
- (a) *trade secrets; or*
  - (b) *any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.*
- (2) *Subsection (1) does not have effect in relation to a request by a person for access to a document:*
- (a) *by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or*
  - (b) *by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or*
  - (c) *by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.*
- (3) *A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.*

A document is conditionally exempt under s.47(1)(b) if its release would, disclose information having a commercial value that would be or could be reasonably expected to be destroyed or diminished if the information was disclosed. As discussed above, a conditionally exempt document must be released under the FOI Act unless the release would be 'contrary to the public interest'.

### **Factors favouring disclosure**

I have considered the factors set out in s.11B(3) of the Act which were discussed above. In weighing up the public interest test, s.11B(3) of the FOI Act states that a decision maker **must** consider whether disclosure of the information would:

- (a) promote the objects of the Act; or*
- (b) inform debate on a matter of public importance; or*
- (c) promote effective oversight of public expenditure; or*
- (d) allow a person to access his or her personal information.*

The objects of the Act, set out in s.3(1) are to give the Australian community access to information held by the Government of the Commonwealth by providing, amongst other things, for a right of access to documents. The intention of Parliament is to promote Australia's representative democracy by increasing public participation in Government processes, with a view to promoting better-informed decision-making and increasing scrutiny, discussion, comment and review of the Government's activities

### Factors weighing against release

The FOI Act does not contain any factors 'against' disclosure. However, the FOI Act states that, if the Australian Information Commissioner has issued Guidelines that set out factors weighing against disclosure, then the decision maker must also consider those factors when weighing the public interest (s.11B(5) FOI Act).

The AIC has since issued Guidelines that contain a non-exhaustive list of factors that a decision maker **must** consider when weighing whether it is contrary to the public interest to release 'conditionally exempt' information (paragraph 6.29 of the Guidelines).

The elements that weigh against disclosure are:

*Whether disclosure of the personal information could reasonably be expected to:*

- (k) harm the interests of an individual or group of individuals*

While release would promote the objects of the Act, I do not consider that it would inform debate on a matter of public importance. In addition, the release of the information is irrelevant to the effective oversight of public expenditure.

### **Factors weighing against disclosure**

As discussed previously, the AIC has issued Guidelines that contain a list of factors weighing against disclosure, which must be considered under s.11B(5) of the Act.

I consider that these factors are relevant to the documents in question:

- could reasonably be expected to harm the interests of an individual or group of individuals

The document that is exempt in part under s.47(1)(b) contains commercially valuable information relating to KPMG methodologies and specialist industry knowledge. The approach taken, details of issues are considered to be material used by KPMG in reaching its conclusions and how it reached those conclusions. Disclosure of this information could prejudice KPMG's ability to bid successfully for future engagements of this nature.

In my view the release of this information could be expected to diminish the information having a commercial value and, as such, is exempt in part under the provision of s.47(1)(b)) of the FOI Act.

**47C Public interest conditional exemptions—deliberative processes**

*General rule*

- (1) A document is conditionally exempt if its disclosure under this Act would disclose matter (**deliberative matter**) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:
- (a) an agency; or
  - (b) a Minister; or
  - (c) the Government of the Commonwealth; or
  - (d) the Government of Norfolk Island.

*Exceptions*

- (2) Deliberative matter does not include either of the following:
- (a) operational information (see section 8A);
  - (b) purely factual material.

*Note:* An agency must publish its operational information (see section 8).

- (3) This section does not apply to any of the following:
- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
  - (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
  - (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

The document that I have exempted in part under s.47C(1) contains matter that is in the nature of or relating to 'opinion, advice or recommendation' (termed 'deliberative matter') that are part of the 'deliberative processes' of the department's ongoing policy development relating to community detention and bridging visas.

I have considered a number of factors in order to determine whether or not the release of the information would be reasonable or not in the specific circumstances of the case. Factors considered when applying the unreasonableness test include:

- whether disclosure of the information could reasonably be expected to harm the interests of an individual or group of individuals;
- whether disclosure of the information could reasonably be expected to prejudice the deliberative processes of the department;
- whether disclosure of the information could reasonably be expected to prejudice the function of the department to manage its portfolio;
- the degree to which release would contribute to a public purpose being achieved and/or shed light on the working of government.

I have taken into account the public interest in appropriately maintaining a confidential relationship between ministers and agencies so as to allow agencies and ministers the scope to explore and develop sensitive policy issues. In addition, I have also consulted with the relevant business areas within the department who have advised that a final policy position has not been finalised.

In my view, when all circumstances are considered, the release of information would be unreasonable in the circumstances as it would prejudice the function of the department to manage its portfolio and compromise the policy development relating to the community detention program.

The FOI Act now provides that 'conditionally exempt' information must be released unless the decision maker reaches the view that release of the information would be 'contrary' to the public interest.

I am satisfied that the documents I have exempted in part under s.47C(1) contains information that would compromise the operations of the community detention program and the disclosure would be contrary to the public interest. When assessing the public interest test, I have considered:

Factors in favour of disclosure:

- promote the objects of the Act;
- inform debate on a matter of public importance;
- reveal the reason for a government decision;
- enhance the scrutiny of government decision making;
- the extent to which the information is well known;

Factors against disclosure:

- whether disclosure of the information could reasonably be expected to harm the interests of an individual or group of individuals;
- whether disclosure of the information could reasonably be expected to prejudice the deliberative processes of the department;
- whether disclosure of the information could reasonably be expected to prejudice the function of the department to manage its portfolio;
- the degree to which release would contribute to a public purpose being achieved and/or shed light on the working of government

On balance, I am satisfied that the release of the deliberative material in the documents would be 'contrary to the public interest'.

Therefore, I am satisfied that the deliberative material in the documents is exempt from release under s.47C(1) of the Act

**47E Public interest conditional exemptions—certain operations of agencies**

*A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:*

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;*
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;*
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;*
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

The documents that are exempt in part under s47E(d) contain specific details regarding the operations of the community detention program. In my view, release of this information would have a substantive adverse effect of the proper and efficient conduct of the operations of the community detention program and would be contrary to the public interest.

I have considered a number of factors in order to determine whether or not the release of the information would be reasonable or not in the specific circumstances of the case. Factors considered when applying the unreasonableness test include:

- the extent to which the information is well known;
- the availability of the information from publicly available sources;
- the degree to which release would contribute to a public purpose being achieved and/or shed light on the working of government;
- the nature of the information and whether disclosure would result in serious consequences;
- how the information was obtained; and

- the current relevance and age of the information.

In my view the release of the information regarding the evaluation of the department's risk management framework and the policies and processes used in relation to the operation of the bridging visas and the community detention program, would have a substantial adverse effect on the proper and effective conduct of the operations of the agency. As such it is partially exempt from the documents shown in the schedule under the provision on S47E(d) of the FOI Act.

The FOI Act now provides that 'conditionally exempt' information must be released unless the decision maker reaches the view that release of the information would be 'contrary' to the public interest.

I am satisfied that the document I have exempted in part under section s47E(d) contains information that would compromise the operations of the community detention program and the disclosure would be contrary to the public interest. When assessing the public interest test, I have considered:

Factors in favour of disclosure:

- promote the objects of the Act;
- inform debate on a matter of public importance;
- reveal the reason for a government decision;
- enhance the scrutiny of government decision making;
- the extent to which the information is well known;

Factors against disclosure:

- could reasonably be expected to compromise the bridging visa and community detention program and have a substantial adverse effect on the proper and efficient conduct of the operations of an agency in implementing these programs.

On balance, I am satisfied that release of the operations of the community detention program information within the documents would be contrary to the public interest and is therefore exempt in part under s47E(d) of the FOI Act. The benefit to the public resulting from disclosure is outweighed by the benefit of withholding the information.

The attached Schedule of Documents identifies documents where material has either been deleted as exempt information under the FOI Act or deleted as irrelevant to the scope of the request.



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5 December 2014



Australian Government

Department of Immigration and Border Protection

Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA14/07/01182  
File Number ADF2014/26356

1. Internal Audit report – Community Detention & Bridging Visas for IMAs – 28/2/2014

|       |  |                      |                            |
|-------|--|----------------------|----------------------------|
| i-ii  | Table of Contents  | Release in full      |                            |
| iii   | Milestones   | Release w. exemption | s47E(d)                    |
| 1-3   | Executive Summary  | Release w. exemption | s47C(1)<br>s47E(d)         |
| 4-5   | Objective, Scope and Approach                                    | Release w. exemption | s47(1)(b)                  |
| 6-7   | Findings   | Release w. exemption | s47E(d)                    |
| 8-9   | Community Detention Program Performance Assessment and Reporting | Release w. exemption | s47C(1)<br>s47E(d)         |
| 10-11 | Incident reporting   | Release w. exemption | s47C(1)<br>s47E(d)         |
| 12-14 | Incident analysis  | Release w. exemption | s47C(1)<br>s47E(d)         |
| 15-16 | Staff resources  | Release w. exemption | s47C(1)<br>s47E(d)         |
| 17-18 | Contract Arrangements  | Release w. exemption | s47C(1)<br>s47E(d)         |
| 19-20 | Key Stakeholders consulted during the review                     | Release w. exemption | s22(1)(a)(ii)<br>s47(1)(b) |
| 21-22 |  | Exempt in full       | s47E(d)                    |
| 23-24 | Management Assessment Framework                                  | Exempt in full       | s47E(d)                    |
| 25-27 |  | Exempt in full       | s47(1)(b)<br>s47E(d)       |

## Attachment C – Extract of relevant legislation

### **FREEDOM OF INFORMATION ACT 1982 - SECT 22**

#### **Access to edited copies with exempt or irrelevant matter deleted**

##### Scope

- (1) This section applies if:
  - (a) an agency or Minister decides:
    - (i) to refuse to give access to an exempt document; or
    - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
  - (b) it is possible for the agency or Minister to prepare a copy (an *edited copy*) of the document, modified by deletions, ensuring that:
    - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
    - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
  - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
    - (i) the nature and extent of the modification; and
    - (ii) the resources available to modify the document; and
  - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

##### Access to edited copy

- (2) The agency or Minister must:
  - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
  - (b) give the applicant access to the edited copy.

##### Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
  - (a) that the edited copy has been prepared; and
  - (b) of the grounds for the deletions; and
  - (c) if any matter deleted is exempt matter--that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

### **47 Documents disclosing trade secrets or commercially valuable information**

- (1) A document is an exempt document if its disclosure under this Act would disclose:
  - (a) trade secrets; or
  - (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
- (2) Subsection (1) does not have effect in relation to a request by a person for access to a document:
  - (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
  - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
  - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.

- (3) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or *by a local government authority*.

#### **47C Public interest conditional exemptions—deliberative processes**

##### General rule

- (1) A document is conditionally exempt if its disclosure under this Act would disclose matter (**deliberative matter**) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:
- (a) an agency; or
  - (b) a Minister; or
  - (c) the Government of the Commonwealth; or
  - (d) the Government of Norfolk Island.

##### Exceptions

- (2) Deliberative matter does not include either of the following:
- (a) operational information (see section 8A);
  - (b) purely factual material.

Note: An agency must publish its operational information (see section 8).

- (3) This section does not apply to any of the following:
- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
  - (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
  - (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

#### **47E Public interest conditional exemptions—certain operations of agencies**

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.



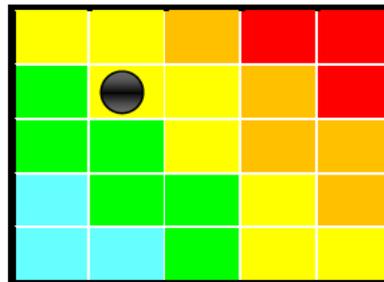
Australian Government

Department of Immigration and Border Protection

# Internal Audit Report

## Community Detention & Bridging Visas for IMAs

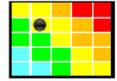
Date: 28/02/2014



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*Freedom of Information Act 1982*



**Milestones**

|  |      |
|--|------|
| <b>Audit reference</b>                 | 4    |
| <b>Revised date report sent to DAC</b> |      |
| <b>Work undertaken by</b>              | KPMG |

| Milestone  | Agreed completion date | Revised completion date |
|--|------------------------|-------------------------|
| Planning   | 8 October 2013         | 8 October 2013          |
| Fieldwork  | 22 November 2013       | 22 November 2013        |
| Final report with management comments to DAC secretariat | 7 February 2014        |                         |

| Task   | Planned date     | Actual date      | Variance (days) | Reason for variance |
|--|------------------|------------------|-----------------|---------------------|
| Commencement of planning stage                                 | 2 August 2013    | 2 August 2013    | 0               |                     |
| Entry interview  | 18 October 2013  | 15 October 2013  | -3              |                     |
| Draft plan to IA   | 9 August 2013    | 9 August 2013    | 0               |                     |
| Order form approval  | 9 August 2013    | 1 November 2013  | 84              | s. 47E(d)           |
| Draft plan to lead accountable                                 | 14 August 2013   | 14 August 2013   | 0               |                     |
| Draft plan to DAC  | 4 October 2013   | 3 October 2013   | -1              |                     |
| Final DAC approval of plan (completion of planning)            | 8 October 2013   | 8 October 2013   | 0               |                     |
| Commencement of fieldwork                                      | 18 October 2013  | 18 October 2013  | 0               |                     |
| Completion of fieldwork  | 22 November 2013 | 22 November 2013 | 0               |                     |
| Draft discussion paper to lead accountable                     | 6 December 2013  | 6 December 2013  |                 |                     |
| Exit interview   | 13 December 2013 | 18 December 2013 |                 |                     |
| Draft audit report to IA                                       | 18 December 2013 | 4 December 2013  |                 |                     |
| Draft audit report to lead accountable for management comments | 20 December 2013 | 20 December 2013 |                 |                     |
| Final draft report with management comments to audit manager   | January 2014     |                  |                 |                     |
| Final draft report to DAC                                      | 7 February 2014  |                  |                 |                     |
| Remedial action if required                                    |                  |                  |                 |                     |

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## 1 Executive Summary

### 1.1 Background

The *Migration Act 1958* requires people who are not Australian citizens and who are unlawfully in Australia to be detained. The purpose of immigration detention is to protect the Australian community from risks that may arise from the presence of unlawful non-citizens, and to ensure unlawful non-citizens are available for removal. Community detention (CD) is one form of immigration detention.

Detainees in community detention do not hold a visa, and are unable to work or engage in vocational studies or training. They are able to live and move about the community while their immigration status is being resolved, however, they are still considered to be in detention. They receive assistance with housing, residential and out-of-home care for unaccompanied minors, access to case workers, healthcare and other services, and an allowance to meet daily living costs and a range of activities. They must live at the address specified by the Minister, and may undertake voluntary activities (with the Department's approval), and attend English classes. School aged children must attend school.

The community detention program has expanded significantly since October 2010 when greater numbers of longer-term and vulnerable detainees, particularly children and vulnerable families, were moved from held detention<sup>1</sup>. As at 11 September 2013, 3325 people were in community detention (27 per cent of the 10,621 people in immigration detention).

Thirteen service providers are contracted by the department to provide housing and other support services to detainees in the community detention program. The Australian Red Cross is the major service provider to the program, and is supported by other subcontracted non-government organisations. A number of other organisations also provide services that are used by the program, particularly in relation to health care and ESL classes.

The department requested an internal audit to assess whether adequate controls are in place to manage the risks inherent in proposing detainees to move into community detention or to receive a bridging visa E and therefore be released into the community; and to examine the department's management of the community detention program.

### 1.2 Summary of Findings

#### *Triage Process*

A triage process is applied to assess whether it would be more appropriate to move a detainee from held detention into community detention or to a bridging visa class E (BVE), given their circumstances and vulnerabilities, and their identity, health and security status. We reviewed whether the design of the triage process includes appropriate controls to mitigate inherent risks, and noted no significant weaknesses (refer section 3.1 and **appendix B**).

However, it should be noted that placing a detainee in community detention is dependent upon the Minister exercising their residence determination power under the *Migration Act*

<sup>1</sup> Alternatively, since November 2011, eligible illegal maritime arrivals (IMAs) who have passed initial health, security and identity checks and who do not pose a risk to the community may be granted a bridging visa E while their asylum claims are assessed.

## For Official Use Only



1958. Following the Federal Election, the policy settings of the new Government and Minister in respect of detainees being considered for community detention or BVE have not been confirmed, although a submission is with the Minister. As a result, there is little activity currently in identifying and assessing detainees through the triage process. The confirmation of these settings is necessary to provide guidance to the department on the number of detainees and types of cases / vulnerabilities for prioritisation, which may lead to increased activity in the triage process.

### *Community Detention Program Management Framework*

The department has implemented a generally sound management framework for the delivery of the community detention program, notwithstanding the need for a more formalised program structure only emerged in 2010 when the number of detainees in community detention expanded significantly.

Community Detention Branch has continued to design and implement elements of the community detention management framework alongside the expansion of the program. This is resulting in a more mature function to better achieve the program's outcomes across a larger cohort of detainees (with a wider array of vulnerabilities), using the assistance of an increased number of service providers. In respect of the management framework, Internal Audit noted:

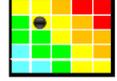
- no current program-level assessment and reporting process against the program objectives;
- no mechanism to ensure case managers are notified of all incidents related to their cases;
- no regular analysis of incident data to confirm service provider compliance with performance levels, and to identify significant issues, trends and data integrity issues;
- an opportunity to better utilise and challenge the CD Contact Officer and CD Portal Support positions; and
- the need to strengthen future service provider contracts to address a number of performance gaps previously identified by management.

These findings and associated recommendations are noted in summary overleaf, and in detail at sections 3.1 to 3.6 of this report.

s. 47E(d), s. 47C(1)

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s. 47E(d), s. 47C(1)



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<sup>2</sup> CCMS – Compliance, Case Management, Detention and Settlement.



## 2 Objective, scope and approach

### 2.1 Objective

The objective of this internal audit was to:

- Assess the controls to manage risks inherent in the triage process that proposes the community detention and BVE options; and
- Examine the department's management of the community detention program.

### 2.2 Scope

This internal audit included:

- Examining the triage process which proposes the community detention and BVE option, with regard to the information that informs that process and the submission for the Minister to exercise his or her discretion to make a residence determination or grant a BVE.
- Assessing the management framework developed and implemented by CD Branch for community detention, which assists to manage identified strategic and tactical risks, and achieve the objectives of the community detention program.
- Considering whether the contract management lessons learnt have been addressed in the draft contract for the Status Resolution Support Services<sup>3</sup> (SRSS) tender.
- Reviewing how the department monitors an individual's compliance with the conditions attached to community detention, to assess whether associated risks are being managed. In particular:
  - the risks relevant to persons complying with their obligations and restrictions whilst in community detention; and
  - the mechanisms, systems and reports used to verify that persons in community detention are complying with their obligations and restrictions.

Areas out-of-scope for this internal audit:

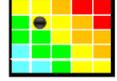
- Contract management, as this aspect of the program had been the subject of previous internal audits and management reviews. CD Branch had developed a paper of the 'lessons learnt' and mitigating actions taken or to be taken by the community detention program in relation to the arrangements in place with the Australian Red Cross for the CD program. Internal Audit did assess whether the lessons learnt have been addressed by the draft contract included in the SRSS tender, however other contract management practices were not reviewed.
- Detailed substantive testing of individual client assessments for eligibility for entry in community detention, BVE or held detention.
- Assessing the capacity of the community detention program to scale up or scale down in response to changes in Government policy.

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<sup>3</sup> The SRSS Program will bring together four existing support programs, including the CD program, into the SRSS program. The SRSS tender will select suitably qualified organisations to provide key support services, including those currently provided by CD service providers

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- To observe appropriate discipline necessary to support the Integrated Service Delivery Framework tender process, contracted service providers were not contacted for the purpose of this audit.

s. 47(1)(b)

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### 3 Findings

#### 3.1 Community Detention and BVE triage process

We reviewed whether the design of the triage process includes appropriate controls to mitigate inherent risks (refer section 3.1 and **appendix B**). No significant weaknesses were noted in respect of the triage process, notwithstanding there are different practices followed for complex status resolution case submissions compared to CD placement submissions. It should also be noted that the identity, security and health checks and assessments occur outside of CD processes, although such are relevant to a detainee's suitability for community detention or BVE.

##### Context

The main risks relevant to moving a detainee into community detention or granting a BVE are:

- Failure to correctly identify and respond to vulnerable clients.
- Failure to provide appropriate advice to the Minister
- Inadequate preparation of people for release into the community.

There are other risks relevant to the community detention program rather than the triage process, such as:

- Failure of service providers to deliver services efficiently and effectively; and
- Failure of service providers to manage clients in the community.

The Minister is the delegate to make a residence determination for a detainee to be put into community detention or be granted a BVE (referred to as the 'triage process').

In relation to community detention, the Minister has a non-delegable non-compellable public interest power to make a residence determination for people in immigration detention under sections 197AB and 197AD of the *Migration Act 1958*. In exercising this power to transfer detainees from held detention to community detention, the Minister generally gives priority to vulnerable detainees, such as unaccompanied minors and severely vulnerable families and adults, including those with diagnosed mental or physical illnesses, disabilities or other complex needs. Case managers assess detainees in held detention as part of the mitigation of risks in respect of identifying and responding to vulnerable clients.

For detainees who are able to support themselves and for whom no significant security or vulnerability issues exist, the BVE pathway may be appropriate.

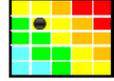
Ministerial Guidelines approved by the Minister provide guidance to the department (including the CD program areas) on the cases and matters that the Minister may wish to consider in respect of CD.

The department is currently seeking to agree the updated Ministerial Guidelines to apply to give effect to the Government's policy settings, and a submission is with the Minister. However, case managers generally consider whether detainees in held detention meet the existing vulnerability criteria, and hence should be referred for consideration for community detention. Such detainees are referred to CD Referrals and Placements section, for further assessment and possible submission to the Minister. s. 47E(d)

Detainee cases are considered on an individual basis, to identify options by which they may be most appropriately managed. Some status resolution cases are referred to Complex Case Resolution section, which provides detailed submissions to the Minister, as appropriate,

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detailing information in respect of the detainee, and outlining possible actions. s. 47E(d)

. Detailed information is also provided to the Minister, reflecting the complexity of the status resolution of these cases.

Where appropriate, cases may be passed from CD Referrals and Placements to Complex Case Resolution, or vice versa, depending on the circumstances of each case.

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## 3.2 Community Detention Program Performance Assessment and Reporting

### Context

The CD program has a number of objectives, as documented in the program's *Operational Framework*:

- Enhance well-being, resilience and self-agency of clients awaiting resolution of their immigration status;
- Provide suitable accommodation and support to clients living in the community;
- Enable greater individual independence and empowerment and social community participation;
- Enhance settlement outcomes for those clients granted protection; and
- Support the status resolution process of clients on a return pathway.

### Discussion of audit finding

#### *Program Performance*

To assess how well the objectives of the CD program are being met, a program-level assessment and reporting process was not specifically noted, and as such we have recommended that one should be implemented.

To date, there has been significant assessment and reporting in relation to service providers (QA reviews are noted in more detail in section 3.6), and a CD Branch Business Report (the 'CD dashboard') is being refined to provide executive information related to both the CD program and the branch's administrative activities. However, a regular assessment and reporting of how well the program is achieving the objectives would provide assurance that the community detention program is operating effectively, and may also highlight specific objectives that require further attention, or which no longer reflect the priorities of the Government and the program.

Whilst the CD dashboard addresses a number of components of a program-level performance report, specific commentary against each of the program's objectives should be included, as well as incident analysis (refer finding 3.4) and service provider performance.

The reporting could be a part of regular branch and division reporting arrangements, thus providing transparency, accountability and assurance to the relevant Senior Executives.

#### *Service Provider Performance*

We note that the Australian Red Cross has been providing quarterly performance reports in respect of various aspects of its service provision to the CD program, however other CD service providers have not been required to provide regular performance reporting.

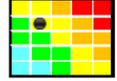
In future, it would be prudent to require all service providers to provide useful and timely performance reports, to facilitate the accountability of service providers to meet their contractual obligations, and to provide a mechanism for service providers to formally notify the department of performance issues and compliance matters, as well as to communicate progress in addressing previously reported issues. We note that performance reporting by service providers will be required under the SRSS arrangement, and therefore we expect this matter will be addressed for future service providers.

### Risk exposure of our findings

Lack of regular performance assessment and reporting will not identify program objectives that are not being met, and the remedial actions required to address identified shortcomings. Such reporting also provides a formal mechanism to raise program issues at the Executive-level for consideration and response, rather than relying on other existing branch and

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division escalation mechanisms.

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### 3.3 Incident Reporting

#### Context

CD service providers are required to notify the department of all incidents relating to clients in community detention. Timely, accurate and detailed information is required for the department to comply with work health and safety obligations, meet the duty of care owed to detainees, and identify risks and issues for mitigation and resolution.

Incidents are categorised according to their severity: critical, major or minor. The types of incidents to be reported range from absconding, sexual assault and death (all examples of types of critical incidents); threat, self-harm, medical and detainee not arriving for an arranged meeting (examples of major incidents); to abusive behaviour, minor accident / injury, theft and substance abuse (minor incidents). As may be noted, the types of incident include health and safety issues, but also matters relevant to detainees' compliance with the conditions of community detention.

#### Discussion of audit findings

##### *Notification of Incidents*

CD service providers now record details of incidents directly in the CCMDS Portal, in addition to notifying incidents to the CD Incident Reporting Hotline as required under the Operational Framework.

We note that case managers do not receive an automatic notification of incidents related to their detainee cases, unless the incident is of such significance that they receive a situation report ('sitrep'). Case managers will review all incidents in the CCMDS Portal in relation to the monthly case review process, however, this may not bring incidents to their attention until days or a few weeks after the incident occurred.

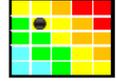
##### **Risk exposure of our findings**

The immediate notification to case managers of all incidents related to their detainee cases would assist in timely consideration of events, possible causes and consequences, and impacts on case resolution, and facilitate timely escalation where appropriate.

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### 3.4 Incident Analysis

#### Context

Incident reporting is a key mechanism used by the department to ensure there is appropriate transparency and knowledge of incidents related to detainees that are owed a duty of care by the department. Incident reporting also facilitates accountability in ensuring incidents are appropriately resolved, and enables the department and service providers to take appropriate steps to prevent a recurrence.

CD service providers have access to the CCMDS Portal, in which they record details of all reportable incidents affecting detainees in community detention.

#### Discussion of audit findings

##### *Identifying Trends and Significant Issues*

The department now has a significant dataset of reports on incidents over the last four years. Whilst acknowledging that the management of the program by the department continues to mature following the significant expansion in the program since 2010, a regular process to analyse incident data has not yet been implemented.

Given the central importance of the duty of care to detainees for the CD program, as well as the appropriate management of other risks including the safety and wellbeing of departmental and service provider staff and the general public, it would be prudent to perform regular analysis of this data to:

- Determine whether there are trends that indicate significant issues (e.g. increasing number or proportion of critical incidents, particular incident types, etc) at the program level, or in relation to each service provider; and
- Confirm service providers are meeting the required standards in respect of complete, timely and detailed incident reports.

The results of the incident analysis could also be input to the development of more targeted quality assurance activity, to respond to the most numerous or emergent trends with the assistance of service providers, or to identify categories of incident that may require further disaggregation to identify issues that should be addressed.

Such analysis would complement analysis already regularly undertaken for the program, such as in respect of the statistics (e.g. detainee cohorts in CD, number of CD detainees in each State, etc) that are regularly reported to service providers and publicly on the department's website.

KPMG obtained community detention incident data from the CCMDS Portal, to review the timeliness of incident reporting, assess whether data integrity issues are apparent, and to perform a high-level analysis of the incident data, for the purposes of illustration. s. 47E(d)

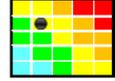
##### *Incident Data Integrity*

###### *Timeliness of Incident Reporting (Service Levels)*

Analysis of the following 3 key fields can assist the department to ensure service providers meet their service levels for reporting incidents, or to identify data entry / integrity issues:

- 'Date Occurred',
- 'Date DIAC notified' and
- 'Date Created' (this is the date the entry was created in the CCMDS Portal).

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It should also be noted that incident data in the CCMDS Portal includes incident information from sources other than CD service providers, for example police, DIAC staff, visitor, contractor. It would be prudent to ensure all relevant fields are completed (e.g. 'DIAC notified' field') regardless of who provided the information for the report, to enable efficient and appropriate analysis.

- A number of instances were noted where 'DIAC notified' was before 'Date Occurred', indicating possible data entry errors.
- There were numerous instances (664) where the 'DIAC notified' field was more than 3 days (the maximum allowable time for Minor incidents to be reported) after 'Date Occurred'. These reports contained Minor, Major and Critical incidents.
- There were instances noted of 'DIAC Notified' being in excess of a year after the 'Date Occurred'.
- There were numerous reports (around 500) that appear to have been entered / created more than 3 days after the incident occurred, although around 300 of these were entered / created within a week of the date of occurrence.

### Completeness of Incident Data Fields

From our review of incident data, there were significant gaps in the completeness of incident report data, in relation to when the department was notified (17%) and the summary of the incident (6.8%). The department should ensure the integrity of incident reporting through periodic review and analysis of the data.

Population Summary (for the period September 2009 to September 2013):

|                              |              |                                     |            |
|------------------------------|--------------|-------------------------------------|------------|
| Total Incident Population    | 3,869 (100%) | Blank data for 'DIAC Notified'      | 664 (17%)  |
| Number of Minor incidents    | 2,095 (54%)  | Blank data for 'Incident Summary'   | 264 (6.8%) |
| Number of Major incidents    | 1,644 (43%)  | Potential incorrect 'type' selected | 46 (1.2%)  |
| Number of Critical incidents | 130 (3%)     | Apparent duplicate incident reports | 52 (1.3%)  |

### Risk exposure of our findings

Failing to analyse available data may result in missed opportunities to address underlying issues, leading to recurrence of incidents that are preventable or may be better managed. Such analysis may also identify good or bad practices by service providers or the department, including data integrity issues, enabling them to be replicated / addressed for the benefit of detainees and the program overall.

s. 47C(1)



s. 47E(d)



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### 3.5 Staff Resources

#### Context

The CD program is largely supported by staff within CD Branch in Canberra and CD Contact Officers (CDCOs) in a number of regional offices, with particular support provided by areas in other branches, notably in respect of health and education.

#### Discussion of audit findings

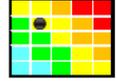
We noted two roles where there appears to be an opportunity to enhance the use of staff resources.

- CDCOs are currently an APS6 level position, with a CDCO based in a number of regional (State) offices. It appears that the functions of this position are generally repetitive process (e.g. care plan amendment approval), with some interaction with service providers to provide guidance, support and training. Notwithstanding, this position appears to be underutilised. CDCOs are required to refer a number of matters to the CD Operations team for decision. The CDCO position was piloted and implemented over the last year, and although we are not aware that there has been significant staff turnover in the positions, our discussions highlighted this as a risk because of its current functions and limited authorities. It may be beneficial to broaden the role, functions and delegations of the CDCO position, to assist in reducing the risk of frequent staff turnover, which would have an impact on the effectiveness of relationships with service providers.
- The CDSP Portal Support position provides support to service providers in relation to queries they have on the use of the CCMDS Portal. Since the introduction of the CDCOs, we understand that these queries have been increasingly addressed by the CDCOs, with whom the service providers have frequent contact.

#### Risk exposure of our findings

There appear to be opportunities to better utilise available staff resources, to improve productivity, share workload across resources, and minimise the risk of high staff turnover with a resultant need to re-establish service provider relationships and train new staff.

s. 47C(1)



s. 47E(d)



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### 3.6 Contract Arrangements

#### Context

A range of services for community detention are provided by third party organisations under contract to the department. The Australian Red Cross is the key service provider, although a number of other contracted and subcontracted service providers are engaged.

The department has previously noted shortcomings in the arrangements and contracts with CD service providers, and has documented the lessons learnt and mitigating actions taken or that may be taken to address the identified shortcomings.

Of particular note is the range of quality assurance reviews by CD Branch of contracted and subcontracted service providers to assess aspects of service provision. E.g.:

- Suitability of accommodation provided to detainees;
- Provision of household items and furnishings as required by the contract;
- Detainee induction processes;
- Accuracy of allowance payments;
- Standard of record keeping, etc.

CD Branch's approach to contract management has been reviewed previously by both the internal audit function, and management, and we have not therefore reviewed or assessed the contract management arrangements for CD service providers, and whether such are adequate and sufficient to address the compliance, performance and financial risks associated with service providers.

We have, however, assessed whether the lessons learnt as documented by CD Branch have been addressed in the tender documents (particularly the draft contract) for the SRSS procurement.

#### Discussion of audit findings

Our analysis indicated that most of the recommendations from the 'lessons learnt' paper have been incorporated in the draft contract. There are some matters that could be better addressed in the future contract:

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## A Key stakeholders consulted during the review

| Ref. Name   | Position   | Purpose     |
|---|--|-------------|
| s. 22(1)(a)(ii)   | First Assistant Secretary – Community Programmes & Children  | s. 47(1)(b) |
|   | Assistant Secretary - Community Detention                    |             |
|   | Assistant Secretary – Immigration Intelligence               |             |
|   | Director – CD Case Escalation Team                           |             |
|   | Director –Case Management & Status Resolution                |             |
|   | Director –Compliance Identity VIC & TAS                      |             |
|   | Director – Complex Case Resolution                           |             |
|   | Director – CD Program Management                             |             |
|   | Director – Referrals and Submissions                         |             |
|   | Director – Change and Procurement                            |             |
|   | Director – Detention Health Operations                       |             |
|   | Director – CD Contract Management                            |             |
|   | Director - Community Case Resolution- NSW & ACT              |             |
|   | A/g Director – Referrals and Submissions                     |             |
|   | A/g Director – Security Assessment, Liaison & Representation |             |
|   | Assistant Director – Case Escalation                         |             |
|   | Assistant Director – Detention Health Operations             |             |
|   | Assistant Director – CDSP Portal Support                     |             |
|   | Assistant Director – Intelligence Analysis                   |             |
|   | Assistant Director – CD Referrals & Placements               |             |
| A/g Assistant Director – CD Case Escalation               |  |             |
| A/g Assistant Director – Community Case Resolution Team 2 |  |             |
| Senior Case Officer - Complex Case Resolution             |  |             |
| Case Manager – Detention Case Resolution Team 2           |  |             |

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| Ref. Name       | Position  | Purpose     |
|-----------------|---|-------------|
| s. 22(1)(a)(ii) | Case Manager – Detention Case Resolution Team 2   | s. 47(1)(b) |
|                 | Case Manager – Detention Case Resolution Team 2   |             |
|                 | Case Manager – Detention Case Resolution Team 2   |             |
|                 | Placements Officer - CD Referrals & Placements    |             |
|                 | Placements Officer - CD Referrals & Placements    |             |
|                 | Contact Officer - NSW and ACT Community Detention |             |

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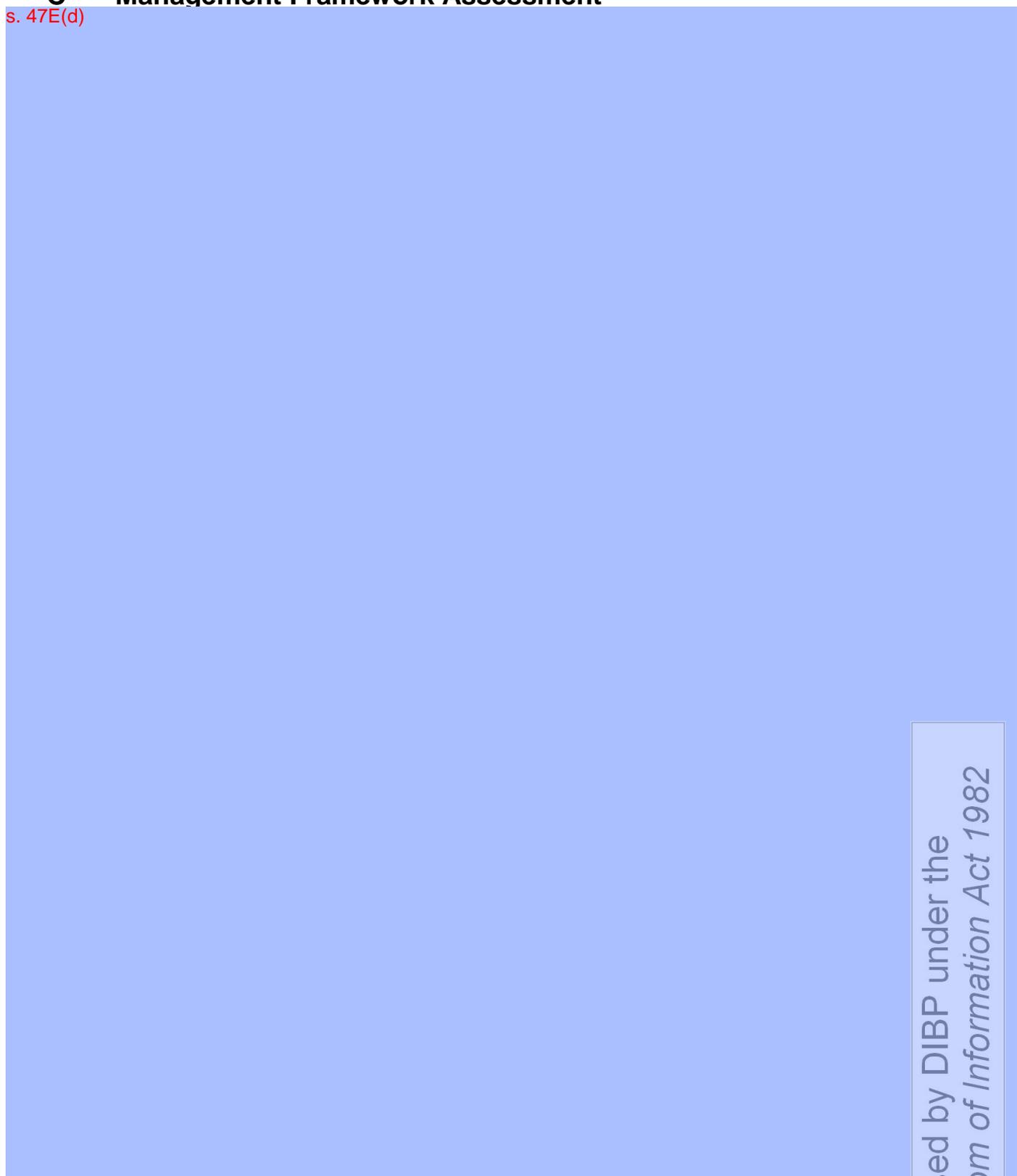






**C Management Framework Assessment**

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