

# Actions Speak

Department of Home Affairs' implementation of recommendations from our investigation into the circumstances of the detention of Mr G

# Contents

<b>Why did we do this report?</b> .....	<b>3</b>
<b>How did we assess implementation?</b> .....	<b>3</b>
<b>What did we find?</b> .....	<b>4</b>
<b>Next steps</b> .....	<b>4</b>
<b>Recommendations summary</b> .....	<b>5</b>
<b>Commonwealth Ombudsman assessment</b> .....	<b>6</b>
Home Affairs' implementation of our recommendations .....	6
<b>Home Affairs' response</b> .....	<b>10</b>

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## Acknowledgement of Country

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



# Why did we do this report?

Our [Investigation into the circumstances of the detention of Mr G](#), published in April 2018, was prompted by information provided by the Department of Home Affairs (Home Affairs) that raised serious concerns about how a person could be detained for four years before Home Affairs became aware he held a valid visa.

Our investigation found that Home Affairs' case reviews were ineffective as they did not identify this error and Home Affairs had not maintained a reasonable suspicion that Mr G was an unlawful non-citizen.<sup>1</sup> Maintaining a reasonable suspicion of unlawfulness is critical in continuing to deprive a person of their liberty by keeping them in detention.

We made 4 recommendations to Home Affairs to address our concerns, which Home Affairs accepted.

In September 2020, we assessed Home Affairs' implementation of the recommendations and published the report [Did They Do What They Said They Would?](#). In this report we found recommendations 1 and 4 had been fully implemented and recommendations 2 and 3 partially implemented. Home Affairs advised it did not intend to take any further action on recommendation 3 as it does not intend to apologise to Mr G.

This report assesses whether, 6 years later, recommendation 2 has now been fully implemented.

## How did we assess implementation?

We conducted a desktop review of Home Affairs' implementation of the recommendations, considering management assertions and evidence provided by Home Affairs. Where our review of material provided by Home Affairs led to further questions, we sought additional information.

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<sup>1</sup> An 'unlawful non-citizen' (UNC) is a person who is not Australian citizen and does not hold a visa to stay in Australia.



# What did we find?

We found Home Affairs very recently fully implemented recommendation 2. However, we note the delay in Home Affairs' implementation, given this recommendation was made in 2018 and that it concerns avoiding the unlawful deprivation of liberty of citizens. Timeliness is critical for agencies acting on our recommendations to ensure that issues we identify are quickly addressed, for the benefit of the community.



Implemented - 3



Partially implemented - 1

## Next steps





Home Affairs has taken some important steps in response to our recommendations to improve its review and governance processes for people in immigration detention.

Systemic improvement in public administration is a dynamic and ongoing process. As a matter of good practice Home Affairs should periodically review the effectiveness of these changes and make further improvements when needed.

We will monitor the effectiveness of Home Affairs' implementation of the recommendations through complaints we receive and regular engagement. We also continue to engage with Home Affairs on specific cases where people were detained in immigration detention and later released as they were not unlawful non-citizens through our ongoing own motion investigation. Our second standalone report in this series is available here: [May 2024 - Report on people Detained and Later Released as Not Unlawful](#).



# Recommendations summary

<b>Recommendation 1</b> Home Affairs review how it continues to hold a reasonable suspicion that an immigration detainee is an unlawful non-citizen.	
<b>Recommendation 2</b> Home Affairs update its processes to ensure regular reviews of the ongoing lawfulness of a person's detention and to appropriately record the suspicion that a detainee is an unlawful non-citizen.	
<b>Recommendation 3</b> Home Affairs offer Mr G redress if, following a legal review of his case, it is considered his detention was unlawful.	
<b>Recommendation 4</b> Home Affairs identify all cases that may be affected by errors such as those in Mr G's case and take action to correctly notify and regularise visa status of affected persons.	

# Commonwealth Ombudsman assessment

## Home Affairs' implementation of our recommendations



### Recommendation 1

The Ombudsman recommends that the department review, with the assistance of external legal counsel if necessary, how it maintains the reasonable suspicion that a person in immigration detention is an unlawful non-citizen.

**Status:** Implemented



### Ombudsman comments

We assessed this recommendation as implemented in our 2020 report [Did They Do What They Said They Would?](#). We reviewed Home Affairs' new 'Status Resolution Reasonable Suspicion Framework' and 'status tool' for forming and maintain a reasonable suspicion the individual in question is an unlawful non-citizen.





## Recommendation 2

The Ombudsman recommends that the department update its relevant policies and procedures in light of the review in Recommendation 1 to ensure the ongoing lawfulness of a person's detention is regularly reviewed, and the steps taken to maintain the suspicion that the detainee is an unlawful non-citizen are appropriately recorded.

**Status:** Implemented



### Ombudsman comments

In our 2020 report [Did They Do What They Said They Would?](#) we assessed Home Affairs had partially implemented this recommendation.

We said that to assess this recommendation as implemented we would expect Home Affairs to have implemented its new procedural instruction which ensures the ongoing lawfulness of a person's detention is regularly reviewed along with associated training. On 24 June 2024, we wrote to Home Affairs asking about implementation of recommendation 2.

On 1 August 2024, Home Affairs published the Procedural Instruction *Status Resolution Officers (SROs) – Detaining UNC's and managing them in detention* on its Policy and Procedure Control Register for use by staff. Prior to its publication, we reviewed this Procedural Instruction and the training content (including timeframes and methods for delivery). The Procedural Instruction establishes processes to ensure the regular review of the ongoing lawfulness of a person's detention and to appropriately record the suspicion that a detainee is an unlawful non-citizen. Home Affairs' training also supports use of the Procedural Instruction to ensure these processes are followed. While we have assessed this recommendation as implemented, we note that it was implemented 6 years after the recommendation was made. We reiterate the importance of taking timely action on our recommendations.





## Recommendation 3

The Ombudsman notes that the department has commenced a formal legal review of the detention of Mr G and recommends that if this review, taking into account the outcome of any review mentioned in Recommendation 1, forms the opinion that his detention was unlawful, it take steps, informed by precedent, to offer Mr G appropriate redress, for example:

- an apology
- a waiver of any debt to the Commonwealth incurred by his removal from Australia, and/or
- an appropriate amount of compensation.

**Status:** Partially Implemented



### Ombudsman comments

We assessed this recommendation as partially implemented in our 2020 report [Did They Do What They Said They Would?](#). Home Affairs had told us they had completed a formal legal review into the lawfulness of Mr G's detention but did not consider it appropriate to apologise to Mr G.

As Home Affairs' position remains unchanged, our final assessment is that this recommendation is partially implemented. Mr G was unlawfully detained for 4 years, despite holding a valid visa. It is unfortunate that Home Affairs has chosen not to write to Mr G with an apology and the outcome of the review. An apology from an agency can send a powerful message about the agency's commitment to improving and making things right. Apologising demonstrates an acceptance of accountability.







## Recommendation 4

The Ombudsman recommends that the department, if it has not already taken this step, identify all cases affected by the errors identified in March 2014 in the notification of the refusal of Partner visa applications. It should then take appropriate measures to ensure that such refusals have been correctly notified and the visa status of affected individuals has been regularised.

**Status:** Implemented



### Ombudsman comments

We assessed this recommendation as implemented in our 2020 report [Did They Do What They Said They Would?](#). We reviewed the methodology and scope Home Affairs applies to conduct sweeps to identify errors such as those that occurred in Mr G's case and considered, if applied correctly, would address the administrative deficiency of concern.





Australian Government  
Department of Home Affairs

SECRETARY

OFFICIAL

Our Ref: EC24-005068

Mr Iain Anderson  
Commonwealth Ombudsman  
Office of the Commonwealth Ombudsman  
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CANBERRA ACT 2601

Dear Mr <sup>Iain</sup>Anderson

Thank you for providing the Department of Home Affairs (the Department) your report, *Actions Speak - Department of Home Affairs' implementation of recommendations from our investigation into the circumstances of the detention of Mr G.*

The Department values the Commonwealth Ombudsman's oversight and appreciates the opportunity to review this report. The Department did not identify any omissions or factual errors in the report.

Should your staff wish to discuss this matter further they can contact [REDACTED] Alternatively, you are welcome to contact me directly if that is helpful.

Yours sincerely

[REDACTED]  
Stephanie Foster PSM

25 September 2024

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