Outline of Report 1: Understanding the Concept of Risk in Australian Immigration Detention Centres.

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1. Executive Summary

The purpose of this project, *Improving Risk Assessment of Immigration Detainees,* is to prepare a research proposal that will assist Australian Border Force in improving the assessment and management of immigration detainees in custody. This project consists of three stages. The first of these stages will aim to understand the broader context of immigration detention in Australia as well as risk assessment tools. This will then be followed by an investigation into the viability of building or validating a psychometrically valid and reliable risk assessment tool that suits the needs of Australia Border Force. Finally, this project will conclude with the building of a risk assessment tool that meets the needs of Australia Border Force. It is anticipated that each stage will be independent and the decision about the feasibility to continue to the next stage will be made following the completion of each stage. This particular report will provide an outline that focuses on Aim 1 of Stage 1, that being understanding the broader context of immigration detention in Australia. Specifically, it will provide a brief overview of migration to Australia and immigration detention, followed by laws in Australia controlling migration. The current Australian immigration detention system will also be considered, as well as the privatisation of Australian immigration detention facilities. The methodology, including data sources, will be briefly outlined, as well as expected results and a brief discussion on how Aim 1 will lead to Aim 2 of Stage 1.

2. Introduction

This section will provide a brief outline of the Australian immigration detention system, beginning with the nature of migration to Australia, followed by the role of immigration detention in Australia and how this has evolved into its current state. This will then be followed by an overview of the laws in Australia controlling migration, particularly focusing on the legislation pertinent to the detention of particular individuals, such as irregular migrants and those of poor character. This background section will then conclude with a description of the current immigration detention system in Australia, including some demographic details regarding those currently detained in these facilities, as well as the privatization of these immigration detention facilities.

2.1. Migration to Australia

Due to the geographically isolated nature of Australia, those individuals seeking asylum in this country have only two ways of doing so: either arriving by boat or by air (Crock & Ghezelbash, 2010). Most arrive by air with a valid visa and then apply for asylum.

Only a small number are unauthorised maritime arrivals (Phillips, 2015). Those arriving by boat are typically the result of the people-smuggling trade, where individuals hoping to reach a western country, often to seek asylum, pay people-smugglers large amounts of money to help them make this journey. Koser (2000, and others) attributes the increasing use of people-smugglers to the introduction of stricter policies such as border controls in response to an increase in irregular arrivals around the world (Akbari & MacDonald, 2014; Turner, 2015).

Whilst many of these individuals arrive in Australia of their own accord, it is important to note that there are also some individuals who are trafficked into Australia. The literature suggests that some of the individuals who are held in immigration detention may not have migrated to Australia of their own free will, as some of them may be the victims of human trafficking (McSherry & Kneebone, 2008). These individuals may then seek asylum in Australia as a result (McSherry & Kneebone, 2008).

In terms of lodging an asylum claim in Australia, individuals who arrive by air or boat may apply to the Department of Home Affairs for some form of protection visa (the type will depend on their method of arrival) (Asylum Seeker Resource Centre, 2012). Whilst the majority of asylum seekers who arrive in Australia do so by air, air arrivals are less likely than their maritime counterparts to be deemed refugees. Approximately 45-50 per cent of all air arrivals seeking asylum over 2012-13 were granted protection, whilst for maritime arrivals this figure is closer to 88 per cent (Asylum Seeker Resource Centre, 2018; Department of Immigration and Border Protection, 2014).

2.2.Immigration Detention in Australia

In the early 1990s the Australian Commonwealth Government introduced a policy of mandatory detention for all persons found in Australia without a valid visa. Laws providing for the detention of those entering Australia through unauthorised routes, or whose presence does not conform to immigration requirements were enacted in 1992 (Bull et al., 2013). Those found to be violating these laws, either as maritime or air arrivals were detained in immigration detention facilities around Australia.

This then changed following the Tampa incident in 2001, where a Norwegian freighter rescued 438 asylum seekers from their distressed fishing boat but the Australian government refused to let these rescued individuals on Australian shores. This incident saw the implementation of the ‘Pacific Solution’ by the LNP, where the Australian government negotiated with neighbouring states to extend the sites of immigration detention to offshore facilities in the Republic of Nauru and Papua New Guinea (Briskman, 2013; Leach, 2003;

Phillips, 2013). In 2014 the Australian government then made an agreement with Cambodia to resettle individuals held in offshore immigration detention, such as Nauru, who had been found to be genuine refugees. Currently, under the *Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012 (Cth)*, irregular migrants who arrive in Australian excised offshore territory will not be allowed to apply for asylum in Australia and will instead be detained in offshore immigration detention facilities.

The individuals detained on these islands have no access to the Australian immigration laws and process that they would have been able to access if they were detained in Australia (Flynn, 2014; Hyndman & Mountz, 2008; McKay et al., 2011). The idea behind all of this ties into the overall aim of the 'Pacific Solution': which is to make seeking asylum in Australia less attractive and deter unauthorised irregular maritime arrivals by giving them no advantage over other asylum seekers (Billings, 2013; Briskman, 2013; McKay et al., 2011; Mountz, 2011). In addition to this, the 'Pacific Solution' policy and its use of extra-territorial detention and processing of these individuals allows the Australian government to avoid its international obligation under both refugee law and human rights to protect those seeking asylum by outsourcing this responsibility to other nations (Billings, 2013; Hyndman & Mountz, 2008; Welch, 2013).

2.3.Law in Australia Controlling Migration

According to the *Migration Act 1958 (Cth)*, Australian Border Force officers must detain all unlawful non-citizens. Such individuals include those who have arrived in Australia without a valid visa, have had their visa cancelled, or their visa has expired. These individuals are to remain in immigration detention until they are granted a visa or they are being removed from the country.

The public policies implemented by the Australian government over the past 20-30 years in response to irregular arrivals are policies that are designed to either contain/ detain or deter these individuals (Billings, 2014). The current policy of indefinite, mandatory immigration detention of all undocumented/ irregular/ unauthorised migrants (as defined by the *Migration Act 1958 (Cth)*) was first introduced in Australia in 1992 through the enactment of the *Migration Amendment Act 1992 (Cth)* (Briskman, 2013; Every et al., 2013; Grewcock, 2013). This immigration detention legislation, along with other relevant Acts, including the *Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012 (Cth)*, creates a two-tiered system for the treatment of irregular arrivals based on their method of arrival on Australian territory or surrounding islands (Crock & Ghezelbash,

2010; Fleay, Hartley & Kenny, 2013). Part of the Australian government's 'solution' to stop irregular maritime arrivals involved the legal excision of thousands of islands that were previously part of Australia's migration zone, including Christmas Island, Cartier Island, Ashmore Reef and the Cocos Islands (Devetak, 2004; Flynn, 2014; Hudson-Rodd, 2009). Australia still maintains control of these territories but these spaces are considered beyond the reach of the Australian legal system (Billings, 2013). Consequently, any irregular migrants that land on these islands will not be deemed to have arrived in Australian territory for migration purposes (Bacon et al., 2016; Briskman, 2013; Howard, 2003; Hudson-Rodd, 2009).

Tied into the excising of these territories, the Australian government implemented extra-territorial (offshore) immigration detention and processing of irregular migrants on Christmas Island, the island nation of Nauru, and Manus Island of Papua New Guinea after striking an agreement with the governments of both of these respective countries (Briskman, 2013; Hudson-Rodd, 2009). Part of this agreement was that these countries would detain, process and take responsibility for irregular migrants that Australia intercepted, and in return these nations would receive foreign aid (Briskman, 2013). Similarly, the Australian government also pays Indonesia and Malaysia, which act as source countries for many irregular migrants, to detain and prevent individuals from leaving on their journeys to Australia, or to reaccept those who are intercepted by Australian Border Force (Hyndman & Mountz, 2008).

Under the *Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012 (Cth)* irregular migrants who arrive, or are interdicted in Australian excised offshore territory, will not be allowed to apply for asylum in Australia. Instead these individuals will be detained in offshore processing facilities, such as that of Nauru and Manus Island, and will only be able to lodge asylum claims with the country they are detained in (Billings, 2013; Howard, 2003; Hyndman & Mountz, 2008). If they are found to be refugees they will not be allowed to resettle in Australia, and instead will only be resettled either in the country they have applied for asylum in, or in another third country (Billings, 2013; Devetak, 2004; McKay, 2013).

More recently there has also been the implementation of the *Australian Border Force Act 2015 (Cth)*, which received bipartisan support of both the Labor (ALP) and Liberal-National (LNP) parties (Bacon et al., 2016). This Act serves to control available access to

information about individuals who are being held in immigration detention. Under this Act it is now a criminal offence for any individual, either public servant or private contractor working for the Department of Home Affairs, to disclose any information regarding what occurs in immigration detention facilities (Barns & Newhouse, 2015). If an individual reveals this information to the media or anyone else, the penalty is two years in prison (Bacon et al., 2016). Health workers, including doctors, are exempt from this penalty due to an amendment to the Act in September 2016 (Department of Immigration and Border Protection, 2016).

2.4.Description of Current Australian Immigration Detention System

Prior to 1994 under the *Migration Amendment Act 1992 (Cth)* there was a fixed time limit of 273 days on how long an individual could be held in immigration detention. This limit was then removed as a result of the introduction of the *Migration Reform Act 1992 (Cth)* and consequently now individuals held in immigration detention can be detained indefinitely (Newman et al., 2008). Over the past few years the length of time that individuals are held in immigration detention facilities has been steadily increasing (see Figure 1). In July 2013 the average length of immigration detention was 72 days, but by May 2018 this average length had increased to 428 days (Asylum Seeker Resource Centre, 2018; Department of Home Affairs, 2018). Similarly, the number of people held in long-term immigration detention, or for a period of two years or longer, has overall been increasing over this same period of time, with 503 people having been in immigration detention for two years or more in May 2018 compared to 457 people in July 2013 (Asylum Seeker Resource Centre, 2018).

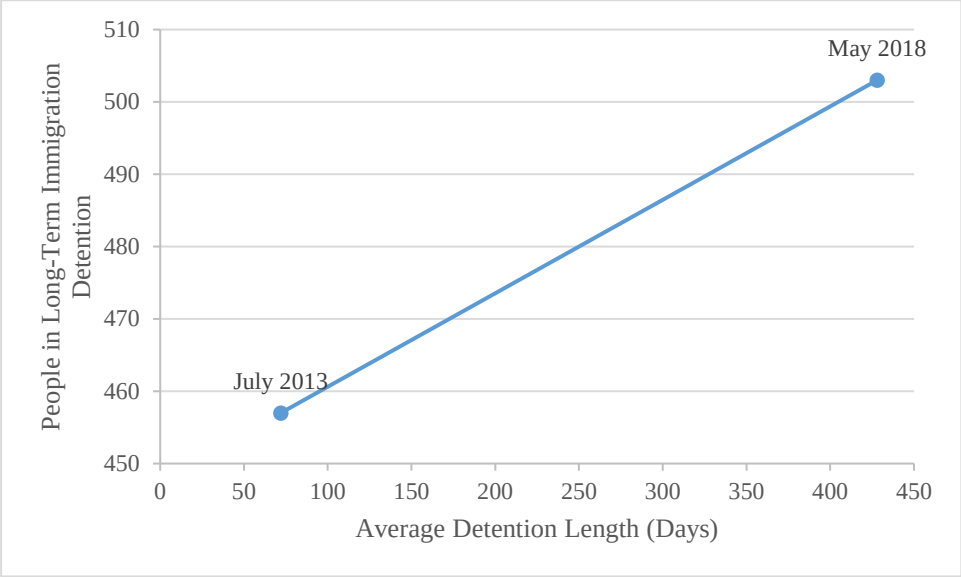

Figure 1. *Australian Immigration Detention Length Trends*

This increase in overall detention length and number of individuals who are being held in long-term immigration detention is despite the fact that the number of individuals held in immigration detention in Australia has been decreasing over this same time period, from a peak of 12,974 people in July 2013 to 1,957 people in May 2018 (Asylum Seeker Resource Centre, 2018).

Table 1. *People Held in Immigration Detention Facilities by Detention Group as of July 2018*

Place of Immigration Detention	**S501 Visa Cancellation**	**Overstayers & Other Visa Cancellations**	**Irregular Arrivals**	**Total**
Closed Detention	449	530	366	1345
Community Detention				386
Offshore Detention (Nauru)				189
				1920

As outlined in Table 1, in July 2018 there were 1920 people held in some form of immigration detention by the Australian government, whether it be closed detention (1345), community detention (386), or offshore detention on Nauru (189). Of these 1920 people, there were 1512 men, 215 women and 193 children (Department of Home Affairs, 2018). Thirty-three per cent of individuals held in closed immigration detention facilities at this time are detained as a result of their visas being cancelled by the Australian government in accordance with s501 of the *Migration Act 1958 (Cth)*, which permits the Home Affairs Minister to refuse or cancel a visa on character grounds. Another 39 per cent of those held in closed immigration detention were detained due to either overstaying the length of their visa, or breaching the conditions of their visa. Individuals who were irregular migrants and whose arrival was unauthorised (whether by air or maritime) account for 27 per cent of the 1345 people in closed immigration detention facilities. The nationalities of individuals held in immigration detention, either in closed detention facilities or in the community as of May 2018, included Iran, New Zealand, Vietnam, China, Sri Lanka, India, the United Kingdom as well as other countries (Department of Home Affairs, 2018). New Zealand nationals made up the largest cohort in closed immigration detention, with 174 detainees (12.9 per cent). Nearly 8 percent of detainees were from Vietnam and another 7.7 per cent were Iran nationals.

There are a number of offshore and onshore immigration detention facilities in Australia. These facilities include Immigration Detention Centres (IDC), Immigration Residential Housing (IRH), Immigration Transit Accommodation (ITA), Alternative Places of Detention (APOD), Community Detention (CD), and a Regional Processing Centre (RPC) on the Republic of Nauru. IDC's, which consist of Villawood, Maribyrnong, North West Point, Perth and Yongah Hill, are closed detention facilities used to detain individuals considered to be high security risks (Australian Border Force, 2018). IRH's are another type of closed immigration detention facility that provides lower security accommodation for detainees (Galardi, 2012). ITA and APOD detention facilities (see Adelaide ITA, Brisbane ITA, Melbourne ITA and Northern APOD) are two other closed, low security alternatives. CD is an open type of immigration detention as detainees reside in the Australian community.

2.5.Privatisation of Australian Immigration Detention Facilities

Over recent decades in response to increases in irregular migration Western countries around the world have privatised immigration detention facilities and services (Bessant, 2002). In the case of Australia, immigration detention facilities were privatised in 1997 and are now operated by corporations that specialise in the management of prison facilities (Hudson-Rodd, 2009; Murdolo, 2002). Onshore immigration detention facilities in Australia are operated and managed by Serco alongside the Department of Home Affairs, as has been the case since 2009. Serco is a multinational services company that supports governments around the world to deliver public services in the areas of citizen services, defence, health, immigration, justice and transport (Serco, 2018). Serco works with other organisations such as the International Health and Medical Services (IHMS), who is also contracted by the Department of Home Affairs to provide primary and mental health care to people in immigration detention in Australia (International Health and Medical Services, 2018).

The privatisation of immigration detention facilities mirrors the privatisation of prisons in many countries such as the United Kingdom and the United States, and is an equally profitable venture for these companies (Burnett & Chebe, 2010; Loewenstein, 2013). The nature of this privatisation means that there is less oversight by the government and reduced possibility of public scrutiny of what occurs in these facilities, including the treatment of detainees (Hudson-Rodd, 2009; Klein & Williams, 2012; Malloch & Stanley, 2005).

3. Method

The purpose of Aim 1 is to develop a sound understanding of the broader context of immigration detention in Australia. In order to achieve this, the project will utilise three primary methods: publicly available data, s. 47C(1) each of which will be described in this section.

3.1. Publicly Available Data

This data will consist of the six-monthly reports published by the Australian Commonwealth Ombudsman on all individuals held in immigration detention for periods of two years or longer. The six monthly reports on long-term immigration detentions provide reliable qualitative data in a narrative form that describes the conditions of immigration detention facilities and the wellbeing of detainees. These reports will also provide quantitative data as each of these six-monthly reports contains details regarding the individual's case progression and status, health, age, any detention incidents, and detention history, including the time spent in detention and at which detention facility, at the time of the report. As they are published every six months, and individuals can be detained for long periods of time, multiple reports are available in the majority of cases.

In addition to these reports published by the Australian Commonwealth Ombudsman, monthly reports on immigration detention and community statistics by the Department of Home Affairs and Australian Border Force will also be utilised. These monthly reports provide an overview of the number of people in immigration detention and Regional Processing Centres, as well a general overview of the arrival type, nationality and average length of detention for those in immigration detention.

This project will utilise these reports published by the Australian Commonwealth Ombudsman and the Department of Home Affairs and Australian Border Force during the last three to five years. This time frame may vary due to the dynamic nature of risk and perceived risk, including factors such as the introduction of prisoners to immigration detention facilities. Consequently it will need to be ensured that the data covers these changes in order for there to be appropriate data to measure risk.

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4. Results

The results for Aim 1 and subsequent sections are all dependent on the availability of data. We were not aware of what ABF can provide when preparing this document. The

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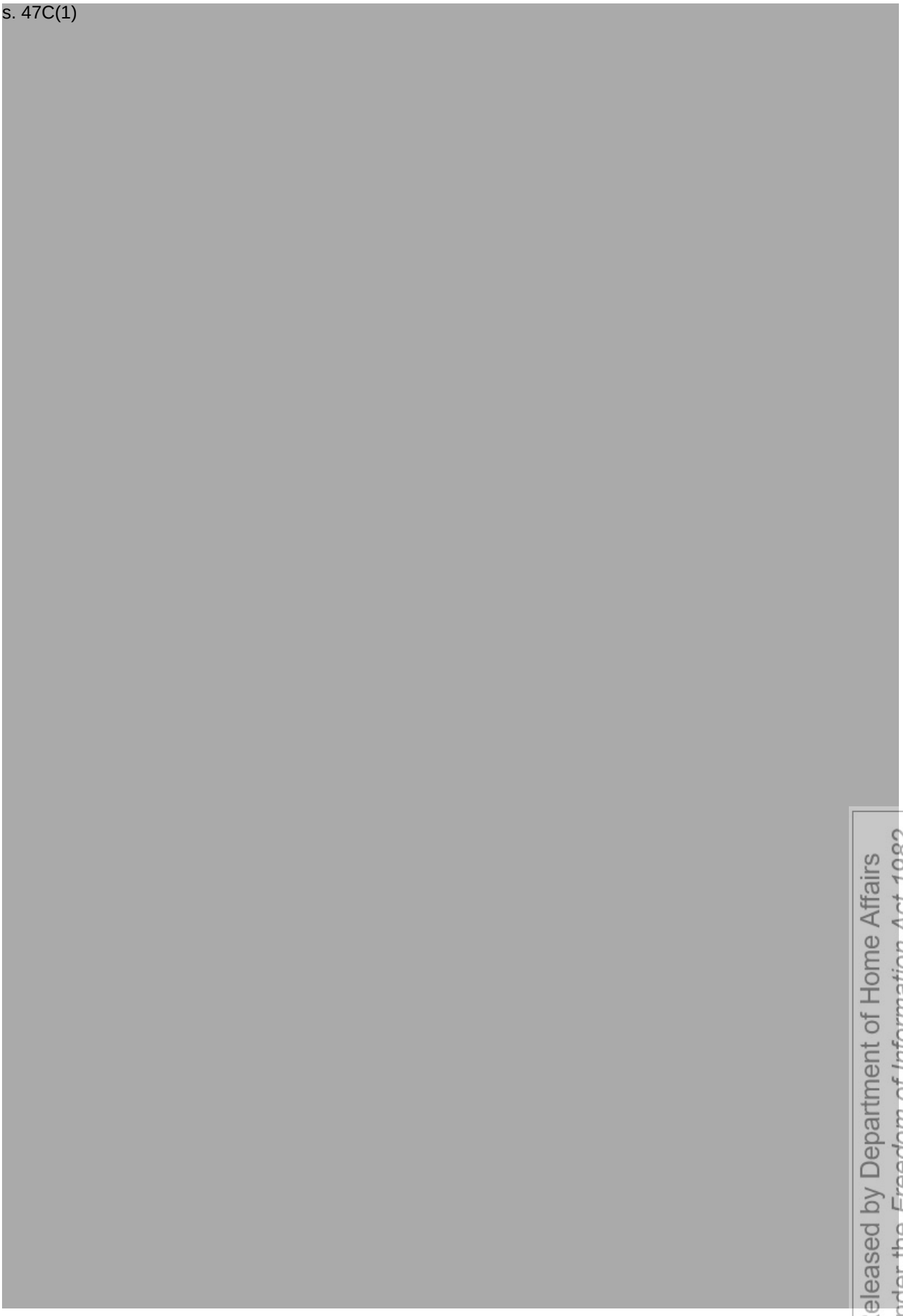

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5. Discussion

Aim 1 will then provide an understanding of the broader context of immigration detention in Australia, which will directly lead to the next section of this report. s. 47C(1)

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Appendix A: s. 47C(1)

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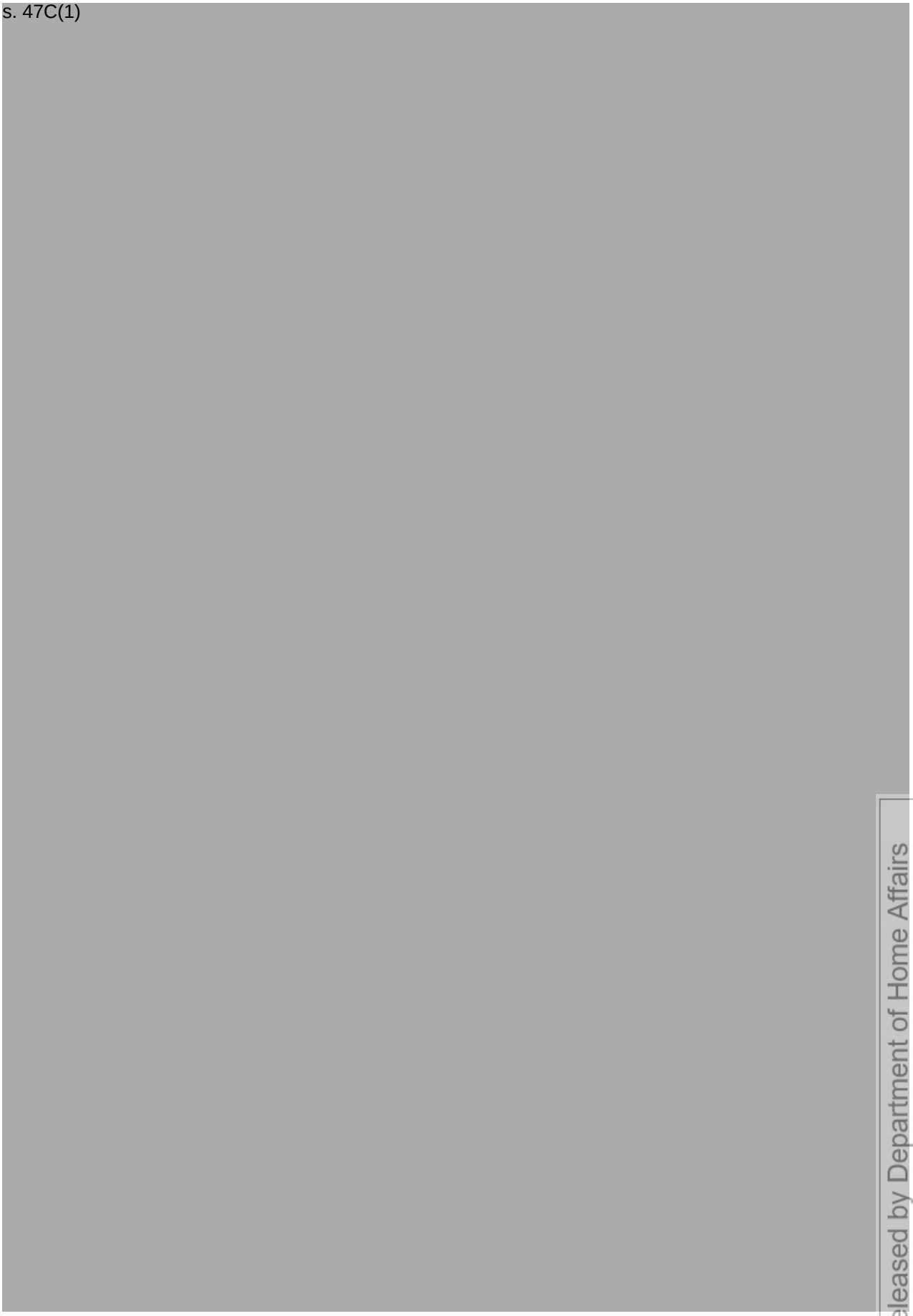

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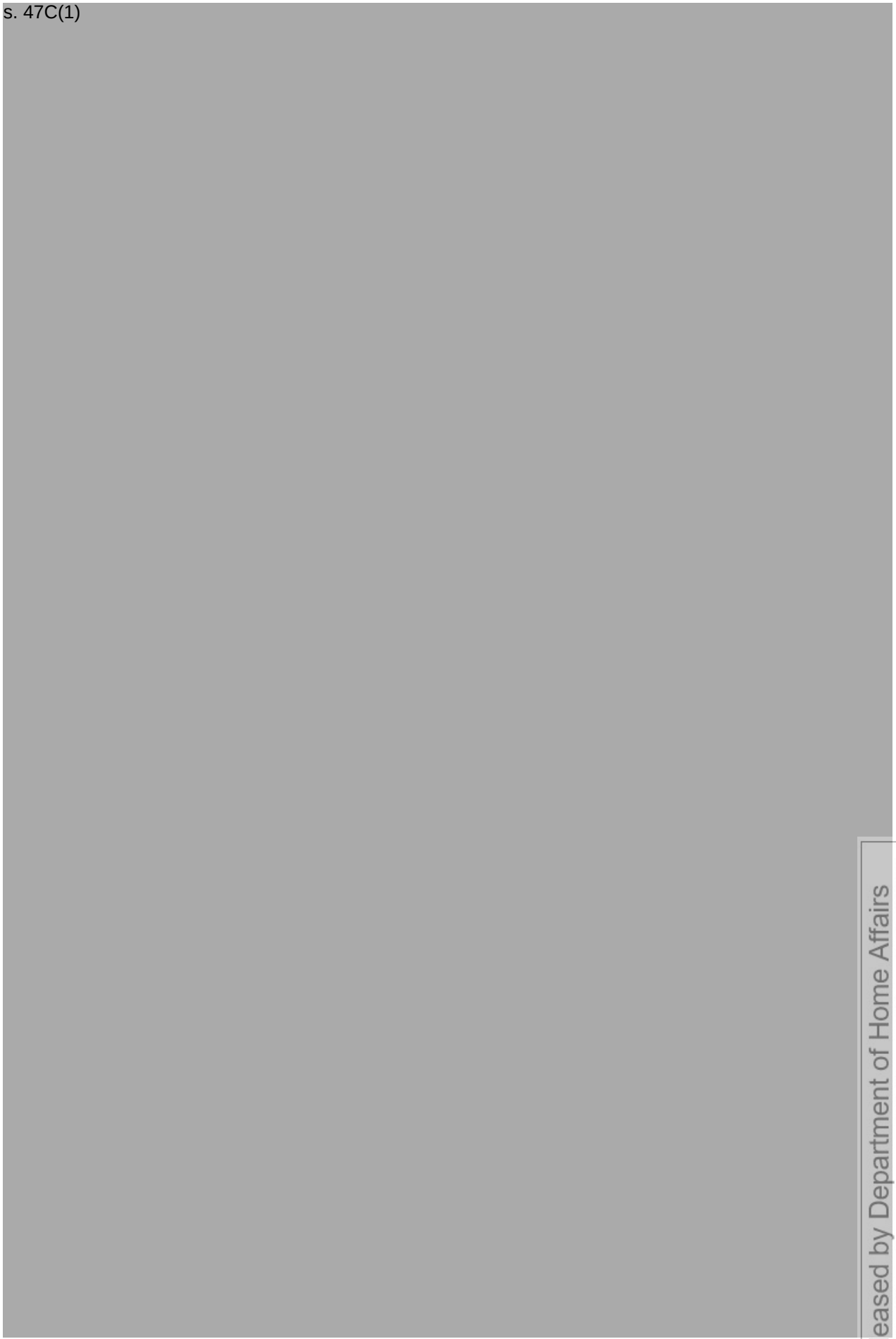

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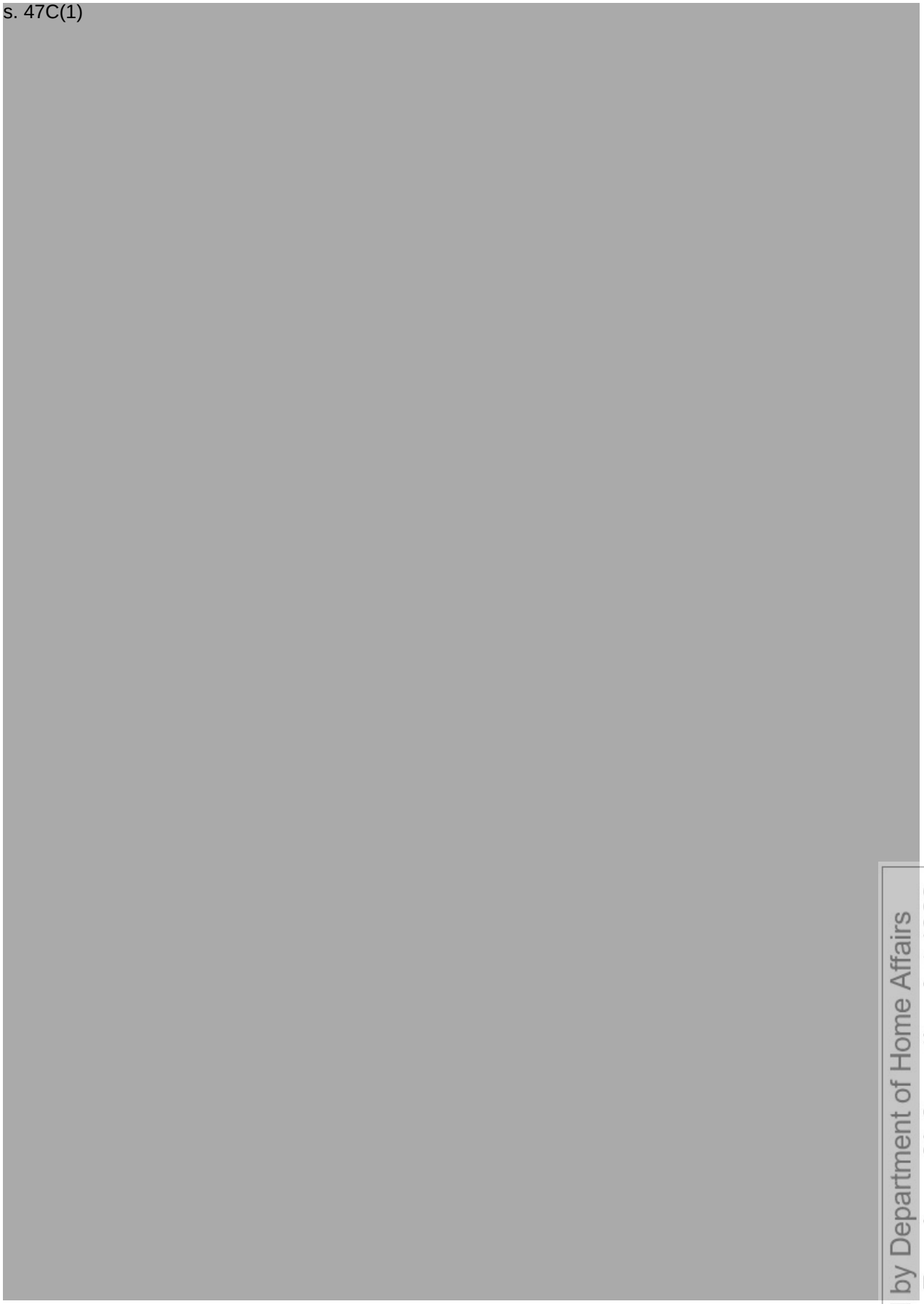

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