



Australian Government
Department of Immigration
and Border Protection



Detention-Related- Decision-Making

Engagement # 32 – 2015/16

Internal Audit Findings				
Extreme	High	Medium	Low	Total
-	3	-	-	3

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1. Executive Summary

1.1 Context

Under s189 of the Migration Act 1958 (the Act), if an officer knows or reasonably suspects that a person in the migration zone (other than an excised offshore place), is an unlawful non-citizen, the officer must detain the person. To support officers in making lawful, reasonable and appropriate decisions to detain, the Department of Immigration and Border Protection (the Department, DIBP) has established a policy framework comprising: the Control Framework for Detention Related Decision Making (Control Framework); Procedures Advice Manuals (PAMs); and Case Law Assessment Tools. The Department has also established quality assurance mechanisms such as the Detention Assurance Team (DAT) and the Programme Evaluation Section to provide assurance over detention related decisions and processes.

In the course of detention-related-decision-making (DRDM), the end-to-end detention continuum comprises the following three phases:

1. pre-detention activities where officers gather intelligence on suspected unlawful non-citizens (UNCs) and exercise the power to enter, search or seize;
2. detention activities where officers exercise the power to detain; and
3. post-detention activities where the decision to detain UNC is reviewed and officers exercise the power to remove UNC who do not have a lawful basis to remain in Australia.

During the 2014-15 financial year, approximately 3,300 unlawful non-citizens were identified and detained through compliance activities. The volume and operational context of compliance activities warrants strict adherence to the existing policy and legislative framework to reduce the risk of unlawful detentions or, the inappropriate release of unlawful non-citizens into the community. In the 2014 and 2015 financial years, 36 non-citizens were released from onshore detention facilities, after being detained as their immigration status was subsequently identified as lawful. The detention of lawful non-citizens has exposed the Department to law suits, external scrutiny and a loss of public confidence in the Department's operations.

Accordingly, this internal audit focussed on the governance arrangements and the effectiveness of the controls in place to support decision makers in their decisions to detain or not to detain.

1.2 Objective

The objectives of this internal audit were to determine whether:

1. appropriate governance arrangements are in place to support DRDM; and
2. decisions to detain and not to detain are lawful and consistent.

The approach undertaken to address the objective and scope of this review is outlined in *Appendix E: Approach*.

1.3 Risks Addressed

This audit addressed the key risks identified in Table 1 below.

Table 1: Key risks

Risk Category	Risk Description	Risk Rating
SR 7	Failure to maintain the capabilities required to sustainably implement the government's priorities and programmes within a tightening fiscal environment.	Strategic
A 3.2	Failure to prevent the unlawful detention or removal of an Australian citizen or lawful non-citizen.	Tactical
A 3.3	Failure to prevent the unlawful or inappropriate release of people into the community.	Tactical

1.4 Overall Assessment of Findings

The significance of the coercive powers officers exercise, and the challenging operational environment within which they are exercised, requires the Department to underpin their use by “*high quality internal systems, rigorous decision making, clear policy guidance, effective training, active oversight and quality assurance and efficient internal and external information exchange*”¹. In addressing the objective of this review, Internal Audit assessed whether appropriate governance arrangements are in place to support detention related decisions and whether decisions to detain are lawful and consistent.

Internal Audit made the following three findings:

1. Governance arrangements over DRDM are not appropriate as they do not:
 - a. articulate accountabilities for key decisions;
 - b. clearly outline the mandatory requirements that must be observed when undertaking operational activities;
 - c. provide accountable stakeholders with sufficient oversight of operations through programme reporting; and
 - d. have mechanisms to provide assurance that operational activities comply with legislative and policy requirements as the Performance Evaluation Section which is responsible for undertaking quality assurance reviews has not been sufficiently resourced.
2. From a review of 20 case files and 36² inappropriate detention reports, Internal Audit noted control design weaknesses in the end-to-end framework for DRDM and that key controls are not operating effectively. Controls design issues include:
 - a. the lack of minimum evidentiary requirements for key controls;
 - b. weaknesses in the structure and process undertaken to execute controls; and
 - c. limited reviews to verify whether operational activities complied with legislative requirements.
3. The factors impacting the operating effectiveness of key controls include:
 - a. officers do not adequately record client responses to interview questions or their reasons for detention related decisions;
 - b. officers may not always make reasonable enquiries into the circumstances of the client when making the decision to detain; and
 - c. officers do not have ready access to all client information electronically when making detention decisions.

Collectively, these findings highlight weaknesses which may not prevent officers from detaining lawful non-citizens or Australian citizens. This is supported by the 36 instances in 2014-15 where clients were initially detained and then subsequently released as they were found to be lawful non-citizens, or the Department could not continue to hold reasonable suspicion that they were UNC's. In the context of these findings, using the Department's risk matrix, this report has been rated as '**High**' on the basis of a '**Likely**' likelihood and '**High**' consequence whereby, recurring instances of detaining lawful non-citizens and/or Australian citizens could continue to expose the Department to law suits, external scrutiny and a loss of confidence in the Department's operations.

Overall, the deficiencies in controls noted in this internal audit are similar to those raised in the report: *Lessons for public administration: investigation of referred immigration cases*, issued by the Commonwealth Ombudsman in August 2007. These deficiencies, consistent with those reported by the Commonwealth Ombudsman are:

¹ p.3, 'Lessons for public administration', Commonwealth Ombudsman, August 2007.

² Inappropriate detention reports are completed for clients who are detained and then subsequently released as their immigration status is found to be lawful, or reasonable suspicion can no longer be held.

- *Accuracy and accessibility of records* – officers do not have ready access to accurate records to ascertain the immigration status of clients when making detention related decisions.
- *Adequacy of controls over the exercise of coercive powers* – there are limited controls to verify whether officer powers are exercised in accordance with policy and legislative requirements.
- *Interview processes should be designed to elicit information useful to the making of decisions about detention and removal* – tools and templates are process driven, due to which officers fail to make or record the reasonable enquiries they have made into a client's circumstances.
- *Adequacy of information systems and staff training to use them* – information systems do not contain a single, accurate view on a client's immigration status.
- *Improved training for officers undertaking compliance and detention operations* – the Department does not have an effective framework which monitors and tracks compliance officer training.

2. Positive Findings

2.1 Quality checks over record-keeping

Internal Audit noted that the New South Wales Regional Compliance team undertakes Quality Assurance checking over record-keeping for all decisions made to detain and for the grant of bridging visas. This includes reviewing whether all supporting documentation has been maintained on file for detention related decisions. This QA process helps identify cases where decision records are not supported by adequate documentation and requires officers to upload the required information on the relevant Departmental system. These QA activities are driving improvements in record keeping practices within the NSW compliance team. However, we noted that this practice was not consistent across the national detention network.

3. Summary of Findings and Agreed Management Actions

3.1 Summary of Findings

The findings and recommendations from this review are presented in Table 2 below. On the basis of the risks presented by the findings, the '**Possible**' likelihood of these risks arising and the '**High**' consequences of their impact on the Department, Internal Audit's assessment utilising the Department's risk matrix of these findings is '**High**'. *Appendix F: Consequence and Likelihood Ratings* outlined the Department's risk matrix.

Table 2: Summary of detailed findings and recommendations

1. Governance Arrangements over DRDM are not appropriate	Risk Rating: High
Governance arrangements over DRDM are not appropriate as they do not: articulate accountabilities for key decisions; clearly outline the mandatory requirements that must be observed when undertaking operational activities; provide accountable stakeholders with sufficient oversight of operations through programme reporting; and have mechanisms to provide assurance that operational activities comply with legislative and policy requirements.	Recommendation Type: Behavioural: information, resources, structures, competencies.
Recommendation One: Internal Audit recommends that the Department should establish a formal governance framework over the end-to-end detention continuum (as outlined in Appendix B), with a view to: clarifying the procedural guidance and accountabilities for key decisions; providing the executive with oversight and assurance that operational activities are compliant with the policy and legislative framework; consistently analysing and reporting issues that are detected; and implementing control improvements where required. In establishing this framework, the Department should: <ul style="list-style-type: none">• develop a formal terms of reference outlining information on the mandate and expectations of the governance framework;• outline the roles and responsibilities of key stakeholders at all levels of the DRDM process;• review and update the DRDM policy framework including PAMs and the Control Framework for DRDM to clearly articulate the mandatory requirements that must be complied with during operational activities;• establish comprehensive reporting to provide key stakeholders such as Regional Commanders and governance and assurance committees such as the Tactical Tasking Coordination Group, Strategic Tasking Coordination Group and Departmental Audit Committee with oversight of key issues;• dedicate sufficient resources to undertake quality assurance, monitoring and oversight functions with a view to identifying key issues and emerging risks;• establish formal feedback mechanisms whereby lessons learned from the national network of DRDM activities (such as advice provided by the legal and compliance helpdesks and Inappropriate Detention Reports) can improve, on an on-going basis, operational procedures, staff training and competencies; and• undertake regular reviews to assess the implementation success of continuous improvement strategies.	
Management Comments	
Management Action Plan	<p>Agree</p> <p>The Department acknowledges the need to establish a formal governance framework over the end-to-end detention continuum.</p> <p>The Secretary commissioned a Detention Capability Review to ensure that onshore immigration detention is strategically aligned, affordable, sustainable and supports capability need now and in the future. It is anticipated the Detention Capability Review will be completed by the end of this financial year (2016). There is no precise timeframe for implementation of the Review at this stage.</p> <p>In September 2015, the Department commissioned a Management Initiated Review of Status Resolution. The review examined status resolution policies, processes and delivery in order to manage risks to the Australian community and to resolve the immigration status of non-citizens.</p> <p>The Risk and Assurance Branch is developing a Quality Management Framework which will set the standards and methodology for Quality Assurance within the Department.</p> <p>These reviews will significantly influence the future design and operation of detention-related</p>

1. Governance Arrangements over DRDM are not appropriate		Risk Rating: High
		<p>decision making over the end-to-end detention continuum. They will also provide an appropriate base upon which to design and implement formal governance frameworks which will cover points a) to g) noted in the recommendation. It is expected the future design will take approximately 22 weeks from commencement.</p> <p>In the interim the Department will implement the following activities:</p> <ul style="list-style-type: none"> • Procedural Instruction Notifications issued to the compliance network are distributed regularly to ensure that they are informed in a timely manner about changes to policy and procedures. This is in response to legal advice, recommendations from external/internal reviews, or legislative changes that impact on current policy and procedures. • A Compliance Toolkit is currently being developed, which will be a central repository for all field compliance officers' to locate resources and tools not located in Procedural Advice Manuals, for example forms, guides and standard operating procedures. This is anticipated to be available in August 2016. • The Immigration Compliance Branch has established a Best Practice Group, which involves Field Compliance Superintendents and Inspectors from each region. The group provides an opportunity to drive best practice and ensure national consistency in compliance operations. The group acts as a formal point between immigration compliance teams, policy group, status resolution ABF College and the Executive. Training for field compliance officers is a standard item on the agenda. The meetings are held face-to-face every month until July 2016 and then as required (at minimum every two months). • The Immigration Compliance Branch has also established a Removals Best Practice Group, which involves Removals Superintendents and Inspectors from each region. The forum provides an opportunity to promote best practice, achieve national consistency in removal operations and inform policy development, including in relation to the Removal Availability Assessment (RAA). The RAA forms part of the Department's control framework for DRDM and is aimed at confirming that a person is available for removal and that removal is practicable.
Due Date	Interim measures will be implemented by August 2016 A governance framework is expected to be in place by July 2017	
Responsible Officers	Ben Evans, Assistant Secretary, Strategy Kylie Scholten, Commander, Immigration Compliance	

2. Controls over DRDM are not designed and operating effectively.	Risk Rating: High
<p>From a review of 20 case files and 36 inappropriate (refer to Appendix E – Audit Sampling Methodology for further details on approach) detention reports, Internal Audit noted control design weaknesses in the end-to-end framework for DRDM and that key controls are not operating effectively. Controls design issues include: the lack of minimum evidentiary requirements required over key controls; weaknesses in the structure and process to undertake and execute controls; and limited reviews to verify whether operational activities complied with legislative requirements.</p> <p>The factors impacting the operating effectiveness of controls include: officers do not adequately record client responses to interview questions or their reasons for detention related decisions; officers may not always make reasonable enquiries into the circumstances of the client when making the decision to detain; and officers do not have ready access to all client information electronically when making detention decisions.</p>	
Recommendation Two: The Department should review the key controls over DRDM with a view to improving the control design having regard to: <ul style="list-style-type: none"> • clarifying the purpose of the control and risks it is addressing; • the minimum evidentiary requirements that must be met when executing the control and how supporting evidence must be stored and made available to delegates approving the control; • the structure and process undertaken when executing these controls so as to enable compliance with legislative requirements; and • ensuring review processes are effective in providing assurance that the execution of operational activities complies with legislative requirements. 	Recommendation Type: Control Design
Management Comments	
Management Action Plan	Agree The reviews listed in recommendation 1 will consider the control design including aspects a) to d) of recommendation 2. In the interim, the Immigration Compliance Business Review Section has commenced a project looking at the decision to detain across the border continuum. This project will review the current governance and practice framework in relation to the decision to detain with a view to bringing it to in line with other similar powers within the ABF to drive one nationally consistent practice. Scoping for the project has commenced and will cover the use of all detention powers under the <i>Migration Act 1958</i> . Pre and post detention decision activities will be reviewed, including: <ul style="list-style-type: none"> • planning • record keeping • detainee management • transfer of custody • transport to an Immigration Detention Facility and • quality assurance. This project will be conducted in a number of phases with implementation of new governance and practice framework to commence in late 2016.
Due Date	30 November 2016
Responsible Officer	Ben Evans, Assistant Secretary, Strategy

3. Enabling functions do not always support lawful and consistent decision making		Risk Rating: High
Internal Audit has found that core enabling functions, namely: officer training, information systems and tools and templates do not support officers in consistently making lawful or inappropriate detention related decisions.		
Recommendation Three: Consistent with the Management Initiated Review on Officer Powers, the Department should develop and implement a training framework to support field compliance officers to improve the operating effectiveness of controls when they are executed. <i>As this recommendation has been already made in the MIR, it is not formally made as part of this report.</i>		Recommendation Type: Operating effectiveness
Management Comments		
Management Action Plan	Noted Please refer to management response to the MIR: management of Field Compliance Officers Training In and Use of Powers.	
Due Date	N/A	
Responsible Officer	N/A	
Recommendation Four: Recognising the limitations of current systems which do not always accurately identify a client's immigration status i.e. clients may have a lawful immigration status even if systems indicate they are unlawful because they may have been incorrectly notified of a visa refusal/cancellation, or they may have multiple identification numbers associated with expired visas, the Department should implement compensating controls whereby decisions to detain are made after officers have considered all relevant information (i.e. on departmental systems as well as, hard copy files) prior to exercising the decision to detain.		Recommendation Type: Systems
Management Comments		
Management Action Plan	Agree As an interim solution, the Immigration Compliance Branch will issue a Procedural Instruction Notification to the compliance network reminding field compliance officers that they need to consider all relevant information prior to exercising a decision to detain by 30 May 2016. Further notifications will be disseminated as key issues are identified. The Immigration Compliance Branch will review the training materials regarding the appropriate use of Departmental systems, and ensure that this requirement is emphasised prior to the delivery of the next course in July 2016. Refresher training for existing officers will also be conducted. As outlined in Recommendation 1, the Risk and Assurance Branch is developing a Quality Management Framework which will set the standards and methodology for Quality Assurance within the Department. Ongoing management assurance processes will be designed and implemented to comply with the framework by the Immigration Compliance Branch once finalised.	
Due Date	31 July 2016	
Responsible Officer	Kylie Scholten, Commander, Immigration Compliance	

<p>Recommendation Five:</p> <p>The Department should:</p> <ol style="list-style-type: none"> revise the tools and templates such as those used for case law and notification assessments and client interviews to appropriately address the key risks these tools are designed for. In revising the templates, they should also be made easy to use and facilitate the consideration of all relevant information required for forming and supporting lawful and appropriate detention decisions; and establish a core competency, or centre of excellence, for the processing of case law and notification assessments to reduce the likelihood of case law and notification assessment errors. 	<p>Recommendation Type: Tools, structures and competencies.</p>
Management Comments	
<p>Management Action Plan</p>	<p>Agree to Recommendation 5a</p> <p>The Status Resolution Operational Support section undertakes to review the primary tools used by officers to conduct notification assessments in line with recommendation 5(a); that is, the 'Brief Assessment Tool' and the 'Comprehensive Assessment Tool' as well as the elements of the 'Compliance Client Interview' form which relate to the determination of immigration status. As any proposed changes will require input and clearance from a number of different operational, policy and legal areas, it is anticipated that the review and appropriate revisions will take approximately 26 weeks.</p> <p>The Compliance Client Interview form is currently under review by the Immigration Compliance Branch. An updated version will be released by end of 2016.</p> <p>Disagree to Recommendation 5b</p> <p>The Status Resolution Operational Support section does not support recommendation 5(b), the establishment of a core competency, or centre of excellence, for the assessment of notifications for the following reasons:</p> <ul style="list-style-type: none"> There is a proposed legislative change that will delink bridging visa cessation from notification-related events that is due for implementation later in 2016. This will significantly enhance officers' certainty regarding non-citizen's immigration status, as cessation of bridging visa will be tied to events that can be easily ascertained from departmental systems, rather than relying on officers undertaking complex assessments that oftentimes require information that is not readily available. The Department already has a referral mechanism through the Status Resolution Helpdesk that can assist officers undertake assessments if they have any doubts regarding the effectiveness of the notification. While this Helpdesk is only available during business hours, it is available to provide urgent and expert advice in relation to any targeted location, on request. <p>We further note that the report does not engage with a detailed analysis regarding the circumstances that have led to detainees being released because they either (i) continue to hold a visa or (ii) a visa is reinstated with the detainee's consent. As officers currently have a duty to detain where they can form a "reasonable suspicion" that a person is an unlawful non-citizen, it is inevitable that some non-citizens will need to be detained where this state of mind is initially formed, but then later released when further information comes to light.</p> <p>As a result, without more detailed analysis, the extent to which decisions to detain are impacted by officers failing to conduct proper notification assessment prior to decisions to detain is not clear. As the Status Resolution Operational Support section is the section responsible for providing advice where detainees need to be released from detention as the holder of a visa, this is our view that the majority of the detainees released in these circumstances, were nevertheless detained in circumstances where the detaining officer had a rational foundation for their view that the detainee was an unlawful non-citizen and on that basis, the officer was obliged to detain that non-citizen, if the criteria to grant a Bridging visa E was not met at the time of location.</p> <p><i>Internal Audit notes that management has not agreed to recommendation 5(b) and will build into the assurance planning process an assessment of the notification process including the extent to which decisions to detain are potentially impacted by officers failing to conduct proper notification assessment prior to decisions to detain.</i></p>
Due Date	31 December 2016
Responsible Officer	Dora Chin-Tan, Assistant Secretary, Public Risk Assessment

The details of the findings are outlined in *Appendix A – Observations made during fieldwork*. In making these findings, the stakeholders consulted as part of this review are outlined in *Appendix C – Personnel consulted during this internal audit*; *Appendix D – Documents and reference sources reviewed*, lists the documents considered as part of this review.

Lines of Defence

All internal audit activities are considered against the Four Lines of Defence. Internal Audit's assessment of the controls at each line is noted below. As described in the Table 3, the findings of this audit present opportunities for the Department to improve their Line One, Two and Line Four control and assurance processes.

Table 3: Assessment against the four lines of defence

Lines of Defence	Line of Defence	Internal Audit Assessment	Related Finding
	1 Business and support control processes and systems	The policy framework including officer training and systems need improvement as identified by Findings 1 and 2.	Findings one, two and three
	2 Management control self-assessment	There are currently no management control self-assessment processes in place. The Performance Evaluation Section which is responsible for undertaking quality assurance reviews, is not sufficiently resourced to acquit its mandate.	Finding one
	3 Internal assurance	This internal audit, as well as previous audits and other internal reviews, has provided an internal assessment of the DRDM processes.	N/A
	4 Governance	The findings of this internal audit collectively support the need for enhanced overall governance over the end-to-end continuum of detention related activities.	Finding one

4. Detailed Findings and Recommendations

4.1 Finding One: Governance arrangements are not appropriate

4.1.1 Context

The operational environment within which officers enforce the requirements of the Act is inherently high risk because of the coercive nature of their powers, the consequences of exercising these powers incorrectly or inappropriately, and the challenging operational environment in which they are exercised. In a high risk operating environment – involving a large number of decision makers across different geographies – it is critical to have a robust governance and control framework which: establishes a sound policy and procedural framework; has appropriate reporting based on accountabilities and need; and adequate quality assurance and performance evaluation mechanisms.

4.1.2 Finding

Governance arrangements over DRDM are not appropriate as they do not: articulate accountabilities for key decisions; clearly outline the mandatory requirements that must be observed when undertaking operational activities; provide accountable stakeholders with sufficient oversight of operations through programme reporting; and have mechanisms to provide assurance that operational activities comply with legislative and policy requirements.

Internal Audit's observations of weaknesses in the framework are noted below:

Policies and procedures

The policy and procedural framework governing compliance operations does not clearly articulate the mandatory requirements that must be complied with. The Procedures Advice Manuals (PAMs) include a number of discretionary requirements, which in some instances, contradict mandatory ones. For example, while policy requires all warrant operations to be approved by a warrant delegate, non-warrant operations may be converted to warrant operations without approval from delegate if the officer leading the operation is unable to contact a delegate.

Internal Audit also noted that the accountabilities for key decision points such as which officer is accountable for the initial decision to detain has not been defined. A policy framework within which key accountabilities are not defined and discretionary requirements contradict mandatory requirements, limit the ability of the Department to hold officers accountable for their actions, and increase the likelihood of inconsistency in compliance operations. This may expose the Department to risks especially when coercive powers such as the power to enter or detain are exercised.

Programme reporting

There is limited reporting on the outcomes of operational activities and, in particular, exceptions to planned activities. While the Department has prepared a matrix of 'notifiable event categories', there is no aggregated reporting on exceptions to provide SES level officers with a view of key risk exposures and recurring issues. The absence of comprehensive reporting limits oversight of emerging and recurring issues and the Department's ability to address them.

Quality assurance and performance evaluation

The Department's Performance Evaluation Section is responsible for evaluating operational performance by undertaking conformance reviews and reviewing key performance data. The Performance Evaluation Section informed Internal Audit that it has not been sufficiently resourced to undertake these functions as it comprises of six staff members while it requires about 14 additional staff members to undertake the full suite of evaluation functions it is responsible for. Consequently, until the Section commences undertaking reviews, there are no evaluation or tier-two quality assurance mechanisms over DRDM. The absence of independent quality assurance

mechanisms, other than those undertaken by Internal Audit, further impedes the ability of the Department to effectively review, evaluate and improve DRDM processes.

There is also limited analysis of information collected by the Department in the course of operational activities to identify and implement improvements to the control framework including officer training, operational procedures, and tools and templates. The Department, through the Compliance and Legal Opinions Helpdesks, and Mandatory Control Point (MCP) 8 reports (i.e. reports on clients released from detention after they were found to be not-unlawful), collects information that can be used for root-cause analysis. While the Department has some controls to detect issues, there are no mechanisms in place to feed learnings back into improving the framework, namely: consistently analyse and report on detected issues; develop improvement strategies; and assess implementation success.

4.1.3 Risk

Without an effective governance and control framework to support DRDM, the Department continues to experience recurring issues where clients are detained and then released as they are subsequently found to be lawful non-citizens. These instances continue to expose the Department to lawsuits and reputational damage.

4.1.4 Risk Rating – High

Using the Department's Risk Matrix, Internal Audit has assessed the risk associated with this finding as being '**High**' based on a '**Possible**' likelihood of occurrence and, a '**High**' consequence whereby the risks identified would result in significant political and media scrutiny.

4.1.5 Recommendations

Recommendation One	Recommendation type
<p>Internal Audit recommends that the Department should establish a formal governance framework over the end-to-end detention continuum (as outlined in Appendix B), with a view to: clarifying procedural guidance and accountabilities for key decisions; providing the executive with oversight and assurance that operational activities are compliant with the policy and legislative framework; consistently analysing and reporting issues that are detected; and implementing control improvements where required.</p> <p>In establishing this framework, the Department should:</p> <ul style="list-style-type: none">• develop a formal terms of reference outlining information on the mandate and expectations of the governance framework;• outline the roles and responsibilities of key stakeholders at all levels of the DRDM process, and disseminate this to all relevant parties;• review and update the DRDM policy framework including PAMs and the Control Framework for DRDM to clearly articulate the mandatory requirements that must be complied with during operational activities;• establish comprehensive reporting to provide key stakeholders such as Regional Commanders and governance and assurance committees such as the Tactical Tasking Coordination Group, Strategic Tasking Coordination Group and Departmental Audit Committee with oversight of key issues;• dedicate sufficient resources to undertake quality assurance, monitoring and oversight functions with a view to identifying key issues and emerging risks;• establish formal feedback mechanisms whereby lessons learned from the national network of DRDM activities (such as advice provided by the legal and compliance helpdesks and Inappropriate Detention Reports) can improve, on an on-going basis, operational procedures, staff training and competencies; and• undertake regular reviews (e.g. at least annually) to assess the implementation success of continuous improvement strategies.	Behavioural: information, resources, structures, competencies.

Management Comments

Management Action Plan	Agree The Department acknowledges the need to establish a formal governance framework over the end-to-end detention continuum. The Secretary commissioned a Detention Capability Review to ensure that onshore immigration detention is strategically aligned, affordable, sustainable and supports capability.
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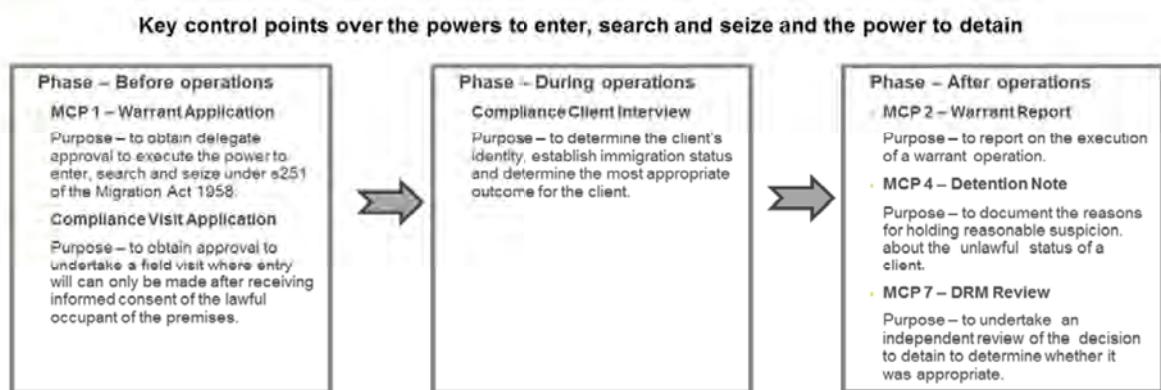
	<p>need now and in the future. It is anticipated the Detention Capability Review will be completed by the end of this financial year (2016). There is no precise timeframe for implementation of the Review at this stage.</p> <p>In September 2015, the Department commissioned a Management Initiated Review of Status Resolution. The review examined status resolution policies, processes and delivery in order to manage risks to the Australian community and to resolve the immigration status of non-citizens.</p> <p>The Risk and Assurance Branch is developing a Quality Management Framework which will set the standards and methodology for Quality Assurance within the Department.</p> <p>These reviews will significantly influence the future design and operation of detention-related decision making over the end-to-end detention continuum. They will also provide an appropriate base upon which to design and implement formal governance frameworks which will cover points a) to g) noted in the recommendation. It is expected the future design will take approximately 22 weeks from commencement.</p> <p>In the interim the Department will implement the following activities:</p> <ul style="list-style-type: none"> • Procedural Instruction Notifications issued to the compliance network are distributed regularly to ensure that they are informed in a timely manner about changes to policy and procedures. This is in response to legal advice, recommendations from external/internal reviews, or legislative changes that impact on current policy and procedures. • A Compliance Toolkit is currently being developed, which will be a central repository for all field compliance officers' to locate resources and tools not located in Procedural Advice Manuals, for example forms, guides and standard operating procedures. This is anticipated to be available in August 2016. • The Immigration Compliance Branch has established a Best Practice Group, which involves Field Compliance Superintendents and Inspectors from each region. The group provides an opportunity to drive best practice and ensure national consistency in compliance operations. The group acts as a formal point between immigration compliance teams, policy group, status resolution ABF College and the Executive. Training for field compliance officers is a standard item on the agenda. The meetings are held face-to-face every month until July 2016 and then as required (at minimum every two months). • The Immigration Compliance Branch has also established a Removals Best Practice Group, which involves Removals Superintendents and Inspectors from each region. The forum provides an opportunity to promote best practice, achieve national consistency in removal operations and inform policy development, including in relation to the Removal Availability Assessment (RAA). The RAA forms part of the Department's control framework for DRDM and is aimed at confirming that a person is available for removal and that removal is practicable.
Due Dates	Interim measures will be implemented by August 2016 A governance framework is expected to be in place by July 2017
Responsible Officers	Ben Evans, Assistant Secretary, Strategy Kylie Scholten, Commander, Immigration Compliance

4.2 Finding Two: Controls over DRDM are not designed and operating effectively

4.2.1 Context

The inappropriate or unlawful use of officers powers to search, detain or remove lawful non-citizens or Australian citizens can undermine public confidence in the Department's operations and attract political and media scrutiny. To address these risks, it is imperative that controls over DRDM are designed and operating effectively. The Department has established a suite of policy and procedural documentation including the MCPs as key controls over each phase of compliance operations. These MCPs are completed within the Compliance, Case Management, Detention and Settlement (CCMDS) portal. Their purpose and phase at which they are completed is presented in figure 1 below. Further context on the key controls is provided in *Appendix B – Key control points within DRDM*.

Figure 1: Key controls over decisions to detain



4.2.2 Finding

Internal Audit notes that the controls supporting DRDM are not designed and operating effectively. Without an effective training framework and adequate systems (finding three) to support officers in the application of key controls, the Department risks detaining lawful non-citizens or Australian citizens. Internal Audit's observations of issues relating to control design and operating effectiveness are:

Control design

There are four key controls over decisions to detain: MCP 1 (warrant application); MCP 2 (warrant report); MCP 4 (detention note) and MCP 7 (Detention Review Manager – Review). Internal Audit has assessed each control point against three necessary attributes for effective control design: evidentiary requirements; structure and process for undertaking the control; and review process. MCP exceptions to the attributes are noted below:

Evidentiary requirements

- MCP 1 and MCP 4 – The minimum evidentiary standards for both these controls have not been defined. This may lead to inconsistent practices and an inappropriate use of officer's powers.

Structure and process

- MCP 10 – Clients streamed as rapid removals are only subject to one review prior to removal. This increases the risk of a single point of failure should the review fail to detect that the initial decision to detain was unlawful or inappropriate. This may ultimately lead to the wrongful removal of a client from Australia.

- MCP 1 – Officers can convert a non-warrant visit into a warrant operation via phone approval from a delegate. In these instances, risk assessments prepared for the non-warrant visit may not continue to be appropriate. This may compromise the safety of clients and officers.
- MCP 1 and MCP 4 – may be completed without reviewing all client information contained on hard copy files. Given the legal complexity of notification and case law issues, not considering all relevant information for example, information on hard copy files resulted in 32³ out of 36 erroneous assessments leading to the inappropriate detention of lawful non-citizens.
- MCP 4 – simply formalises the initial client interview, it is not an independent review of information supporting the detention decision. This reduces the effectiveness of MCP 4 as a control as it does not re-prosecute whether the initial decision to detain was lawful, fair and reasonable.

Review requirements

- MCP 1 and MCP 4 – are completed within the CCMDS portal. However, documentation supporting these controls is not stored in a single place. This limits the delegate from reviewing all supporting information when executing the control (through their approval). The ability to approve warrants and decisions to detain by delegates without reviewing all relevant information may result in the inappropriate use of officer powers if errors are not detected during the review
- MCP 1 and MCP 2 – The review processes over reports on warrant and non-warrant field visits do not have any mechanisms to verify whether informed consent was sought and obtained from the lawful occupant of the premises. This limits the ability of the reviewer to validate whether operational activity complies with policy and legislative requirements.
- MCP 2 – There is no requirement for officers to report on exceptions to policy and legislative requirements that occurred during a field visit. This limits the ability of the Department to have oversight of exceptions and implement improvements where relevant.

Operating effectiveness

Internal Audit has identified a range of factors which reduce the operating effectiveness of key controls. The details of these factors are outlined in *Appendix A – Observations made during fieldwork*. The overall themes of these issues are noted below:

- Record keeping – officers do not adequately record client responses to interview questions or their reasons for detention related decisions. This reduces the transparency and defensibility of decisions made.
- Reasonable enquiries – detaining officers do not always make reasonable enquiries into the circumstances of clients when making decisions to detain. Case file reviews indicated instances where clients had: matters ongoing before the Department; family ties to Australian citizens; and legal representatives who were nominated to act on their behalf. However, decision records did not evidence enquiries made by officers when this information was provided by clients. The failure to make reasonable enquiries, may impact on the fairness and reasonableness of detention decisions if important information is not elicited or overlooked.
- Records management – officers do not have ready access to all client information electronically. Delays in retrieving hard copy files has meant that 11 instances out of 36 inappropriate detentions where clients were detained and then released after a review of information on hard copy files found them to be lawful non-citizens or reasonable suspicion could no longer be held.

4.2.3 Risk

In the absence of controls that are designed and operating effectively, the Department risks continuing to detain lawful non-citizens and/or Australian citizens. These instances continue to expose the Department to lawsuits and reputational damage.

³ From an analysis of root-causes of the detention and subsequent release of 36 clients.

4.2.4 Risk Rating – High

Using the Department's Risk Matrix, Internal Audit has assessed the risk associated with this finding as being '**High**' based on a '**Possible**' likelihood of occurrence and, a '**High**' consequence whereby the risks identified would result in significant political and media scrutiny.

4.2.5 Recommendation

Internal Audit has only made a recommendation to improve control design as operating effectiveness issues noted in this finding would be addressed through the recommendations made in Finding three.

Recommendation Two		Recommendation type
Recommendation Two: The Department should review the key controls over DRDM with a view to improving the control design having regard to: <ul style="list-style-type: none">• clarifying the purpose of the control and risks it is addressing;• the minimum evidentiary requirements that must be met when executing the control and how supporting evidence must be stored and made available to delegates approving the control;• the structure and process undertaken when executing these controls so as to enable compliance with legislative requirements; and• ensuring review processes are effective in providing assurance that the execution of operational activities complies with legislative requirements.		Recommendation Type: Control Design
Management Comments		
Management Action Plan	Agree The reviews listed in recommendation 1 will consider the control design including aspects a) to d) of recommendation 2. In the interim, the Immigration Compliance Business Review Section has commenced a project looking at the decision to detain across the border continuum. This project will review the current governance and practice framework in relation to the decision to detain with a view to bringing it to in line with other similar powers within the ABF to drive one nationally consistent practice. Scoping for the project has commenced and will cover the use of all detention powers under the <i>Migration Act 1958</i> . Pre and post detention decision activities will be reviewed, including: <ul style="list-style-type: none">• planning• record keeping• detainee management• transfer of custody• transport to an Immigration Detention Facility and• quality assurance. This project will be conducted in a number of phases with implementation of new governance and practice framework to commence in late 2016.	
Due Date	30 November 2016	
Responsible Officer	Ben Evans, Assistant Secretary, Strategy	

4.3 Finding three: Enabling functions do not support officers in consistently making lawful decisions

4.3.1 Context

The inquiry into the circumstances surrounding the detention of Ms Vivian Alvarez noted that “*the unlawful removal of Vivian was a consequence of systemic failures in DIMIA⁴—among them inadequate training programs, database and operating system failures, poor case management, and a flawed organisational culture*”. Effective training, robust information and case management systems and easy to use tools and templates lay the foundation for good decision making.

4.3.2 Finding

Internal Audit has found that core enabling functions, namely: officer training, information systems and tools and templates do not support officers in consistently making lawful or inappropriate detention related decisions. Internal Audit’s observations of each enabling function are noted below:

Training

A Management Initiated Review⁵ (MIR) into officer training noted that the Department does not have an effective framework in place to deliver and monitor training. The MIR also found only two of seven warrant delegates interviewed, who had completed warrant delegate training. This was supported by the outcomes of this Internal Audit where stakeholders informed Internal Audit that all field compliance officers had not completed the requisite training required for their roles and responsibilities. Further, officers had not been trained in undertaking case law assessments and identifying notification errors which limit their ability to identify clients who may be lawful non-citizens at the time of being detained. Exercising powers without the requisite training increases the risk that officers may exercise their powers inappropriately and reduces the operating effectiveness of the control environment.

Systems

The Department’s different information systems: Integrated Client Services Environment (ICSE); Client Search Portal (CSP); the CCMDS Portal do not provide a single view on the immigration status of clients. This is because clients may have multiple ICSE IDs (i.e. if they have multiple aliases or have different IDs associated with previously held visas) where a client may appear to be lawful or unlawful depending on the ID used to search for them on Departmental systems. After clients have been identified, important information is not always stored on TRIM (the records management system) limiting officers from accurately assessing case law and notification errors. From discussions, stakeholders informed Internal Audit that not all officers have been trained in searching multiple systems when determining the immigration status of clients. This increases the risk that officers may not correctly determine the immigration status of clients prior to them being detained, increasing the risk of unlawful or inappropriate detentions.

Tools and templates

The Department has provided officers with pro forma templates to undertake compliance interviews and assess whether clients are affected by case law or notification errors. Internal Audit notes that the Comprehensive Assessment Tool (CAT) is not user friendly and does not effectively support officers in making accurate case law assessments. As noted earlier, officers have not been sufficiently trained in completing case law assessments due to which the likelihood of erroneous case law and notification assessments is increased.

4.3.3 Risk

Without providing officers with the requisite training, information systems and tools to make detention related decisions, the Department risks continuing to detain lawful non-citizens and/or

⁴ p.xxi, ‘Inquiry into the Circumstances of the Vivian Alvarez Matter’, Commonwealth Ombudsman, September 2005

⁵ MIR into Field Compliance Officer Training November, 2015

Australian citizens. These instances continue to expose the Department to lawsuits and reputational damage.

4.3.4 Risk Rating – High

Using the Department's Risk Matrix, Internal Audit has assessed the risk associated with this finding as being '**High**' based on a '**Likely**' likelihood of occurrence and, a '**High**' consequence whereby the risks identified would result in significant political and media scrutiny.

4.3.5 Recommendation

Recommendation Three		Recommendation type
Recommendation Three: Consistent with the Management Initiated Review on Officer Powers, the Department should develop and implement a training framework to support field compliance officers to improve the operating effectiveness of controls when they are executed. As this recommendation has been already made in the MIR, it is not formally made as part of this report.		Recommendation Type: Operating effectiveness
Management Comments		
Management Action Plan	Noted Please refer to management response to the MIR: management of Field Compliance Officers Training In and Use of Powers.	
Due Date	N/A	
Responsible Officer	N/A	
Recommendation Four		Recommendation type
Recommendation Four: Recognising the limitations of current systems which do not always accurately identify a client's immigration status i.e. clients may have a lawful immigration status even if systems indicate they are unlawful because they may have been incorrectly notified of a visa refusal/cancellation, or they may have multiple identification numbers associated with expired visas, the Department should implement compensating controls whereby decisions to detain are made after officers have considered all relevant information (i.e. on departmental systems as well as, hard copy files) prior to exercising the decision to detain.		Recommendation Type: Systems
Management Comments		
Management Action Plan	Agree As an interim solution, the Immigration Compliance Branch will issue a Procedural Instruction Notification to the compliance network reminding field compliance officers that they need to consider all relevant information prior to exercising a decision to detain by 30 May 2016. Further notifications will be disseminated as key issues are identified. The Immigration Compliance Branch will review the training materials regarding the appropriate use of Departmental systems, and ensure that this requirement is emphasised prior to the delivery of the next course in July 2016. Refresher training for existing officers will also be conducted. As outlined in Recommendation 1, the Risk and Assurance Branch is developing a Quality Management Framework which will set the standards and methodology for Quality Assurance within the Department. Ongoing management assurance processes will be designed and implemented to comply with the framework by the Immigration Compliance Branch once finalised.	
Due Date	31 July 2016	
Responsible Officer	Kylie Scholten, Commander, Immigration Compliance	
Recommendation Five		Recommendation type
Recommendation Five: The Department should: a. revise the tools and templates such as those used for case law and notification assessments and client interviews to appropriately address the key risks these tools are		Recommendation Type: Control Specific

<p>designed for. In revising the templates, they should also be made easy to use and facilitate the consideration of all relevant information required for forming and supporting lawful and appropriate detention decisions; and</p> <p>b. establish a core competency, or centre of excellence, for the processing of case law and notification assessments to reduce the likelihood of case law and notification assessment errors.</p>	
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Management Comments

Management Action Plan	<p>Agree to Recommendation 5a</p> <p>The Status Resolution Operational Support section undertakes to review the primary tools used by officers to conduct notification assessments in line with recommendation 5(a); that is, the 'Brief Assessment Tool' and the 'Comprehensive Assessment Tool' as well as the elements of the 'Compliance Client Interview' form which relate to the determination of immigration status. As any proposed changes will require input and clearance from a number of different operational, policy and legal areas, it is anticipated that the review and appropriate revisions will take approximately 26 weeks.</p> <p>The Compliance Client Interview form is currently under review by the Immigration Compliance Branch. An updated version will be released by end of 2016.</p> <p>Disagree to Recommendation 5b</p> <p>The Status Resolution Operational Support section does not support recommendation 5(b), the establishment of a core competency, or centre of excellence, for the assessment of notifications for the following reasons:</p> <ul style="list-style-type: none"> • There is a proposed legislative change that will delink bridging visa cessation from notification-related events that is due for implementation later in 2016. This will significantly enhance officers' certainty regarding non-citizen's immigration status, as cessation of bridging visa will be tied to events that can be easily ascertained from departmental systems, rather than relying on officers undertaking complex assessments that oftentimes require information that is not readily available. • The Department already has a referral mechanism through the Status Resolution Helpdesk that can assist officers undertake assessments if they have any doubts regarding the effectiveness of the notification. While this Helpdesk is only available during business hours, it is available to provide urgent and expert advice in relation to any targeted location, on request. <p>We further note that the report does not engage with a detailed analysis regarding the circumstances that have led to detainees being released because they either (i) continue to hold a visa or (ii) a visa is reinstated with the detainee's consent. As officers currently have a duty to detain where they can form a "reasonable suspicion" that a person is an unlawful non-citizen, it is inevitable that some non-citizens will need to be detained where this state of mind is initially formed, but then later released when further information comes to light.</p> <p>As a result, without more detailed analysis, the extent to which decisions to detain are impacted by officers failing to conduct proper notification assessment prior to decisions to detain is not clear. As the Status Resolution Operational Support section is the section responsible for providing advice where detainees need to be released from detention as the holder of a visa, it is our view that the majority of the detainees released in these circumstances, were nevertheless detained in circumstances where the detaining officer had a rational foundation for their view that the detainee was an unlawful non-citizen and on that basis, the officer was obliged to detain that non-citizen, if the criteria to grant a Bridging visa E was not met at the time of location.</p> <p><i>Internal Audit notes that management has not agreed to recommendation 5(b) and will build into the assurance planning process an assessment of the notification process including the extent to which decisions to detain are potentially impacted by officers failing to conduct proper notification assessment prior to decisions to detain.</i></p>
Due Date	31 December 2016
Responsible Officer	Dora Chin-Tan, Assistant Secretary, Public Risk Assessment

Appendix A: Observations made during fieldwork

Internal Audit undertook sample testing of 20 case files and also reviewed 36 cases of inappropriate detentions where clients were detained and then subsequently released. The observations made from the case file reviews and inappropriate detentions are outlined in the table below.

Table 4: Observations made during fieldwork

Phase	Case file reviews	Cases of inappropriate detention decisions
Pre-detention activities The key controls for this phase include: MCP 1 and CVA and the Comprehensive Assessment Tool. These controls are completed prior to undertaking operations.	<ul style="list-style-type: none"> In one instance there was insufficient evidence to verify that informed consent was sought and provided by the lawful occupant for a non-warrant visit. In one instance the number of officers listed on the CVA was excessive for the stated purpose of the activity. In two instances evidence supporting the warrant/visit application could not be located on TRIM or the CCMDS Portal. 	<ul style="list-style-type: none"> In four of five instances where clients were detained as part of a targeted warrant operation, MCP 1 did not identify case law or notification errors.
Detention activities The key controls for this phase are: Compliance Client Interview (CCI), Comprehensive Assessment Tool. These controls are completed after UNC's have been located.	<ul style="list-style-type: none"> In one instance the officer exercising the power to detain was not listed on the training register. In one instances a client was detained while they had ongoing matters before the Department and the officer did not consider this as part of their decision record. In four cases there was no evidence to suggest a translator was used during the CCI and initial detention process. In one instance the officer did not record the enquiries they made about a client's claim that they had an Australian citizen spouse who was pregnant. In three instances clients were only given 10 minutes to consider a response to a visa cancellation notice. Departmental policy is that at least two hours should be provided. In one instance the CCI notes were incomplete. 	<ul style="list-style-type: none"> In three instances officers identified that further information was required prior to ascertaining case law and notification errors, however, detention of the client continued. In three instances Internal Audit could not locate a CAT that was completed to support detention decisions. In five instances relevant information was contained within Departmental systems to identify potential case law or notification errors. However, there is no evidence that this was considered as part of the detention decision. In four instances the detaining officer relied upon prior case law assessments that were incorrect.
Post-detention activities The key controls for this phase are: MCP 2, MCP 4, MCP 7 and the CVR	<ul style="list-style-type: none"> In six cases the time taken to review MCP 4 by the EL1 level officer ranged between one and five minutes. In one instance the MCP 4 was completed seven days after the decision to detain. Policy requires this to be completed within 48 hours. In two of three instances where a warrant/field visit was conducted, the warrant/visit reports did not report that the person of interest the operations were undertaken for was not located. 	<ul style="list-style-type: none"> In 27 instances, the MCP 4 did not identify that client was affected by a case law or notification errors due to which their detention was not appropriate and reasonable suspicion could no longer be maintained. In four instances MCP 7 did not identify case law or notification errors. In six instances, case law and notification errors were only identified by the Removals team at the removal phase. In four instances the client targeted as part of the visit/warrant operation was not located however, the post operation reports did not note these exceptions.

Appendix B: Key control points within DRDM

The purpose, timeframes, inputs, outputs and the rank of officers who undertake and approve key controls within DRDM are outlined in Figure 2 below.

Figure 2: Key control points across detention activities.

		PRE-DETENTION Only undertaken for clients who are targeted	DURING DETENTION This phase applies to all clients who are detained				REMOVAL UNCs who do not have a lawful right to remain in Australia
		Detention Operations Responsibility					
Control	MCP 1 or CVA	CCI	MCP 4	MCP 7	MCP 2 or CVR	MCP 10	
Responsibility							Detention Operations
Description of control	MCP 1 – Application for a search warrant to exercise the power to enter, search and seize where express authority from the lawful occupant is not required. CVA – Application to undertake a field visit where informed consent is provided by the lawful occupant prior to entry.	Interview process where the client's identity, and immigration status are determined. The detaining officer also determines whether the client would be detained and categorised as a Rapid Removal if ready to depart or Case Managed if unwilling to depart.	Review of the decision record supporting the decision to detain by the supervisor/ Team leader	Independent review of the decision to detain by the Detention Review Manager	Report on the outcomes of the warrant or field visit.	MCP 10 – Removal Availability Assessment to confirm that the UNC has no outstanding immigration matters, has an unlawful status and is mentally and physically fit to be removed.	
Timeframes	Prior to undertaking field operations, valid for seven days to three months.	From time of apprehension to four hours.	Within 24 to 48 hours of being detained.	Within 24 to 48 hours of being detained.	14 days from the completion of the operation.	24 hours to seven days prior to removal	
Officer	Warrant officer (Compliance Field Officer)	Detaining officer (Compliance Field Officer)	Detaining officer (Compliance Field Officer)	Detention Review Manager	Warrant officer (Compliance Field Officer)	Removals officer	
Approving officer	Warrant Delegate for MCP 1 EL1 level equivalent for CVA (Inspector or Superintendent)	N/A	Team Leader	N/A	Warrant Delegate for MCP 2 EL1 level equivalent for CVR (Inspector or Superintendent)	Team Leader to Regional Commander	
Key inputs	Intelligence Comprehensive Assessment Tool PAMs	Client interview responses Case law assessment PAMs	CCI Comprehensive Assessment Tool PAMs	CCI Comprehensive Assessment Tool PAMs	Officer notes on details of the operation PAMs	Multiple PAMs	
Key outputs	s251 warrant application	Ongoing detention decision	Detention Note affirming detention decision	DRM review of the decision to detain	Warrant /Compliance visit execution report	Removal Availability Assessment	
System based or Manual	System based through the CCMDS portal.	Manual form with copy saved on the CCMDS portal.	System based through the CCMDS portal.	System based through the CCMDS portal.	System based through the CCMDS portal.	System based with evidence stored in TRIM	

Note: Immigration Compliance Section Responsibility

Appendix C: Personnel consulted during this Internal Audit

Table 5 provides a list of all stakeholders consulted as part of this internal audit, as well as their respective positions at the time.

Table 5: Personnel consulted

Name	Position
Kylie Scholten	Commander Immigration Compliance
James Watson	Commander Detention and Compliance
Tim Fitzgerald	Regional Commander NSW
Don Smith	Regional Commander VIC/TAS
Benjamin Evans s. 22(1)(a)(ii)	Assistant Secretary Strategy
	Regional Director NSW/ACT
	Superintendent National Compliance Programme
	Superintendent National Returns Programme
	Director Status Resolution Operational Support
	Superintendent Compliance and Removals
	A/g Director Evaluations
	Director NSW Community Status Resolution
	A/g Director Wickham Point Case Management
	Director Detention Strategy
	Director Civil Litigation and Compensation
	Director (Operational) Performance Evaluation
	Superintendent Field Operations East
	Principal Legal Officer Framework and Training
	Inspector Field Team 2 and SRT
	Inspector Policy Coordination Innovation and Improvement
	Assistant Director Detention Strategy (TBC)
	WA Compliance Removals Manager
	Inspector Compliance Operations
	Inspector Compliance Field Operations
	A/g Assistant Director Compliance and Removals Central
	A/g Assistant Director Status Resolution Operational Support
	Detention Review Manager
	Detention Review Manager
	Principal Consultant Compliance Analysis Research and Statistics
	APS6 Compliance and Removals Central
	APS6 Status Resolution Reporting
	A/g Senior Legal Officer Framework and Training

Appendix D: Documents and reference sources reviewed

Table 6 lists the documents and reference sources sighted during this internal audit.

Table 6: Documents and reference sources reviewed

Documents and Other Reference Sources Reviewed
PAM - Compliance Case Resolution Guide
PAM - Compliance Overview
PAM - Gathering and assessing information
PAM - Field visits
PAM - Immigration detention and the powers to detain
PAM - Removal from Australia
PAM - Detention review manager
PAM - Establishing identity in the field and in detention
PAM - General visa cancellation powers (s109,s116, s128 & s140)
PAM - Bridging E visas
Control Framework for Detention-Related Decision Making
ID-593 Report - 17/08/2015
PEAR 'MCP8 Evaluation: Released, not unlawful' - Evaluation report
Report on persons detained and later released - 1 July 2013 to 31 December 2013
Report on persons detained and later released - 1 January 2014 to 30 June 2014
Report on persons detained and later released - 1 July 2014 to 31 December 2014
Report on persons detained and later released - 1 January 2015 to 30 June 2015
Detention Review Committee Terms of Reference
Detention Review Committee Coordinator Role
Audit Committee Running Sheets - various dates
Draft Management Initiated Review report on Officer Powers
Draft report from the internal review on the Governance and Practice Framework on s251 warrants
Draft Management Initiated Review report on Status Resolution Capabilities

Appendix E: Approach

On the basis of the objective and scope of this engagement, and the risks and controls being tested, a Compliance Process Review was the most appropriate audit response. Correspondingly this internal audit tested compliance with legislative and internal policy requirements. The audit report is a report of factual findings and recommendations.

Scope

The scope of this internal audit included:

- Reviewing the governance and control arrangements in place including (but not limited to) policies and procedural guidelines, risk assessment, control activities, information and communication protocols, monitoring and reporting mechanisms and quality assurance processes;
- Reviewing policies and procedures including PAMs, the Control Framework and Case Law Assessments to support the decision to detain or not to detain;
- Reviewing the roles and functions of Detention Review Managers, Detention Review committees, Regional Commanders and Regional Directors;
- Reviewing known instances of unlawful detentions to understand control failures and control improvements implemented as a result of these instances; and
- Assessing compliance with legislative requirements for decisions to detain and not to detain.

As part of this internal audit we will work with the engagement team assigned to the Management-Initiated Review (MIR) into Status Resolution (including Case Management) to align our processes, review findings and recommendations.

Approach

The internal audit approach was consistent with the Compliance Process Review response and involved the following activities:

- Holding discussions with key stakeholders to understand the governance and control arrangements in place over detention related decision making;
- Reviewing existing Quality Assurance (QA) artefacts, such as previous PEAR QA Review outcomes, and DAT reports in order to gain an understanding of the Department's potential control weaknesses and where applicable improvements to the detention-related decision-making process;
- Reviewing previous case management reviews and consideration of potential findings and recommendations from the MIR into Status Resolution;
- Analysing instances of unlawful detentions to understand root causes for control failures;
- Understanding the legislative requirements decision makers must adhere to when making lawful decisions to detain or not to detain;
- Reviewing case files to review the decision to detain and not to detain to determine whether the decision outcome was lawful and consistent amongst decision makers;
- Applying BEAM to identify root causes of findings which impact the governance arrangements and the effective management of the decisions to detain or not to detain; and
- Holding discussions with key stakeholders to validate findings and observations made during this review;

Limitations

This internal audit was limited to reviewing case files for non-citizens held in onshore detention facilities. As such, detention decisions relating to non-citizens who are in community detention, alternative detention or transferees being processed at offshore processing centres were outside the scope of this review.

Audit Sampling Methodology

As detailed in the approach, this engagement reviewed cases to assess whether decisions to detain or not detain were lawful, reasonable and appropriate. Due to design effectiveness observations made of the Control Framework, and operating effectiveness observations made during initial testing it was determined that statistical sampling methods would not provide additional value to the audit.

Appendix F: Consequence and Likelihood Ratings

Risk Rating and Definition

This DIBP Risk Assessment Reference Card provides the Risk Matrix and associated tables required to complete a risk assessment.

Risk Matrix

The risk matrix table below expresses risk in terms of a combination of the consequences or impact ratings of an event occurring and the associated likelihood of the occurrence.

Table 7: Risk matrix

		Consequence Ratings				
Likelihood Ratings		Low	Minor	Moderate	High	Extreme
Almost Certain	Medium	Medium	High	Extreme	Extreme	Extreme
Likely	Minor	Medium	Medium	High	Extreme	Extreme
Possible	Minor	Minor	Medium	High	High	High
Unlikely	Low	Minor	Minor	Medium	High	Medium
Rare	Low	Low	Minor	Medium	Medium	Medium

Consequence ratings

The table below describes the five ratings that can be selected to show how severe the consequence or impact would be if the risk occurs.

Table 8: Consequence ratings

Risk Areas Consequence Rating	Financial	Reputation	People	IT	Outcomes
Extreme	> \$2mil	Result in extreme political/ community sensitivity and media scrutiny	Result in death or permanent disability to a DIBP Officer, service provider, or client .	An ICT application, system or service is unusable for a period greater than 48 hours.	Would threaten the department's viability OR result in a commission of inquiry or inquest
High	\$1mil - \$2mil	Result in significant political/ community sensitivity and media scrutiny	Result in life threatening or serious injury requiring ongoing treatment to a DIBP Officer, service provider, or client.	An ICT application, system or service is unusable for a period greater than 24 hours.	Impact adversely on the achievement of the department's strategic objectives OR require audit of program or project
Moderate	\$250k - \$1mil	Result in some political/ community sensitivity	Result in injury or health impact requiring limited ongoing treatment to a DIBP Officer, service provider, or client.	An ICT application, system or service is unusable for a period greater than 12 hours.	May be some impact on the department's operational objectives OR require management initiated review of the program or project
Minor	\$80k - \$250k	Result in limited political/ community sensitivity	May result in a minor injury or health impact with some medical treatment to a DIBP Officer, service provider, or client	An ICT application, system or service is unusable for a period greater than 1 hour.	Could require action to offset the impact on some aspect of a program or project OR management reporting required
Low	\$0 - \$80K	No reputation damage outside the department	Injury may be dealt with through primary first aid	An ICT application, system or service is unusable for a period less than 1hour.	Any consequence can be dealt with by routine operations and management action

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As the services covered by this project are not being performed under the requirements of the Corporations Act, the services do not constitute an external audit, or an engagement to perform agreed-upon procedures in accordance with the Australian Auditing Standards.

The services are being undertaken at the request of the Department of Immigration and Border Protection Service to examine the adequacy of internal controls outlined in the scope and approach sections of this document.

The Department of Immigration and Border Protection is fully and solely responsible for making implementation decisions, if any, and to determine further course of action with respect to any matters addressed in any advice, recommendations, services, reports or other work product or deliverables provided by us.

The Department of Immigration and Border Protection is responsible for maintaining an effective internal control structure. The purpose of our report will be to assist the Department of Immigration and Border Protection in discharging this obligation.

Due to the inherent limitations of any internal control structure, it is possible that errors or irregularities may occur and not be detected by us. Further, the internal control structure, within which the control procedures that we will examine are located, will not be reviewed; therefore no view will be expressed by us as to its effectiveness.

Any projection of the evaluation of control procedures to future periods is subject to the risk that the procedures may become inadequate because of changes in conditions, or that the degree of compliance with them may deteriorate.

Our report will be prepared for the use of the Department of Immigration and Border Protection. We disclaim all liability to any other third party for all costs, loss, damage and liability that the other third party may suffer or incur arising from or relating to or in any way connected with the contents of our report, the provision of our report to the other third party or the reliance upon our report by the other third party including your external auditor. We understand that whilst our work does not negate the primary obligations of your external auditor, the work we undertake may be accessed by the external auditor for their information only. Any reliance on our report will require separate consent by EY, The Department of Immigration and Border Protection and your external auditor.

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