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## Inquiry into the management of the case of Mr E and related matters

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Inspector-General of Intelligence and Security  
under the *Inspector-General of Intelligence and Security Act 1986*

**Public report**

January 2014

## Note on report

This report is an abridgement of a more comprehensive and detailed classified report that has been provided to the Prime Minister. This report is unclassified and intended for public release. This report was prepared on the basis that it would contain as much information as possible while satisfying the requirement that such information would not prejudice security, the defence of Australia, Australia's relations with other countries, law enforcement operations or the privacy of individuals.

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Inspector-General of Intelligence and Security  
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## Executive summary

From April 2013 the Australian media were reporting that an Egyptian asylum seeker who had allegedly been convicted of terrorism offences overseas and who was the subject of an Interpol red notice was being 'kept behind a pool fence' in an immigration detention facility and had been cleared for community detention because of a 'clerical error'.

In June 2013 the then Prime Minister asked me to conduct an inquiry into the management of the case of the individual at the centre of these reports and, more generally, into the management by Australian government agencies of persons seeking asylum who present complex security issues. The relevant agencies were identified as the Australian Federal Police (AFP), the then Department of Immigration and Citizenship (Immigration) and the Australian Security Intelligence Organisation (ASIO).

I found that in relation to the person's arrival and during the initial period of his detention, each agency involved generally followed standard policies and procedures. Each agency had information that the individual was potentially the subject of an Interpol red notice well before 2012 when he arrived in Australia.

Immigration managed the person as part of a family unit that included several children and made detention decisions according to the then Government's immigration detention values and the behaviours he and the family displayed in detention.

The AFP managed the case through the prism of an Interpol red notice and focused on completing the steps that would be necessary to confirm identity to process any extradition request.

ASIO cleared the individual for community detention in accordance with the extremely limited type of check that it conducted at the time. Although ASIO had information that might have caused it not to clear the individual had that information been considered, its processes at that time did not include consideration of that information in the community detention security assessment process. Different areas of ASIO dealt with the potential match to alerts connected to the Interpol red notice and the community detention checks and there was no effective communication between the two.

There was little understanding in Immigration about what types of security checks ASIO did for community detention and it is not clear that the then Minister for Immigration or the then Attorney-General received advice about the rigour of the checks. Within ASIO there was a disconnect between what the senior executive had approved as a process of checks, what operational staff understood, and what actually happened. There was inadequate guidance for ASIO staff.

Some senior staff in ASIO were of the understanding that if a person was a match or a possible match to a national security alert on the immigration watchlist then Immigration would not consider the person for community detention, even if Immigration sent the name to ASIO for advice and ASIO subsequently gave Immigration advice that they were cleared for community detention. This view was not clearly supported by any documentary evidence. Guidance on this policy within Immigration was scarce and it was not included in any briefings to senior

executives or the Minister for Immigration when managing or reviewing the case of the Egyptian asylum seeker.

Although the individual was initially cleared by ASIO for community detention the clearance was withdrawn and he was not released into the community. After eleven months in a low security immigration detention facility the individual was moved to a higher security facility. The inquiry found that Immigration management made decisions on detention arrangements without a full appreciation of all relevant information. Immigration does not have the expertise to properly assess and manage risk in complex national security cases without input from ASIO and the AFP. The AFP gave varying advice to Immigration over a period of time but there was no formal framework for such advice. Information held by separate parts of Immigration was not shared and interpreted consistently. ASIO provided no information to assist Immigration in assessing or managing any detention risks.

The inquiry also found deficiencies in recordkeeping particularly in Immigration. Much corporate information in Immigration resided in emails in personal drives and there were inadequate corporate records of key decisions. Key procedures and agreements between Immigration and ASIO were not well documented.

The events described in this report occurred at a time of extraordinary operational activity. The inquiry found that the high workloads and the demands placed on both Immigration and ASIO tested the capacity of both agencies and go some way to explaining why there was a lack of clarity in arrangements and inadequate communication both internally and between agencies.

Shortly after the commencement of the inquiry the Interpol red notice was amended by the country that issued it and all charges involving violence were removed.

Very few individuals seeking asylum in Australia raise complex national security issues. The inquiry concluded that in those few cases Immigration should be able to access all relevant information when making detention decisions in order to best identify and mitigate potential risks. This includes, but is not limited to, access to ASIO assessments for individuals who are in immigration detention because of an adverse visa security assessment. There is also potential, on a case by case basis, for ASIO to provide security advice to Immigration specifically for the purpose of assisting Immigration making detention decisions in complex national security cases. Where issues of national security and criminality overlap there is also potential for the AFP to provide tailored advice to Immigration to assist in detention risk management.

Significant changes were initiated in ASIO and Immigration prior to this case being a matter of public interest. Security checking prior to community detention or bridging visas is considerably more robust and ASIO now has written guidance for staff on how to do the checks and the mechanism for escalating and resolving concerns. Immigration has established a centralised team to identify and oversight national security and serious criminality cases. Immigration is also working to implement an external case conferencing framework that includes ASIO and AFP input in relevant cases.

These changes represent significant improvements and go some way towards addressing the issues raised in this inquiry and implementing the recommendations in this report.

## Recommendations

### **Recommendation 1:**

Immigration and ASIO should continue to build on recent improvements in implementing a coordinated approach to resolving potential matches to national security alerts and document agreed procedures. This approach includes mechanisms to:

- escalate the priority of requests for information
- ensure that requests are followed up
- access all relevant existing information.

### **Recommendation 2:**

Immigration should develop procedures to ensure that the AFP is promptly notified of CMAL alerts for Interpol red notices. Immigration should continue to explore the feasibility of an automated system with the AFP.

### **Recommendation 3:**

Immigration should:

- assess what level of confidence about the identity of an individual is required for any particular detention management decision taking into account any threat to national security
- access all relevant information in assessing the identity of an individual in cases that may involve national security issues
- formalise arrangements to obtain identity resolution advice from the AFP including enabling the AFP to provide prompt interim advice where appropriate.

### **Recommendation 4:**

Immigration should review its procedures for conducting risk assessments in cases involving national security to ensure that those undertaking the assessment:

- have access to relevant information and expertise including from ASIO and AFP
- have appropriate training and a standard process to follow
- reference source information
- ensure that risk assessments become part of corporate records and are linked to the particular client's case.

### **Recommendation 5:**

Immigration should ensure that proper records are retained of a decision to place a person in a particular form of immigration detention on the basis of national security concerns.

### **Recommendation 6:**

Immigration and ASIO should ensure that in the small number of cases where there are potentially national security issues all relevant information is taken into account by Immigration when making immigration detention management decisions. Where such a case also involves issues of serious criminality Immigration should also work with the AFP to ensure relevant AFP information is also obtained and taken into account. This recommendation is not intended to suggest that responsibility for the decision in relation to the level of security for a person in immigration detention should rest with ASIO or AFP; that decision is ultimately one for Immigration to make based on the best available information and advice.

## Agency responses to recommendations

Immigration has agreed to all of the recommendations and has advised that it is implementing or will implement a number of changes to address each of the recommendations.

The AFP advised that it supports all of the recommendations that relate to the AFP.

ASIO accepted recommendations relating to ASIO and will work with Immigration and the AFP to implement them. ASIO notes that some changes have already been made to ASIO processes, training and guidance to staff.

## Glossary

AFP	Australian Federal Police
AIC	Australian Intelligence Community
APOD	alternative place of detention
ASIO	Australian Security Intelligence Organisation
ASIO Act	<i>Australian Security Intelligence Organisation Act 1979</i>
BOC	Border Operations Centre
CD	community detention
CMAL	Central Movement Alert List
CCMD	Compliance and Case Management Detention portal
Customs	Australian Customs and Border Protection Service
DFAT	Department of Foreign Affairs and Trade
DIAC	Department of Immigration and Citizenship
DIBP	Department of Immigration and Border Protection
IDC	immigration detention centre
IGIS	Inspector-General of Intelligence and Security
IGIS Act	<i>Inspector-General of Intelligence and Security Act 1986</i>
Immigration	Department of Immigration and Citizenship (before 18 September 2013) Department of Immigration and Border Protection (from 18 September 2013)
IRN	Interpol red notice
Migration Act	<i>Migration Act 1958</i>
PROMIS	Police Realtime On-line Management Information System
Serco	Serco Australia Pty Ltd
SIEV	suspected irregular entry vessel

## A short chronology

- Prior to 2011 ASIO, AFP and Immigration have information about Interpol red notice.
- 11 May 2012 Mr E and family arrive at Christmas Island. Name and date of birth and other information given by Mr E closely match Interpol red notice.
- 25 May 2012 Immigration advises ASIO of amber match to a national security alert and existence of Interpol red notice. First attempt to resolve alert commences. ASIO liaises with foreign partner.
- 26 May 2012 Mr E and family transferred to an alternative place of detention.
- 22 June 2012 Immigration conducts entry interview with Mr E. Details given by Mr E match Interpol red notice.
- 26 June 2012 AFP identifies possible match to Interpol red notice, advises ASIO and Immigration by telephone.
- 5 July 2012 ASIO clears Mr E for community detention.
- 9 July 2012 Preparation of s. 46A (Migration Act) ministerial submission initiates second (parallel) attempt to resolve amber alert.
- 17 July 2012 A different Immigration officer identifies possible match (originally matched on 25 May 2012) to Interpol red notice and emails advice to ASIO and AFP (Interpol Canberra).
- 18 July 2012 AFP emails ASIO and Immigration on possible match to Interpol red notice.
- 24 August 2012 Senior Immigration officers and Detention Operations Section advised of possible match to Interpol red notice.
- 25 August 2012 ASIO confirms there is a match to a national security alert.
- 30 August 2012 ASIO withdraws community detention clearance.
- 28 September 2012 Immigration lodges s. 46A ministerial submission for Mr E and family. There is no record of the Minister reading this submission.
- 18 October 2012 AFP letter to Immigration – AFP has a strong suspicion Mr E is the subject of the Interpol red notice.
- 23 January 2013 Immigration assistant secretary proposes moving Mr E to Villawood IDC on the basis that AFP has advised it is concerned he may take flight.
- February 2013 Immigration commences drafting a risk assessment on Mr E. The final version is dated 13 March 2013.
- 20 February 2013 AFP letter to Immigration – investigation brief and related documents provided. It is AFP's strong suspicion that Mr E is subject of Interpol

red notice.

- 27 February 2013 Immigration senior executive meeting to discuss Mr E. Decision made to move Mr E to Villawood IDC within two weeks.
- 12 April 2013 A third party provides unredacted document to Mr E.
- 17 April 2013 Mr E is moved to Villawood IDC. Brief sent to the Minister for Immigration advising of the move. Brief signed 24 April 2013.
- 23 April 2013 Media reporting commences and continues through to early June. ASIO Attorney-General submission providing background on Mr E and two other cases mentioned in initial media reporting.
- 24 April 2013 ASIO briefs Shadow Attorney-General.
- 3 May 2013 AFP sent a submission about Mr E and the two other cases mentioned in media on 23 April 2013 to the Minister for Home Affairs and Justice submission (copy to Attorney-General).
- 13 June 2013 Interpol removes charges relating to violent activity from the red notice.
- 19 July 2013 Immigration reviews Mr E's accommodation within Villawood and moves him to another area in Villawood.

# Part 1 Background

## 1.1 THE INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

### Legislation

The *Inspector-General of Intelligence and Security Act 1986* (IGIS Act) establishes the independent office of the Inspector-General of Intelligence and Security. The Inspector-General reviews the activities of the agencies which collectively comprise the Australian Intelligence Community (AIC). These agencies are:

- the Australian Security Intelligence Organisation (ASIO)
- the Australian Secret Intelligence Service
- the Defence Intelligence Organisation
- the Defence Signals Directorate (also known as the Australian Signals Directorate)
- the Defence Imagery and Geospatial Organisation (also known as the Australian Geospatial Organisation)
- the Office of National Assessments.

The role and functions of the Inspector-General are set out in sections 8, 9 and 9A of the IGIS Act and, broadly, are to conduct inspections of agencies of the AIC and to conduct inquiries, the aim of which are to ensure that each AIC agency acts legally, with propriety, and in a manner which is consistent with human rights.

Under s. 9AA of the IGIS Act the Inspector-General must not, in the performance of their functions inquire into an action taken by a Minister except to the extent necessary to look at the question of whether an AIC agency is complying with directions or guidelines given by the Minister.

The Inspector-General is empowered to inquire into the actions of non-AIC agencies only if the Prime Minister requests that the Inspector-General inquire into an intelligence or security matter relating to a Commonwealth agency. This inquiry is the third time such an inquiry has been undertaken by the Inspector-General since the relevant provision was introduced in late 2010.

### Powers of the Inspector-General

The IGIS Act provides the Inspector-General with significant powers with which to conduct inquiries.

Section 18 provides that the Inspector-General may:

- compel the giving of information or the production of a document that the Inspector-General has reason to believe is relevant to an inquiry
- require a person to appear and answer questions where the Inspector-General has reason to believe that they are able to give information relevant to the inquiry

- administer an oath or affirmation to a person appearing and examine the person on oath or affirmation.

Section 18 also provides that it is an offence to fail to give information or produce a document or answer a question from the Inspector-General when required to do so. A person is not excused from giving information, producing a document or answering a question from the Inspector-General on the grounds that doing so would contravene the provisions of another Act; would be contrary to the public interest or might tend to incriminate the person or make the person liable to a penalty; or would disclose legal advice given to a minister or Commonwealth agency.

However s. 18 also provides protections for those persons giving information, producing a document to, or answering questions from, the Inspector-General. Any information which is obtained under s. 18 is not admissible in any court or proceedings except in a prosecution for a limited number of offences. Further, a person is not liable to any penalty under the provisions of any law of the Commonwealth or of the states or a territory by reason only of giving information, producing a document to or answering a question from the Inspector-General. This immunity ensures that, to the extent possible, the Inspector-General is able to pursue the truth of a matter rather than engaging persons in an unnecessarily adversarial process.

## 1.2 INQUIRY INITIATION AND SCOPE

### Background

On 23 April 2013 *The Daily Telegraph* published an article ‘Secrecy On Trio With Security Concerns’. The article reported that ‘an Egyptian man who is the subject of a high-level Interpol red notice for terrorism activities was reportedly being held in a detention centre on the east coast’. Public interest in the case intensified in late May 2013 with media outlets reporting that the Director-General of Security believed that a clerical error may have led to the person being cleared by ASIO for community detention. There were also reports of a refugee advocate questioning the accuracy of the charges listed on the Interpol red notice, citing Egyptian court documents that he believed contradicted the charges. The media reported concerns that the individual and his family had been housed at a low-security centre, ‘behind a pool fence’ for nine months prior to being moved to Villawood Immigration Detention Centre. Media interest continued into June.

### Referral from the Prime Minister

On 5 June 2013 the then Prime Minister, the Hon Julia Gillard MP, requested that I conduct an inquiry into the matter of:

an Egyptian irregular maritime arrival who arrived in Australia in May 2012, was placed in immigration detention in Australia and was the subject of an Interpol red notice.

Although the name of the person was not given, the circumstances identified a particular individual who is referred to as Mr E in this report. The Prime Minister also requested that I consider and make recommendations more generally on the management by Australian agencies of persons seeking asylum who present complex security issues.

I commenced the inquiry on 6 June 2013. I identified that the agencies involved were the Australian Federal Police (AFP), ASIO and the then Department of Immigration and Citizenship (Immigration).<sup>1</sup> I notified relevant ministers and agency heads of the inquiry, as required by the IGIS Act.

### Scope of inquiry

The inquiry examined the management of Mr E in detail. The focus of the inquiry was not to establish whether Mr E posed a threat to security but rather to look at whether the relevant agencies had in place appropriate procedures to identify, assess and manage any security threat, and whether they followed those procedures. The way that the agencies shared information and expertise in managing risk for the Australian community was identified as a key issue.

The inquiry also looked more generally at the management of other individuals seeking asylum in Australia who present complex security issues, including those in respect of whom ASIO has issued an adverse visa security assessment. Very few individuals seeking asylum in Australia present complex security issues.

The term 'security' is given a particular meaning in the IGIS Act. The definition is derived from the *Australian Security Intelligence Organisation Act 1979* (ASIO Act). Broadly 'security' is concerned with the protection of the Commonwealth and the States and Territories and the people in them from:

- espionage
- sabotage
- politically motivated violence (including terrorism)
- the promotion of communal violence
- attacks on Australia's defence system
- acts of foreign interference

and the protection of Australia's territorial and border integrity from serious threats as well as carrying out Australia's responsibilities to any foreign country in relation to any of these matters.

In this report unless otherwise specified the word 'security' is used in this sense.

'Security' does not include general character or criminality concerns or matters of physical security unless these issues also go to one of the matters covered by the definition.

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<sup>1</sup> Administrative Arrangements Orders dated 18 September 2013 transferred the relevant functions of the former Department of Immigration and Citizenship to the Department of Immigration and Border Protection. This report uses the shortened form 'Immigration' to refer to both the current and former Departments.

## 1.3 INQUIRY METHODOLOGY

### Documents

Shortly after informing ministers and relevant agency heads about the inquiry I met with senior managers in each agency. I issued notices to ASIO, Immigration and the AFP under s. 18 of the IGIS Act on 6 June 2013 requiring agencies to provide me with documents that related to:

- the Egyptian IMA who arrived in Australia in May 2012, was placed in immigration detention in Australia and was the subject of an Interpol red notice
- policy, procedures or internal guidance to be followed by the agencies in the period between 1 May 2012 and 6 June 2013 in relation to the identification and management by the agencies of persons seeking asylum who present complex security issues.

All of the agencies provided documents in response to the initial request. The AFP had already assembled most of their relevant documents and provided these at an early stage. During the course of the inquiry Immigration and ASIO provided further documents as they undertook further searches and all three agencies provided additional information requested by the inquiry team.

The inquiry team ultimately examined over 9000 pages of information during the course of the inquiry.

While the Immigration and ASIO contact officers worked diligently to meet our requests for documents, there was often delay and difficulty in locating the specified information. In one instance an Immigration ministerial submission specifically related to Mr E was located only after several requests and provided to the inquiry almost three months after the initial notice. ASIO acknowledged some difficulty in initially identifying relevant documents due to staff movements. This led to delay in producing key material.

AFP records were largely produced from official diaries and the PROMIS system.<sup>2</sup> Immigration and ASIO documents that should have formed part of corporate records were often found stored in personal emails and drives rather than the corporate records management system. I do not believe this to be consistent with the recordkeeping policies in place for either agency. I note that the 2005 Commonwealth Ombudsman *Inquiry into the Circumstances of the Vivian Alvarez Matter*, (Comrie report) also made observations about the difficulties of accessing emails from personal drives in the then Department of Immigration and Multicultural and Indigenous Affairs and recommended that:

Recommendation 10: The Inquiry recommends that the Secretary of [Immigration] take all necessary steps to ensure that email business records are kept in accordance with the requirements of the Archives Act 1983.<sup>3</sup>

At interview both Immigration and ASIO officers provided additional documents that were within the scope of my original notice but that had not previously been located through the searches conducted by the agencies. Further highly relevant documents, including ministerial

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<sup>2</sup> PROMIS (Police Realtime On-line Management Information System) collects and manages all of the AFP's investigations and operational information

<sup>3</sup> Mr Neil Comrie AO APM, 2005, *Inquiry into the Circumstances of the Vivian Alvarez Matter*, Commonwealth Ombudsman, Canberra

submissions, were provided in response to draft reports. As new relevant documents were provided by ASIO and Immigration until as late as the end of October 2013 it is difficult to say with confidence that all relevant documents were provided before the finalisation of this report.

It is clear that both ASIO and Immigration should review relevant recordkeeping arrangements.

## Interviews

After reviewing the documents initially provided and considering that information, I gave written notices under s. 18 of the IGIS Act to twelve current or former Commonwealth officers requiring them to attend before me to answer questions under oath or affirmation.

## Procedural fairness

On 4 October 2013 I provided the agency heads of Immigration, ASIO and the AFP with an opportunity to make submissions to me about matters of which I was likely to be expressly or impliedly critical, and to provide submissions on my preliminary views in accordance with the IGIS Act. I requested comments by 25 October 2013. The Commissioner of the AFP provided a response on 23 October 2013, the Secretary of Immigration provided a response on 25 October 2013 and the Director-General of Security on 28 October 2013. Additional relevant documents were subsequently provided by ASIO and Immigration and a further draft was circulated on 13 November 2013 with a request for comments by 20 November 2013. The AFP provided a response on 20 November 2013, Immigration provided a response on 21 November 2013 and ASIO provided a response on 29 November 2013.

On 29 November 2013 I wrote to relevant ministers to provide them with a copy of my proposed report and offered them the opportunity to meet with me to discuss the report. I met with the Minister for Immigration on 15 January 2014 and the Attorney-General on 22 January 2014. The final report was provided to the Prime Minister on 24 January 2014.

## 1.4 ABOUT IMMIGRATION

At the time of the events that led to this inquiry the key business of the Department was to:

- contribute to Australia's future through managed migration
- protect refugees and contribute to humanitarian policy internationally
- contribute to Australia's security through border management and traveller facilitation
- make fair and reasonable decisions for people entering or leaving Australia, ensuring compliance with Australia's immigration laws and integrity in decision making
- support migrants and refugees to settle in the community and participate in Australian society
- promote Australian citizenship and a multicultural Australia.

Immigration administers the Australian visa system that requires that all non-citizens must apply for and be granted a visa to enter and remain in Australia. Non-citizens who do not hold a

valid visa are described as unlawful non-citizens. The *Migration Act 1958* (the Migration Act) authorises the detention of unlawful non-citizens.

At the time Mr E arrived on Christmas Island Immigration was dealing with around 1300 IMAs per month and was managing around 5000 people in immigration centres or alternative places of detention. Around 23 000 people are currently living in the Australian community waiting for processing of their visa applications. In my view, it would be fair to say that the detention network was under considerable pressure at the time Mr E arrived and had been for some time. The number of IMAs arriving each month rose from 228 in July 2011 to more than 2600 in June 2013.

Immigration also manages the Central Movement Alert List (CMAL), a database that stores biographic details of identities and travel documents of persons who are of concern, including those of immigration or national security concern to Australia. This database is used to assess Immigration clients at any point that they interact with the department if they become of interest to Immigration or another agency. This system could be described as an 'immigration watchlist'.

## 1.5 ABOUT ASIO

The role of ASIO is to collect and evaluate intelligence on threats to Australia's security, both in Australia and overseas, and to provide advice to protect Australia, its people and its interests. Its functions are set out in the ASIO Act. It is also subject to guidelines issued by the Attorney-General under the ASIO Act. Section 17(1)(c) of the ASIO Act specifically states that one of ASIO's functions is:

... to advise Ministers and authorities of the Commonwealth in respect of matters relating to security, in so far as those matters are relevant to their functions and responsibilities.

In addition, s. 37(1) of the ASIO Act specifically provides that:

The functions of the Organisation referred to in paragraph 17(1)(c) include the furnishing to Commonwealth agencies of security assessments relevant to their functions and responsibilities.

These sections provide the authority for ASIO to lawfully produce security assessments (including an adverse security assessment on an individual). Security assessments can be produced in relation to a number of prescribed administrative actions, including the exercise of powers or the performance of functions under the Migration Act.

In October 2010, when the then Minister for Immigration announced the expansion of the community detention program, ASIO expected that there would be around 900 low-risk cases with around 200 referred to ASIO for security checking during 2010-11. Ultimately, the profile of people being considered for community detention expanded and the number of referrals to ASIO for security checks for community detention was far greater than expected – 2858 cases had been referred by December 2011. The number of cases referred to ASIO for community detention security checks continued to increase into 2012.

At the same time as it was conducting community detention security checks ASIO was continuing to undertake security assessments for permanent visas for IMAs who had been assessed to be refugees.

## 1.6 ABOUT THE AFP

The *Australian Federal Police Act 1979* (the AFP Act) sets out the functions of the AFP. Those functions include providing police services in relation to the laws and property of the Commonwealth, safeguarding the Commonwealth's interests, assisting or cooperating with an Australian or foreign law enforcement, intelligence or security agency, and providing police services to establish, develop and monitor peace, stability and security in foreign countries.

The AFP also provides security risk management advice to Australian Government departments and agencies, Commonwealth authorities and private sector organisations and companies that deal with Commonwealth interests. These services include preparing security plans, risk assessments, compliance reviews, client service risk management and critical incident management.

The AFP provides services to Immigration to assist with Immigration management of persons in immigration detention including public order management at Christmas Island, incident response (Christmas Island and the detention network) and logistical support for detainee transfers.

## Part 2 Interpol red notice: October 2001

### 2.1 ABOUT INTERPOL RED NOTICES

Interpol is the international police organisation that facilitates cross-border police cooperation, and assists law enforcement agencies in combating all forms of transnational crime and terrorism. The AFP is the contact point for all Interpol activities in Australia. An Interpol notice is an international request for cooperation or an alert allowing police in member countries to share critical crime related information. An Interpol red notice indicates that the person concerned is wanted by a national jurisdiction for prosecution or to serve a sentence.

An Interpol red notice has no legal status under Australian law and Australian police cannot arrest a person solely on the basis of a red notice. A person can only be arrested for extradition purposes if Australia has received and accepted a provisional arrest request or formal extradition request and an extradition warrant has been issued in Australia for the person. Any request for action to be taken in relation to an Interpol red notice in Australia is facilitated through the Attorney-General's Department.

An abridged form of most Interpol red notices appears on the public Interpol website. In addition to the publicly available form of an Interpol red notice a more detailed version is available to the relevant authorities in each member country. In Australia the AFP has this access as does Immigration.

### 2.2 INTERPOL RED NOTICE ISSUED IN 2001

An Interpol red notice was issued in 2001 for an individual with biographical details that were a close match to Mr E. The charges listed on the original notice included violent offences and membership of a terrorist group. Shortly after the commencement of the inquiry the Interpol red notice was amended by the country that issued it and all charges involving violence were removed. It is rare for Interpol notices to be amended.

### 2.3 AUSTRALIAN AGENCIES' KNOWLEDGE OF THE 2001 INTERPOL RED NOTICE

The inquiry found that Immigration, ASIO and AFP all had information about the Interpol red notice well before Mr E arrived in Australia in May 2012.

The AFP uploaded the Interpol red notice to the AFP PROMIS system in late 2001. Shortly afterward Immigration uploaded the Interpol red notice to CMAL. In late 2004 ASIO became aware of the Interpol red notice and in January 2005 recorded the details in its holdings.

ASIO did not create a CMAL alert based on the 2004 information about the Interpol red notice. However in 2007 ASIO did place an alert on CMAL for an individual with similar biographical details based on information provided to them by a foreign partner.<sup>4</sup>

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<sup>4</sup> In this inquiry I refer to this 'foreign partner' several times. It is not necessary for me to disclose who that partner is but I will note that it is not Egypt.

## **Part 3 Initial processing of IMAs**

### **3.1 ARRIVAL PROCESS**

At the time of Mr E's arrival, when a suspected irregular entry vessel (SIEV) arrived at Christmas Island Immigration officers would conduct a short interview with each passenger to gather preliminary information about them. This information was recorded in what is known as 'the biodata form'.

With the exception of issues relating to people smuggling, in mid-2012 there was no documented system in place for escalating any national security concerns identified in this initial contact with an IMA within the immigration processing system.

### **3.2 ARRIVAL OF MR E**

Mr E together with his family arrived by boat on Christmas Island on 11 May 2012. In accordance with normal processes initial identity information was obtained from Mr E and other arrivals on that day using Immigration biodata forms. This information was collected during a brief interview using an interpreter.

The date of birth that Mr E provided matched that on the Interpol red notice and the spelling of his name was very similar. He also provided other information consistent with the notice.

Information was also collected about his most recent address, family members travelling with him and identity documents. In relation to identity documents Mr E said that he had copies of a passport, travel documents, birth certificates and also had original UNHCR documents.

A copy of the complete biodata form was sent by Immigration to ASIO, Customs and the Department of Foreign Affairs and Trade (DFAT) on 17 May 2012. A copy of the nominal roll for the vessel he arrived on was sent to ASIO, Customs and DFAT on 28 June 2012.

On 14 May 2012 Serco Australia Pty Ltd (Serco), the immigration detention service provider, completed the first 'Person in Detention – Security Risk Assessment' for Mr E based on his behavior in detention and concluded that the overall risk rating was 'low'.

### **3.3 TRANSFER TO ALTERNATIVE PLACE OF DETENTION**

Government policy at the time of the arrival of Mr E and his family was to keep families together and to try to keep children out of detention centres. Consistent with this policy the family was transferred from Christmas Island to an alternative place of detention (APOD) on 26 May 2012. The relevant APOD is designed to hold low risk family group members in houses. Children from the APOD attend school in the local community.

### **3.4 ENTRY INTERVIEW PROCESS**

The main purpose of an entry interview is to collect information to assist Immigration in establishing the identity of a person and their reasons for seeking asylum. The information is

used by Immigration to make a decision whether to screen-in the person, to allow them to remain in Australia to seek a protection visa.

### Entry interview for Mr E

Immigration conducted an entry interview with Mr E on 22 June 2012.

Information collected during the interview included biographic details of Mr E, a detailed history of addresses, education, employment and travel along with details of identity documents. Biographic details of family members were also recorded.

Mr E provided a detailed account of the circumstances that led to him leaving his home country and most recent country of residence. These details are included in the classified report of this inquiry but have been omitted from this version for privacy reasons. The details provided should have alerted agencies to the fact that his case presented complex security issues.

Copies of the entry interview were sent to ASIO and AFP. The AFP reviewed the interview as part of the process for seeking to confirm Mr E's identity.

Within Immigration, at the time of Mr E's entry interview there was no documented process for entry interviewers to escalate issues of potential security concern although the inquiry was advised that 'the understanding of interviewers ... was that information which arose from interviews that related to a client's security or character assessment should be flagged using a client case note'. No case note was completed to highlight the information Mr E volunteered during the entry interview. This meant that relevant information in the Immigration systems was not readily accessible by all Immigration officers with a need to know the information.

Immigration made a preliminary determination on 9 July 2012 that Mr E should be allowed to remain in Australia to proceed with his application for a protection visa. This 'screen-in' recommendation includes discussion of information Mr E divulged during the entry interview and which should have identified the case as one that potentially presented complex security issues.

I note that the siloing of information in Immigration was a concern raised previously in the 2005 Palmer report *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*:

The [Immigration] database infrastructure is 'siloed', with little connectivity between systems. Important information that needs to be linked frequently for reasons of operational effectiveness and integrity is not effectively networked. There is limited search capacity and until recently little evidence – despite the problems caused by these deficiencies – of any structured attempt to improve the systems and so remove gaps and vulnerabilities.<sup>5</sup>

Despite considerable investment and improvements in Immigration's systems since that time, connectivity is still a concern.

During the course of the inquiry Immigration provided new guidance to interviewing officers on making case notes. According to the new guidance an Immigration officer conducting an entry interview is to draw to the attention of their team leader and record as a case note 'any

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<sup>5</sup> Mick Palmer AO APM, 2005, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, Commonwealth of Australia, Canberra

information which may adversely affect their character assessment', for example 'clients with a criminal conviction or who disclose that they have committed crimes'. The guidance stipulates that the interviewing officer should 'err on the side of caution. If you think something could possibly be a character concern then complete a character note'. Under a process that Immigration advised was to be implemented from 28 June 2013 that information is to be forwarded to a new national security and serious crime team within the Department who are to perform a monitoring function to ensure information relating to serious crime and national security is made available to stakeholders.

On the basis that successful implementation of these measures would resolve similar problems in the future I make no recommendation but note that in a large complex information-rich organisation such as Immigration, information sharing will always be challenging and require senior management attention.

## Part 4 Central Movement Alert List records

### 4.1 CENTRAL MOVEMENT ALERT LIST ALERTS

CMAL is a database that stores biographic details of identities and travel documents of immigration concern to Australia. This database is used primarily for visa management purposes.

CMAL checks names and documents against alerts that have been entered into the system by Immigration or other agencies including ASIO. A match or potential match to a person or document is given a colour code:

- Red: true match to one or more alerts
- Amber: potential match requiring analysis
- Green: no match to any records.

There is an electronic system to facilitate communications between Immigration and ASIO.

Any CMAL matches for IMAs would not normally be reviewed by Immigration until the individual was considered for community detention or a bridging visa. This does not stop the alert for any amber or red national security alert being sent to ASIO.

### 4.2 ENTRY ON CMAL FOR MR E ON 16 MAY 2012

Mr E's details from the nominal roll were loaded into Immigration's systems on 16 May 2012. The potential CMAL alerts were identified by an Immigration official for the first time on 25 May 2012. The CMAL alerts identified that Mr E was a potential match against the 2001 Immigration record of the Interpol red notice and a 2007 national security alert. Following assessment of the potential matches by Immigration, Mr E was assessed as a true match (red) against the Interpol alert and referred to ASIO for the (amber) potential match. The alert sent to ASIO on 25 May 2012 also included a comment advising that Mr E 'is the subject of an Interpol alert associated with terrorism'.

### 4.3 RESOLVING THE POTENTIAL MATCHES

The classified report of this inquiry contains details of two parallel processes involving ASIO and Immigration that were undertaken to resolve the potential matches. In summary, the processes involved different areas of Immigration and ASIO and were not well coordinated. There were delays in passing on relevant information and there were also delays caused by re-collecting information that had been previously collected.

On 26 June 2012, about a month after Immigration and ASIO started working to resolve the national security alert, the AFP identified a possible match to the Interpol red notice. The AFP advised ASIO and Immigration of the possible match by telephone that day and again by email around three weeks later on 18 July 2012. Around the same time, on 17 July 2012, a different area of Immigration from the one the AFP had contacted, independently contacted the AFP to advise them of the match between Mr E and the details on the alert for the Interpol red notice.

On 17 July 2012 ASIO received a copy of the Interpol red notice from Immigration. This was nearly eight weeks after Immigration first alerted ASIO to the Interpol red notice. There is no record of relevant biographical information being passed to the AFP which, by this stage, was also trying to ascertain if Mr E matched the Interpol red notice.

The AFP undertook a series of steps over ten months to seek information to confirm Mr E's identity. This included meeting with him on four occasions and contacting Interpol counterparts.

#### **4.4 COORDINATION ISSUES**

From as early as June 2012 parts of Immigration, the AFP and ASIO were aware that a person in immigration detention potentially matched an Interpol red notice and a CMAL national security alert.

It appears that the liaison to resolve the amber match to a national security alert was between the Border Operations Centre in Immigration and one team in ASIO whereas liaison for the community detention clearance which was occurring at the same time was between the Security Assessment Liaison and Reporting section of Immigration and another section of ASIO.

The Immigration Border Operations Centre was alerted to both the 'true match' with the Interpol red notice and the possible match with the national security alert from mid May 2012. The Border Operations Centre took steps to make sure both the AFP and ASIO were aware of the Interpol red notice match and also played a role in seeking additional information to resolve the additional national security alert. However, there is no record that those in Immigration responsible for managing detention centre arrangements for Mr E were advised of the red notice until 24 August 2012. While requests for information were sent promptly there does not appear to have been any system for ensuring that these were followed up.

Overall there was a lack of coordination, a duplication of effort and a lack of urgency in obtaining information about whether a person in immigration detention potentially matched a national security alert. There was a seven week delay by Immigration in advising the AFP of the potential match to an Interpol red notice. There was also an almost three month delay internally within Immigration in alerting the area responsible for managing the immigration detention centre that a person had an allegedly violent past and links to terrorism.

In the case of Mr E the potential for harm to national security that could have been caused by these problems did not materialise; however, such an outcome is not assured for other complex security cases. While cases that involve national security concerns about individuals seeking asylum are not common there is a need for a more coordinated approach to resolving potential matches to national security alerts. There also needs to be a mechanism to escalate the priority of, and follow up on, a request for further information about a person in light of a potential match to a national security alert. Agencies need to check what information they already hold about a person before asking the person for the same information again or requesting the information from other agencies.

Since early 2013 Immigration and ASIO have improved how they interact and manage national security alerts. In response to a draft of this report ASIO noted that its recent experience is that requests to Immigration for information are given appropriate priority and are followed up.

As discussed later in this report, a failure to properly record agreed procedures and processes can lead to difficulties. In response to a draft of this report ASIO advised that ASIO and Immigration already have 'formalised structured arrangements' in place to resolve potential matches to national security alerts. ASIO has sent Immigration a letter on the revised processes and the minutes of a Deputy Secretaries meeting shortly after acknowledge the new process but do not go into detail on what has been agreed. These are the only records provided to the inquiry on the proposed changes and agreement between the two agencies. ASIO advised that in June 2013 it introduced standard operating procedures on how to resolve cases referred by Immigration for community detention or a bridging visa. These procedures were finalised in October 2013.

**Recommendation 1:**

Immigration and ASIO should continue to build on recent improvements in implementing a coordinated approach to resolving potential matches to national security alerts and document agreed procedures. This approach includes mechanisms to:

- escalate the priority of requests for information
- ensure that requests are followed up
- access all relevant existing information.

#### 4.5 INFORMING THE AFP OF CMAL ALERTS

The first record of Immigration advising the AFP of the match between Mr E's details and the alert for an Interpol red notice was seven weeks after the alert had been triggered by the entry of the nominal roll into the CMAL system. There is currently no automated way for the AFP to receive an alert when there is a match or a potential match against an Interpol red notice; it relies on a manual process. An automated process would reduce delay and mitigate the potential for human error. The feasibility of an automated notification process needs to be investigated. Immigration has advised that it will undertake a discovery and scoping exercise in 2013-14. In the interim, manual procedures for advising the AFP should be reviewed to ensure delay is minimised.

**Recommendation 2:**

Immigration should develop procedures to ensure that the AFP is promptly notified of CMAL alerts for Interpol red notices. Immigration should continue to explore the feasibility of an automated system with the AFP.

## Part 5 Action to confirm identity

The identification of passengers arriving on SIEVs is a significant issue for the Australian government. Passengers often arrive without formal travel documents and, for various reasons, may not disclose their true identity.

### 5.1 PURPOSE OF CONFIRMING IDENTITY

Information about identity is relevant to a number of immigration-related decisions including:

- visa checks conducted at airports and ports for persons arriving with a visa
- decisions on whether a person is to be taken into immigration detention (reviews following the Rau and Solon cases look at the issue of identity and detention of people not previously in immigration detention)
- the determination of refugee status for humanitarian visa purposes
- visa security assessments conducted by ASIO after Immigration has made a determination on refugee status
- managing risk while a person is lawfully in immigration detention.

Identity information is critical to the AFP in considering an Interpol red notice. If the AFP assesses that a person is the same individual as the subject of an Interpol red notice it then notifies Interpol via Interpol Canberra, who in turn notifies Interpol in the country that issued the notice and that country can commence an extradition process directly with Australia through the Attorney-General's Department. In any extradition proceedings identity is one of the key issues that might be argued before the courts.

The standard of evidence of identity that is required for each of these purposes varies. For extradition, information about identity needs to be established by evidence that would be admissible in court proceedings. However, Immigration will often need to make decisions about the management of individuals lawfully in immigration detention long before enough evidence to support extradition or even the determination of a refugee application has been obtained. Administrative decisions about detention arrangements may well be changed when further identity information comes to light but it is not unreasonable for Immigration to base such decisions on intelligence or other information, particularly where that information indicates a high risk to the individual, other detainees or to the community.

### 5.2 ESTABLISHING THE IDENTITY OF MR E

#### Identity of Mr E for extradition purposes

It was appropriate that the AFP went to some lengths to confirm the identity of Mr E for potential extradition purposes and put particular emphasis on seeking biometric information. That process took ten months. (The classified report of this inquiry sets out the steps that the AFP took.)

## Identity of Mr E for immigration detention management purposes

The name, date of birth, nationality and other information given by Mr E to Immigration when he arrived in May 2012 matched closely those that were on the Interpol red notice and the CMAL alerts based on it. Mr E made no attempt to hide this information. In addition, the information given by Mr E during his entry interview and again in further interviews with the AFP was consistent with the information in the Interpol red notice. The identity documents Mr E had with him when he arrived in Australia were also consistent with the Interpol red notice and the national security alert. Mr E provided copies of the identity documents to the AFP himself on 21 November 2012.

From at least early July 2012 ASIO appeared to have little doubt that, for their purposes, the person in immigration detention matched the person described in the national security alert. This was based on the fact that the date of birth was identical and the spelling of the name was only a slight variation.

Immigration relied on the AFP for advice about the identity of Mr E. The inquiry was told that uncertainty and delay in that advice was a reason for the delay in making detention related decisions. None of the records reviewed by the inquiry suggest that Immigration was seeking to form its own view on identity for the purpose of detention risk management separate to the investigations being undertaken by the AFP to confirm identity for Interpol and possible extradition.

I note that a chronology prepared by the AFP states that the AFP advised Immigration that it had confirmed Mr E's identity on 14 November 2012. None of the documents provided to the inquiry suggest that the AFP provided Immigration confirmation of identity on that day. Immigration is of the view that the AFP never did provide confirmation of the identity of Mr E.

The AFP passed most of its advice on identity to Immigration in meetings or by email. In late August 2012 the AFP advised Immigration that it was 'unable to confirm' whether the Mr E in immigration detention was the same as the person on the Interpol notice. By October 2012 this had changed to the AFP having a 'strong suspicion' that he was the same person but this could not be confirmed until he was spoken to. Similarly, on 18 October 2012 the AFP wrote to Immigration advising:

... it is the AFP's strong suspicion that [Mr E] is the subject of a current Interpol Red Notice, issued on 9 October 2001. The AFP [State] Office is currently conducting enquiries with overseas law enforcement agencies, including Interpol, to confirm the status of the Interpol Red Notice and to confirm the identity and previous movements of [Mr E].

In January 2013 this became 'likely to be identical with ...'. The formal advice from the AFP to Immigration, which was not provided until 20 February 2013, stated that the AFP 'hold a strong suspicion' that Mr E was the subject of a current Interpol red notice.

In response to a draft of this report the AFP noted that Immigration officers were present on 14 November 2012 when Mr E was interviewed by the AFP. The AFP stated that during the interview Mr E was advised that his name matched with an outstanding Interpol red notice and that checks were being made with Interpol to confirm his identity and to confirm he was the person subject of the notice. I note that the Immigration officers present at the interview were the case manager and the acting Director of the immigration detention centre at which Mr E

was residing. Although identity was discussed at the interview it was in the context that the AFP was still undertaking checks.

Seeking to have the identity of Mr E confirmed by biometric data from overseas was not unreasonable for the purpose of taking formal steps in relation to Australia's obligations under the Interpol arrangement. Predictably, that process took many months. In the meantime, responsibility for making immigration detention management decisions about Mr E rested with Immigration.

At times it will be necessary for Immigration to make decisions about the management of people lawfully in immigration detention with imperfect identity information. The same is true about the management of individuals in community detention or on bridging visas. These identity decisions of course need to be reviewed as new information comes to light. The lack of a clear system for the AFP to provide preliminary advice about identity to assist detention management contributed to uncertainty and delay in Immigration decision making; however, even without such interim advice Immigration had a significant amount of information and documents relating to Mr E's identity.

Advice from the AFP should not be the only source of information used by Immigration to make identity decisions for detention management purposes, particularly in those rare cases where there are issues of national security in play. In the case of Mr E the information that he gave Immigration when he arrived in Australia should have been sufficient for Immigration to make a working assumption about identity and be able to make detention management decisions on that basis.

**Recommendation 3:**

Immigration should:

- assess what level of confidence about the identity of an individual is required for any particular detention management decision taking into account any threat to national security
- access all relevant information in assessing the identity of an individual in cases that may involve national security issues
- formalise arrangements to obtain identity resolution advice from the AFP including enabling the AFP to provide prompt interim advice where appropriate.

In response to a draft of this report Immigration advised that during the course of the inquiry it has already taken some steps to assist with detention placement decision making. Immigration advised that this includes greater emphasis on entry interviewers locating and assessing identity documents, a single point of contact in Immigration and in AFP for ad hoc and regular case discussions and the establishment of a centralised team to identify and oversight cases with potential security or serious criminality concerns.

I note that the disclosure of information by government agencies is regulated by legislation including the *Privacy Act 1988*, ASIO Act and the AFP Act. Any disclosure of information needs to comply with relevant legislation.

## Part 6 Community detention arrangements

Under the Migration Act the Minister for Immigration has the power to make a ‘residence determination’ to allow persons in immigration detention to reside at a specified place in the community.<sup>6</sup>

The Ministerial Guidelines that applied to the exercise of these powers at the time Mr E was being considered for community detention specifically provided for the Minister to take into account security issues. ASIO provided community detention security assessments for this purpose.

When community detention was significantly expanded in 2010 it was usually the case that the person’s application for a protection visa was well advanced. By 2012 this had changed and it could be years between when a person was placed in the community and when their application for a protection visa was processed. This ‘gap’ between being placed in the community and visa processing is relevant to security because of the government policy that ASIO would not be requested to commence a visa security assessment until after a person had been determined to be a refugee. This delay between a person being moved into the community and undergoing a comprehensive ASIO visa security assessment increased significantly. Until changes to the process were made by ASIO in March 2013, the community detention security check could be the only check undertaken by ASIO of IMAs for many months or even years (although it should be noted that any person living in Australia who undertakes activities prejudicial to security may come to ASIO attention through normal ASIO activity).

The circumstances in which an IMA is referred to ASIO for a community detention security assessment, and the assessment process, have changed a number of times since 2010.

This Part of the report attempts to set out the arrangements that were in place for these security assessments. The inquiry had access to procedural documents, emails, records of meetings and interviewed a number of Immigration and ASIO officers. The evidence was conflicting and it was not possible to establish a consistent view of any agreed procedures that applied. The descriptions that follow may appear to be confused and, at times, counter-intuitive but represent the most definitive representation of the processes that the inquiry was able to determine.

The events described in this report occurred at a time of extraordinary operational activity. In my view, the high workloads and demands placed on both Immigration and ASIO tested the capacity of both agencies and go some way to explaining why there was a lack of clarity in arrangements and inadequate communication both internally and between agencies.

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<sup>6</sup> See section 197AB and 197AD of the Migration Act and Paragraph 2.1.1, Ministerial guidelines ‘Minister’s Residence Determination Power under s. 197AB and s. 197AD of the *Migration Act 1958*’ (issued 15 August 2011)

## 6.1 WHAT WERE THE COMMUNITY DETENTION SECURITY CHECKS?

### October 2010 to late 2011

- Children (specifically unaccompanied minors), all families with children and vulnerable adults (both males and females) were potentially eligible for community detention.
- ASIO watchlisted all individuals of security interest on CMAL, including individuals who were the subject of an adverse security assessment.
- Immigration sent ASIO a list of community detention candidates that had been checked against CMAL. Only those who did not have an amber or red CMAL match were sent; those with an amber or red match were ineligible and the validity of the match was not investigated.
- ASIO checked individuals on this list against ASIO databases that contain details of people of potential security concern, no further investigation was conducted. If there was no match to these databases ASIO cleared the person for community detention. If there was any match ASIO provided adverse advice without further investigation.

### Late 2011 to early 2013

- Community detention continued for families, unaccompanied minors and vulnerable adults. Bridging visas were expanded such that the single adult male IMAs were potentially eligible (bridging visas were previously used mostly for air arrivals and visa over stayers).
- ASIO watchlisted all individuals of security interest on CMAL, including those who were the subject of an adverse security assessment.
- Immigration conducted a check against CMAL for all potential community detention candidates.
- Immigration sent ASIO a list of all community detention candidates including biographical details and results of CMAL check (green, amber and red sent).
- ASIO applied a uniform threshold for all IMA security assessments. Senior ASIO officers were briefed that in practice, this meant only IMAs who (at the time of referral for community detention) were already the subject of adverse visa security assessments were to be given a negative community detention security assessment.
- ASIO staff were advised to check names referred by Immigration against the list of people who had received an adverse visa security assessment and a list of those who were in the final stage of receiving such an adverse assessment.
- There was however some confusion about the process to be followed within ASIO and at least until mid 2012 some staff continued to do additional checks in some cases.
- Some senior ASIO staff believed that, notwithstanding the fact Immigration was referring and ASIO was checking, and in most cases clearing, individuals with amber or red alerts it was Immigration policy not to consider these individuals for release.

## 6.2 IMPLEMENTING THE 2011 CHANGES

It was expected that extending the use of bridging visas from late 2011 would result in an increase in the number of security checks requested from ASIO. ASIO advised the inquiry it had anticipated this increase would be from a few hundred to over 30 000 (no timeframe for this increase was stated); however, Immigration advised that this prediction seemed very high. In

any event, managing this increase was the subject of high-level negotiations between Immigration and ASIO. The records indicate that there was disagreement about the best approach.

Following a conversation with the Secretary of Immigration on 26 October 2011, the Director-General of Security communicated to a Deputy Director-General and the relevant Division Head in ASIO that there was agreement on a new process for implementing the Government's recently announced policy extending the use of bridging visas. He noted that Immigration would conduct a CMAL check and 'if the MAL check threw anything up, the case would be referred immediately for more complex checking by ASIO'. This process would have been consistent with the process that had been outlined in an earlier brief that the Director-General approved which proposed that only red or amber security alerts would be referred to ASIO.

In the weeks following this advice there were a number of discussions between ASIO and Immigration including a meeting on 2 November 2011 in which Immigration officials advised that 'in a recent meeting with the Minister [for Immigration], the [Minister] had made it clear he wanted the details of all IMAs to be released into the community to be provided to ASIO'. The ASIO record of the meeting with Immigration also states there was agreement that only IMAs who triggered a security related CMAL would be referred to ASIO and to meet the Minister's requirement a letter would be sent to ASIO periodically for all IMAs that would be released into community detention. The record states:

[Immigration] understood that little, if anything, would be done with these names (comment: ASIO will undertake some rolling quality assurance checks to verify the accuracy of [Immigration] MAL checks).

According to the ASIO record, Immigration was to prepare a summary of the agreed position and forward it to ASIO for clearance prior to sending a letter from the Secretary to the Director-General to confirm the process. The inquiry was not provided with a copy of any such Immigration summary but ASIO correspondence after the meeting states that Immigration advised that the meeting was 'not conclusive and that it was business as usual' (that is, Immigration and ASIO would revert to the old community detention process).

There was further correspondence via email on 9 November 2011 from a senior Immigration officer regarding the conversation between the Director-General and the Secretary in late October. The officer stated that:

There was NO agreement on [community detention] changes by our Secretary, hence our status quo point. We have double checked with [Immigration officers who were at the meeting] and they are both very clear that there was a general discussion but this did not constitute an agreement. Your DG may have interpreted it differently but as far as we are concerned, the status quo stands until such time as we mutually agree to change it. This is of course dependent on your legal advice.

On 11 November 2011 an ASIO Deputy Director-General wrote to an Immigration Deputy Secretary about arrangements for community detention and bridging visa security assessments. The letter advised that ASIO had reviewed the community detention process and subsequently 'the Director-General agreed a new approach to the security assessment process for [community detention] ... first communicated to [Immigration] on 26 October 2011'. The letter described the new process as:

Only IMAs who trigger a security-related MAL holding are required to be referred to ASIO for security advice in relation to community detention. Those IMAs who do not trigger a security-related MAL holding do not require referral to ASIO. This is because ASIO ensures all IMAs with known security concerns are flagged in MAL.

I was advised that the proposed 2011 process outlined in the letter was only in place for half a day as Immigration did not agree with the proposal. Around mid November the Director-General of Security and the Secretary of Immigration discussed the arrangements for community detention and bridging visa security assessments further. It appears there was agreement that Immigration would refer all IMA community detention candidates with the date and result of a CMAL check to ASIO for assessment. This was confirmed in a brief letter from the Secretary of Immigration to the Director-General of Security on 17 November 2011.

None of this correspondence or the records of meetings relating to the new procedures implemented in late 2011 refer to the issue of whether a person with red or amber CMAL status would be considered for community detention or a bridging visa. It would be reasonable to draw the implication that if Immigration was referring a person to ASIO for checking and ASIO gave a non-adverse response Immigration would not deny community detention on security grounds. This issue is discussed further below.

The negotiations between Immigration and ASIO did not go into the detail of what level of security checking ASIO would do and it is not clear that senior Immigration officers were aware that the level of checking conducted by ASIO was to be decreased to little more than Immigration could have done itself.

During this period of negotiation with Immigration there were also discussions within ASIO on procedural fairness aspects of the community detention process. The ASIO process endorsed by the Director-General in late 2011 was to adopt a uniform legal threshold across all security assessments issued in relation to IMAs. An adverse community detention or bridging visa security assessment would not be issued unless the IMA was assessed to represent a direct or indirect risk to security. Senior ASIO officers were then briefed that in practice this meant that a negative community detention or bridging visa security assessment was issued only to persons that ASIO had already advised Immigration should not be issued a permanent visa on security grounds, as well as those few individuals for whom ASIO was in the very final stages of issuing such an adverse assessment. All other IMAs were to be cleared for community detention or a bridging visa.

When interviewed in the course of this inquiry the relevant ASIO manager advised that they had a number of verbal briefings with the Director-General and others in late 2011 and specifically that they had advised that only where an individual was the subject of an adverse visa security assessment or an advanced pathway to such an assessment would a 'no' for community detention be given.

In May 2012 an ASIO internal briefing note indicated that ASIO's practice was to clear all IMAs referred for community detention security checks unless they were the subject of an adverse security assessment.

As discussed below in 6.6 it is not clear whether all ASIO staff conducting the checks had a clear understanding of the process to be followed.

As the referrals for placement in the community moved from initially being a low risk cohort in 2010 to all IMAs from late 2011, the depth of checking that was to be done by ASIO actually decreased. (This situation was remedied in 2013 as discussed in Part 10.)

### **6.3 WERE INDIVIDUALS WITH RED OR AMBER ALERTS RELEASED FROM DETENTION?**

In response to a draft of this report the Director-General of Security advised on 28 October 2013 that the practice at the time Mr E's security check was done was that individuals with amber or red national security alerts in CMAL were not to be released from immigration detention. The inquiry was also advised in an October 2013 meeting with a senior ASIO officer, now responsible for security assessments, that this was the major risk mitigation factor relied on by ASIO when it undertook only a check against the list of existing and almost completed adverse security assessments.

No documents provided to the inquiry provided a clear record of this being the Immigration practice in 2012.

On 30 October 2013 ASIO also provided the inquiry with an April 2012 Immigration document titled 'Data Entry Management Plan Onshore processing module'. The document is a technical standard operating procedure for Immigration officers responsible for onshore processing. At page 13 of 29 the document instructs Immigration officers that when preparing a submission for bridging visas:

Clients with an amber status must be resolved by the BOC, and will not be included on the [bridging visa submission to the Minister] until the client's CMAL status is resolved to green.

This document is the only Immigration record that was provided to the inquiry which references this policy but is not relevant to the case of Mr E as it deals only with bridging visas and not community detention.

I also note that the regular lists of names Immigration sent to ASIO for community detention and bridging visa checks from late 2011 included individuals with red or amber CMAL status. Those red and amber alerts included alerts based on national security. ASIO provided a reply for red and amber status in the same terms as it did for individuals with green status (clear, if they did not have an adverse visa security assessment).

In response to a draft report the Secretary for Immigration noted:

Red CMAL matches include persons who owe a debt to the Commonwealth. Such a debt would not ordinarily constitute a reason not to approve a person for CD or a BV. Nor would it prevent the grant of a permanent visa. To suggest that DIPB would not (ever) send Red CMAL listed matches to ASIO as a blanket approach is not credible. Sending only green matches would have meant that we were only asking ASIO to consider cases that were very likely already clear and therefore the process would have been virtually redundant.

The Secretary confirmed that from late 2011 to early 2013 Immigration sent ASIO a list of all community detention candidates.

I do not doubt that some senior ASIO officers believed in 2012 that individuals with amber or red national security alerts in CMAL would not be placed into community detention by

Immigration and that this was considered to be a risk mitigation strategy. But this view is not supported by any contemporaneous record.

I would also expect that such an important element of the policy would have been clearly communicated to the Minister who is exercising a discretionary power based on ASIO advice.

Immigration briefings to Ministers that were provided to the inquiry do not address this aspect of the policy. For example, the briefing about Mr E noted that he had never been released from detention but did not say that this was because it would have been contrary to a clear policy on amber and red CMAL matches to do so. Similarly, an October 2012 submission regarding changes to the Immigration processing arrangements for the release of IMAs into the community does not mention whether red or amber status IMAs are released into the community. The brief notes that there had been three adverse security assessments for community detention and one for a bridging visa over the previous year but it does not specify whether there were other cases of IMAs not being placed in the community due to their potential CMAL match.

As there was no clear agreement between the two agencies in late 2011 on proposing community detention or a bridging visa for individuals with amber or red CMAL status, this position was not well understood and possibly not consistently applied. It would not be unreasonable for an Immigration officer having received advice that ASIO had cleared a person for community detention to place the person's name on a submission for consideration by the Minister.

This inquiry has not examined the records of the people released into the community from the time Immigration started sending red and amber status individuals to ASIO for checking in late 2011 through to the change of practice in early 2013. The inquiry was advised that changes implemented by Immigration and ASIO in early 2013 include the re-checking of individuals living in the community at regular points, and that any who, at that time, have an amber or red status are referred to ASIO for advice.

ASIO recognised potential shortcomings in its community detention checking processes and changed them prior to this case being of public interest. Following an organisational restructure and change of senior personnel the ASIO processes relating to community detention and bridging visas were reviewed in early 2013. In my view the changes made represent a significant improvement and I make no recommendation about the current procedure for community detention security checking within ASIO.

While the documents supplied to the inquiry on the 2013 process demonstrate the progress that the agencies have made to date, the confusion about the 2011-2012 community detention procedures described above highlights the need for a clear written record of what has been agreed and how it is to work in practice.

#### **6.4 CONCERNS WITHIN ASIO ABOUT THE RIGOUR OF THE CHECKS**

From 2011 the process for undertaking community detention security checks was the subject of some concern within ASIO. Details of these concerns are contained in the classified report of this inquiry. In summary, some within ASIO considered that the process lacked security value and exposed ASIO to risk.

In comments provided to the inquiry in a meeting to discuss the draft report in October 2013 a senior ASIO officer advised that the discomfort some staff had about the process was not because of the change to the level of checks undertaken by ASIO between 2010 and 2012 but rather that it was that such a large number of people were residing in the community without comprehensive security assessment checking.

In response to a draft of this report the Director-General of Security noted that:

[ASIO's community detention security checks were] in addition to Immigration's check of CMAL, which is of course ASIO's first-line border security checking mechanism. These checks were an initial security check only. It is not uncommon globally for security checking to comprise only checks against watchlists, in contrast to Australia's layered approach which enables a series of additional checks over time...

## **6.5 WERE MINISTERS BRIEFED ON CHANGES TO COMMUNITY DETENTION SECURITY CHECKS?**

While the efficacy of the community detention security assessment checks conducted prior to the 2013 changes was the subject of some concern within ASIO, it is not clear whether this view was communicated explicitly to the Attorney-General or to the Minister for Immigration.

Although the Minister for Immigration used ASIO's community detention security assessments to inform his decisions about community detention, Immigration was unable to provide the inquiry with any record of the Minister being briefed about the change to ASIO security checks implemented in late 2011. In a brief signed by the then Minister for Immigration in October 2012, nearly a year after the changes, Immigration advised the Minister that:

This cohort would have the same initial security assessment that was put in place for the move of unaccompanied minors and vulnerable families into community detention arrangements established in October 2010 and further utilised for release of IMAs on [bridging visas] following the Government's consideration of revised handling arrangements in October 2011.

This statement does not reflect the changes that ASIO made to the security checking process in late 2011.

In late October 2011 the Director-General of Security verbally advised the Attorney-General of the proposed process that Immigration and ASIO would undertake to support the Government's community detention policy. The briefing notes provided for this meeting were about the process for ASIO checks that had been in place since 2010. That briefing was prior to Immigration and ASIO agreement on the new procedures and ASIO's decision to adopt a uniform legal threshold across all security assessments issued in relation to IMAs. The inquiry was not provided with a copy of any contemporaneous written briefing to the Attorney-General or notes from a verbal briefing that explained the way the ASIO procedures changed in November 2011.<sup>7</sup>

The Attorney-General was briefed about the type of security checking introduced in 2013. In response to media reporting in early February 2013 claiming IMAs received a 'light touch'

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<sup>7</sup> In a written brief to the Director-General of Security on the changes, it is noted that 'following the decision, ASIO will advise the Attorney-General of ASIO's proposed approach to CD and BV assessments'; however, no such briefing was located.

security assessment, ASIO provided a brief to the Attorney-General on 6 March 2013 that advised what the processes were in March 2013. The briefing referred to all IMAs being considered for a bridging visa or community detention being 'checked against known entities of national security concern'.

In response to a draft of this inquiry report ASIO advised that the phrase 'checked against known entities of national security concern' was intended to be a reference to the CMAL check conducted by Immigration.

A later briefing to the Attorney-General on 23 April 2013 regarding media reporting on Mr E and two other IMAs, also advised the Attorney-General on the procedures that were implemented in early 2013. It provides no reference to the policy in place from late 2011 to early 2013, the period in which Mr E arrived.

## **6.6 DID ASIO STAFF UNDERSTAND THE CHANGE TO ASIO PROCEDURES?**

ASIO documents relating to community detention security assessment procedures between 2010 and early 2013 that were supplied to the inquiry mostly consisted of ministerial submissions, executive briefs and email correspondence. The lack of any clearly documented standard operating procedures used by staff contributed to an apparent difference in understanding of the procedure between the senior executive and the officers responsible for conducting community detention security assessment processing. This led to inconsistent practices and advice.

Some guidance was given to staff at an operational level about how to conduct community detention security checks following the change of procedures in late 2011. Some examples of this guidance are set out in the classified report of this inquiry. The general impression from the guidance given to ASIO staff and briefings to the executive is that in 2012 the community detention and bridging visa security check was a simple check of lists of existing and pending adverse visa security assessments and that any names not on those lists were to be cleared.

A relevant senior officer at ASIO responsible for community detention processing in mid 2012 advised that until mid 2012 they did not realise that the procedure approved by the Director-General in late 2011 was a check only of the list of existing and imminent adverse security assessments and not a check of ASIO databases. It appears that some of the processing team continued to conduct these additional checks until 12 July 2012 when the senior officer provided advice to staff that the only check that was to be done was to check whether the person was the subject of an adverse visa security assessment, or likely to be the subject of an imminent adverse visa security assessment.

An ASIO officer who was involved in the initial processing of Mr E's case in July 2012 was interviewed by the inquiry. During the interview the officer described the process that they usually followed at the relevant time; that process was consistent with the 2010-11 process described in Part 6.1 above. A review of ASIO records showed no evidence of this process being followed in Mr E's case.

In my inquiry into ASIO's security assessments for community detention determinations in 2012, I recommended that:

ASIO should ensure that records of decision making in respect of all security assessments are clear and unambiguous, explicitly setting out what decision has been made, by whom, and the basis for the assessment.<sup>8</sup>

While the final report was released in June 2012 discussions with ASIO on likely recommendations, including the issue of recordkeeping, commenced in March 2012. ASIO accepted this recommendation and in December 2012 noted that there were existing records management procedures in place for any prejudicial community detention security assessment as ‘the visa [adverse security assessment] decision is the basis of any prejudicial [community detention security assessment]’. An internal ASIO briefing about my recommendations went on to state that:

For non-prejudicial CDSAs, however, the agreed procedures are extremely simple, comprising a check of existing adverse visa security assessments (post-November 2011), and did not require additional consideration in the decision-making process.

Regardless of the simplicity of the procedure, a clear record of the decision making process should be documented. The case of Mr E is illustrative; the inquiry received conflicting advice about the procedure that should have been followed but there was no record of what analysis had been done on his potential match to an amber alert and the subsequent community detention security assessment clearance.

As ASIO finalised written procedures for staff to follow while conducting community detention security checks during the course of this inquiry, I make no recommendation in respect of the need for such documentation.<sup>9</sup>

## **6.7 WHY WAS MR E CLEARED FOR COMMUNITY DETENTION?**

A briefing was sent to the then Attorney-General on 23 April 2013 advising that ASIO had issued Mr E a non-prejudicial security assessment for community detention on 5 July 2012, after Immigration had advised ASIO of the existence of the Interpol red notice but before Immigration had provided a copy of the notice to ASIO. ASIO revoked the assessment on 30 August 2012 in light of the Interpol information.<sup>10</sup>

The then Shadow Attorney-General was briefed by ASIO about Mr E on 24 April 2013. In this briefing the then Shadow Attorney-General was advised that a ‘human error’ had occurred in this case and that actions had been implemented to ensure a similar mistake could not occur again.

In a timeline attached to an internal ASIO e-mail on 31 May 2013 the initial clearance for community detention is described as a ‘processing error’.

The classified report of this inquiry examines the steps actually taken by ASIO staff in the case of Mr E and concludes that the process was consistent with the process described in briefings to senior ASIO executives and the limited available records of guidance to staff for ASIO.

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<sup>8</sup> IGIS report, *Inquiry into ASIO’s security assessments for community detention determinations*, June 2012.

<sup>9</sup> ASIO advise that procedures were in place from March 2013, and written procedures finalised in October 2013.

<sup>10</sup> ASIO advise that the submission was sent on 23 April 2013 but not signed by the Minister until 2 May 2013.

Following that process led ASIO to issue a non-prejudicial community detention security assessment for Mr E on 5 July 2012.

Mr E's community detention security clearance was handled in the same way as others around that time; other individuals with amber or red national security alerts were also referred from Immigration to ASIO for community detention checks and were cleared.<sup>11</sup>

In response to a draft of this report in October 2013 the Director-General of Security stated:

In my view, the [Mr E] case did contain processing errors. At the time ASIO made the non-prejudicial assessment, ASIO had information that would have warranted, at the very least, further consideration and analysis prior to the provision of advice. A check of the individual's name was conducted in one of ASIO's main information systems, but these results were not communicated to the relevant working area within ASIO.

The draft executive summary reflects that several different areas of ASIO dealt with the [Mr E] case, including the potential match to the Interpol red notice and the community detention checks and there was no effective communication between them. In my view, this constitutes a processing error by ASIO and informed my answers during Senate Estimates of what had occurred. While the media picked up on my comments that a 'clerical' error may have occurred, I went on to clarify that it had been a processing error.

In my view, if ASIO had in place the procedures implemented in 2013, the result of the July 2012 community detention check might well have been different. ASIO has advised that, in its view, the result of the initial community detention check in this case would have been different if the improved procedures had been in place at the time.

ASIO withdrew the community detention clearance for Mr E on 30 August 2012. The withdrawal was not an unreasonable action in the circumstances.

## **6.8 MINISTERIAL SUBMISSION TO ALLOW PROCESSING OF VISA APPLICATION**

Members of the E family were prevented from making a valid protection visa application unless the Minister considered it in the public interest to allow them to do so by exercising the Minister's power under s. 46A of the Migration Act. In accordance with guidelines current at that time, when Immigration has assessed that a person's claims prima facie may engage Australia's protection obligations the Minister would consider exercising the power. The claims of the E family were assessed as prima facie engaging Australia's protection obligations on 9 July 2012. The recommendation to 'screen in' Mr E included information that should have alerted officials to the fact that his case raised complex security issues.

On 28 September 2012 Immigration submitted a s. 46A submission to the office of the then Minister for Immigration to allow Mr E and his family to apply for protection visas. The submission advised the Minister that Mr E's biodata was 'almost identical' to the Interpol red notice and it was expected the family would remain at their current APOD until further checks were completed. The brief was followed up by Immigration officers on several occasions. The inquiry was not provided with any evidence as to whether the then Minister saw the

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<sup>11</sup> The inquiry did not seek to conduct a comprehensive review of community detention checks but a review of a small number of spreadsheets from the same general time period revealed others with red or amber national security CMAL alerts that had been cleared for community detention.

submission but, in any event, no signed copy was returned to the Department. The inquiry was advised that Immigration had concluded that the submission must have been misplaced within the Minister's office. In my view this conclusion is not unreasonable.

## Part 7 Immigration detention arrangements for Mr E

### 7.1 DECISIONS ABOUT IMMIGRATION DETENTION

Decisions about detention arrangements made by Immigration can have a significant impact on the lives of individuals. Immigration has a range of immigration detention facilities available:

- Immigration detention centres (IDCs) are the most restrictive, highest security and most institutional places of detention. Villawood IDC is for visa-overstayers, visa cancellations and adult male IMAs. Within Villawood IDC there are different areas with different levels of security.
- Immigration residential housing enables people in detention to live in family-style accommodation. It is less institutional, more domestic and the Immigration website advises that it is for people with low flight and security risk, particularly families with children.
- Alternative places of detention accommodate people who have been assessed as posing a minimal risk to the Australian community.

A number of sources of information are likely to be relevant to a decision by Immigration that, because of potential risk to security, a person should be placed in a particular detention facility including:

- risk assessments and incident reports prepared by the contract service provider, Serco Australia Pty Ltd (Serco)
- observations made by Immigration officers dealing with the individual
- advice from the AFP on risk in relation to criminal convictions, charges or allegations
- advice from ASIO in relation to security.

The need for Immigration to draw on the expertise of other Commonwealth agencies in making detention decisions in cases involving complex security issues was well expressed at interview by an Assistant Secretary from Immigration:

[Immigration] is an administrative agency. We don't have any expertise in areas of terrorism and serious criminality. ASIO and AFP have been given the authority in those areas and [Immigration] looks to ASIO and AFP to provide us advice in terms of the risk that we are sitting on.

In 2011-12 the then Government's key immigration detention values that applied required that:

- 4 ... conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review.
- 5 Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.

It would follow that if an individual has been placed in a restrictive form of immigration detention that decision should be reviewed regularly and in light of any significant new information.

## 7.2 SOURCES OF RISK INFORMATION: SERCO RISK ASSESSMENTS

Under contractual arrangements the day to day management of operation matters within immigration detention facilities is undertaken by Serco on behalf of Immigration.

Serco provides Immigration regular risk assessments of clients in detention as well as, on request from Immigration, specific advice on individual risks, alternative placement options and risks associated with transfers. Serco risk assessments are primarily based on the observations made by Serco staff. The Serco risk assessments address security threat and general management issues. The term 'security' is used in these assessments in the general sense rather than in the specific way it is used in the IGIS Act and the ASIO Act. This means that much of the material dealt with in the Serco assessments, while relevant to the day to day management of detainees, is not about 'security' in the sense that term is used in this inquiry.

The Serco risk assessments reviewed by this inquiry follow a consistent methodology and clearly record the basis for assessments. The Serco incident reports examined by the inquiry were detailed and evidenced a clear system for reporting, assessing and recording incidents.

### Serco risk assessments of Mr E

Relevant details of the risk assessments conducted by Serco are contained in the classified report of this inquiry. They include personal information and have been omitted from this report. The assessments do not contain any observations of violent behaviour or any intent to escape.

### Information provided to Serco

Immigration does not have a clear protocol for the provision of information to Serco as it relates to potential clients of security interest. There are times when police and security agencies are involved and it may not be appropriate to advise Serco immediately.

When Immigration senior staff became aware on 24 August 2012 of the Interpol red notice that could relate to Mr E they decided not to advise Serco. Immigration records indicate that 'it has been agreed by [the First Assistant Secretary of the Immigration Status Resolution Group] not to alert Serco at [the relevant APOD] or Serco National Office and to keep it to limited distribution within [Immigration]'. The reasons for that recommendation and decision do not appear to have been clearly recorded, although we found some evidence to suggest it was to be cautious about broadly disseminating this information as the client had not been positively confirmed as the person on the Interpol red notice.

Had Serco been notified at that point their management of the client may have changed. The relevant Deputy Secretaries were advised later that same day of both the decision not to tell Serco and that a Commander of the AFP had subsequently also advised that to date the AFP had not been able to confirm that the detainee was the same person as the Interpol red notice.

The Immigration senior executive and the senior officers with responsibility for the APOD where the family was located and the Immigration security liaison officer at that APOD had visibility of the AFP engagement on the Interpol red notice during the subsequent period, but with what appears to be limited detail. It is apparent that throughout the remainder of 2012, given this earlier decision, Serco had still not been notified. The relevant Immigration staff and

service providers (including Serco) were closely monitoring the family from a welfare perspective. Nevertheless, the inquiry found that in November 2012 Immigration staff expressed concern that ‘we are effectively expecting the detention service provider to carry out their role without being in possession of all the facts’. This view, and any recommendation to advise Serco based on the new information since the original decision, was never escalated to the original decision-maker, the First Assistant Secretary or to the relevant Deputy Secretary. I was advised that senior Serco officers became aware of the red notice at the end of February 2013.

Around March 2013 the Serco risk assessments started to include comments such as ‘... potentially has a violent past that has led to a number of interviews with investigators from the AFP’. From April 2013 there was significant media interest in Mr E and the Interpol red notice. This media reporting seems to have influenced Serco assessments. Subsequent risk assessments refer to ‘his past and allegations against him’ as a basis for increasing his risk rating despite calm and compliant behaviour. For example, the 6 June 2013 Serco assessment notes that ‘based on the Interpol Red Notice and interest by law enforcement and media, Mr E is considered an EXTREME risk client’. In a letter covering the 6 June 2013 risk assessment, a senior officer of Serco Immigration Services noted that the risk assessment was ‘compiled without access to the detail of the criminal and terrorist allegations against Mr E; however his risk level is reflective of the INTERPOL Red Notice that has been issued’.

### **7.3 SOURCES OF RISK INFORMATION: IMMIGRATION CASE MANAGER OBSERVATIONS**

Within Immigration it is the case manager who has the most contact with a client in immigration detention. Case managers use the Compliance and Case Management Detention (CCMD) portal to record notes of their interactions with detainees.

#### **Case manager observations of Mr E and his family**

On 24 August 2012 an experienced senior case manager was appointed to manage the E family’s case in light of the Interpol red notice. The E family was one of approximately thirty families that the senior case manager was responsible for at the time.

The case notes made by the senior case manager and recorded on the CCMD portal were comprehensive. The senior case manager was interviewed for this inquiry. She had a strong recollection of the E family and the unusual circumstance of there being a potentially relevant Interpol red notice.

Some information from the case notes about a particular incident is included in the classified report; it has been removed from this report for privacy reasons.

The case manager advised the inquiry that she was not contacted by anyone in Immigration for input on any risk assessment or to obtain context for any remarks made by Mr E. The officer noted it would not be usual practice for a case manager to be contacted for this purpose.

## 7.4 SOURCES OF RISK INFORMATION: AFP ADVICE ON DETENTION

It is not inappropriate for Immigration to seek advice from the AFP on the potential risk a client with an alleged criminal background may pose to the community and to the good management of a detention centre. Where such information is within the scope of the AFP's functions it is open to the AFP to provide such advice.

The AFP provides security risk management advice to other Australian Government agencies drawing on its experience in federal law enforcement and protective security.

The July 2012 AFP and Immigration memorandum of understanding on collaborative working arrangements has provision for the agencies to provide specialist support to each other to assist the respective agency achieve their objectives. The inquiry was not provided with evidence of any formal arrangement between Immigration and the AFP for the AFP to provide Immigration with risk advice for the purpose of the management of individual detainees.

### AFP advice on Mr E

The AFP, primarily through its relevant state office, made a number of comments to Immigration that could be interpreted as advice on risk and detention management between July 2012 and June 2013. The AFP officers in the relevant state consistently said that security for Mr E should be upgraded and they also suggested he be moved out of an APOD and to Villawood. On 13 November 2012, an AFP officer emailed Immigration stating:

Considering the nature of the convictions against [Mr E], his current behaviours and the minimal security at [the APOD], I would implore [Immigration] to reassess his current detention and further considerations are made concerning [Mr E's] security.

However, on 25 January 2013 a more senior officer in Canberra stated that the AFP was 'not in a position to advise on any threat posed by this individual, and therefore cannot really add value to discussions on appropriate placement within the Detention Network'. A summary of records of communications between the AFP and Immigration on detention arrangements is included in the classified report.

In response to a draft of this report the AFP provided the following comment:

The advice provided by the AFP should be considered in relation to both context and timing. The AFP provided advice on several occasions to [Immigration] officers regarding the need to consider [Mr E's] detention. This information was provided at an operational level through the AFP's [State] office, and was appropriate at the time. At an organisational level the AFP provided consistent advice that [Immigration] were ultimately responsible for identifying suitable custody arrangements for [Mr E]. The AFP supported [Immigration] in providing all available material to assist in their decision on where best to accommodate detainees...

The AFP was consistent in its advice in regard to [Mr E] being subject of an IRN and the charges for which he was sought. The AFP was most definitive in its advice that [Immigration] should reassess [Mr E's] detention arrangements. Ultimately it was [Immigration's] decision on where and how [Mr E] was detained.

During the course of its interactions with Mr E, the AFP was given material by Mr E that was potentially exculpatory in relation the question of whether he had been convicted of violent

crimes overseas. After meeting with the AFP in November 2012 Mr E provided an electronic copy of court documents. At the meeting with the AFP on 12 December 2012 Mr E showed the AFP partially translated extracts of the documents. On 25 February 2013 Mr E provided the AFP, through Immigration, further documents (in Arabic) with underlining on the parts he said showed that despite the judge acquitting him he was still sentenced. Over the five month period between 26 November 2012 and 16 April 2013 the AFP partially translated the transcripts. On 13 May 2013 (six months after the transcript was provided by Mr E) a record of the AFP review of the transcripts concluded that the transcript 'supports that [Mr E] was a member of/associate with the al-Jihad but does not support involvement in any violence .... The inquiry asked the AFP whether this information had been passed to Immigration or ASIO and was advised that there was no record of the AFP analysis or translated transcript being provided to ASIO or Immigration.

The AFP corresponded with its Interpol counterparts including in Egypt and another country where Mr E had resided. Relevant details of that correspondence are included in the classified report of this inquiry. In summary, my view is that the information included material that identified that this case potentially raised complex security matters; however, I do not consider that there was a sufficient basis to say that Mr E had 'absconded' from another country or that he was a 'flight risk'.

There was at least one conversation between AFP and Immigration where Immigration was left with the impression that the AFP considered that Mr E was a 'flight risk' and that he had 'absconded twice'. Records about what advice AFP gave Immigration about 'flight risk' are inconsistent. For example, in one instance following an AFP/ Immigration meeting the AFP officer stated in his record of conversation:

Agree to provide details of AGD contact, issue of custody a matter for [Immigration], [senior officer] agrees with approach.

In contrast the Immigration record of the meeting includes a number of other points including:

... there was a discussion about the risks for both AFP and [Immigration] if [Mr E] was to escape. As [Mr E] has absconded twice already [two countries named], the risk was high.

The AFP officer sent a follow up email to Immigration which indicated there was discussion at the meeting which was not recorded in the AFP record of conversation:

In relation to the view of the AFP on custody issues for [Mr E]. As stated we are happy to provide all available material to [Immigration] to assist you in your decision on where best [Mr E] should be accommodated. Apologies that we cannot be more prescriptive than that. If pushed for a 'without prejudice' comment I would suggest [Villawood IDC] may be a good starting point.

## **7.5 SOURCES OF RISK INFORMATION: ASIO ADVICE ON SECURITY RISK**

The inquiry was not provided with evidence of any formal arrangement between Immigration and ASIO for ASIO to provide Immigration with risk advice for the purpose of the management of individual detainees. Comments in emails and at interview indicate that in the recent past at least some senior ASIO officers were of the view that ASIO should not, as a matter of policy, provide such advice.

It is an ASIO function to advise authorities of the Commonwealth (which includes Immigration) in matters relating to security, in so far as those matters are relevant to their functions and responsibilities.<sup>12</sup> This includes furnishing 'security assessments' for this purpose.<sup>13</sup> A security assessment is a recommendation, advice or opinion or reference to whether it would be consistent with the requirements of security for prescribed administrative action to be taken. The definition of prescribed administrative action includes:

The exercise of any power, or the performance of any function, in relation to a person under the *Migration Act 1958* or the regulations under that Act.<sup>14</sup>

This includes, but is not limited to, decisions about permanent visas and detention. In my view there is nothing in the ASIO Act that precludes ASIO from giving advice to Immigration on security matters (as defined in the ASIO Act) to assist Immigration in making decisions about the management of persons in immigration detention where that decision is potentially influenced by the requirements of security as defined in the ASIO Act.

That advice may well constitute a 'security assessment' within the meaning of Part IV of the ASIO Act but this regulates rather than prevents the provisions of such advice. I note that the number of cases in which it would be appropriate for ASIO to become involved and give this type of advice to Immigration would be small.

I am not suggesting that ASIO give advice to Immigration on how to manage people in detention, only that ASIO provide information and expertise to inform Immigration decisions. ASIO has recently started providing relevant information to Immigration; this is discussed in Part 9 below.

### **ASIO advice on Mr E**

In late August 2012, when the Immigration senior executive became focussed on the case, Immigration contacted ASIO for advice on whether ASIO 'have been able to identify if the subject of the [Interpol red notice] is in fact [Mr E]'. The Immigration request also asked ASIO for 'a risk assessment as he is currently in a low risk centre'. In response ASIO made it clear that it was not going to provide Immigration with any advice on any possible security risk that Mr E posed until Immigration had assessed him to be a refugee and made a formal referral for a visa security assessment (a process likely to take many months or years).

While the information about Mr E in ASIO holdings at the time amounted to little more than what had been provided to Immigration by Mr E, the AFP and through the Interpol red notice, I consider it likely that ASIO had more expertise than Immigration in interpreting that information to identify whether Mr E posed a potential risk to national security and what that risk might be. By this stage ASIO had also formed at least a working assumption about identity which could have assisted Immigration, though probably not of sufficient evidentiary standard to support any extradition request.

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<sup>12</sup> ASIO Act s. 17(c)

<sup>13</sup> ASIO Act s. 37(1)

<sup>14</sup> Part (b) of the definition of prescribed administrative action in s. 35 of the ASIO Act.

## 7.6 SOURCES OF RISK INFORMATION: ADVICE FROM OTHER AGENCIES

Mr E's claim for asylum is based largely on the assertion that his conviction in his home country was politically motivated. There is no evidence that Immigration officers accessed any relevant advice from within the Department or from the Attorney-General's Department or the Department of Foreign Affairs and Trade on the likelihood of that assertion being true as part of deciding how much weight to place on the notice. While I would not necessarily have expected an immediate risk management decision to be delayed while that issue was considered, it did take eleven months to decide to move Mr E to Villawood based on the red notice.

## 7.7 IMMIGRATION RISK ASSESSMENT

Immigration has a Chief Risk Officer and a Risk, Fraud and Integrity Division. Immigration advised the inquiry that these have a focus on strategic risks to the department. Risk assessments for detention management purposes are managed by the same area that manages detention; the Immigration Status Resolution Group. In November 2013 Immigration provided the inquiry with Risk, Fraud and Integrity Division documents that guide the development of risk assessments. Understandably the documents did not specifically address risk assessments for clients in detention.

The process undertaken by Immigration to develop a risk assessment in the case of Mr E and the conclusions it reached show that assistance and information from agencies experienced in assessing and managing security risk was needed.

The inquiry was provided with four drafts of a risk assessment table prepared by the National Operations and Capability Branch between February and March 2013. It is not at all clear on what evidence many of the assertions and assessments were based and in some points the assessment appears contrary to other information known by Immigration. The Immigration assessment is quite different to the assessment made by Serco based on observed behaviour. This, of itself, is not surprising given that Serco were not aware of the Interpol red notice at this time. However the Immigration assessment seems to make some significant assumptions based on the Interpol red notice without supporting analysis. Extracts from the risk assessment are provided in the classified report of this inquiry.

At interview I was told that the task of preparing the risk assessment was given to an inexperienced staff member who had never done a risk assessment before. Given the serious nature of the allegations against Mr E and the potentially complex national security issues involved the lack of a framework or any expert assistance to the officer tasked to develop the risk assessment is a concern. In my view any failings in the risk assessment arose from a lack of Immigration corporate knowledge, processes and skills; they cannot be attributed to the individual officer or officers who worked on developing the assessment in that environment.

In an email to the inquiry on 3 July 2013 an Immigration senior executive advised that the risk assessment was intended as a planning aid and was used to:

... shape our understanding of the risks associated with moving [Mr E], it was not used as any documentary basis for the move. Rather, I and my colleagues used it to articulate the risk to service providers, the executive, other areas of the department, etc.

At interview the risk assessment was described as ‘worst case scenario’ planning. The role the risk assessment played in the decision to move Mr E to Villawood is dealt with in Part 8 below.

The process followed by Immigration to undertake the risk assessment for Mr E lacked rigour. Changes are required to Immigration detention risk assessment practices to ensure that assessments are properly informed, referenced and recorded, particularly in cases involving complex national security issues.

The inquiry found that Immigration did not have access to all of the relevant information and expertise available to ASIO and AFP at the time it was managing decisions about the detention of Mr E. In cases involving complex national security matters information and expertise from ASIO are required to enable Immigration to understand and assess risks for detention management purposes. ASIO is the agency within the Commonwealth that is charged with assessing and predicting national security issues. Where a case also involves allegations of serious criminality input from the AFP may also be needed. Immigration also failed to properly utilise information and knowledge about the case from within the Department. Although Immigration should have access to ASIO and AFP information and advice, decisions about immigration detention are ultimately decisions for Immigration.

**Recommendation 4:**

Immigration should review its procedures for conducting risk assessments in cases involving national security to ensure that those undertaking the assessment:

- have access to relevant information and expertise including from ASIO and AFP
- have appropriate training and a standard process to follow
- reference source information
- ensure that risk assessments become part of corporate records and are linked to the particular client’s case.

In response to a draft of this report Immigration advised that in most instances a decision to move someone between facilities should be informed by professional risk assessment from the detention service provider. Immigration noted it will confirm if the relevant Serco officers have the appropriate security clearances to take into consideration information of a national security nature when undertaking these assessments. With respect to conducting risk assessments internally Immigration advised:

In some very limited instances where the nature of the information cannot be shared with [Serco], [Immigration] will need to develop a methodology to conduct a risk assessment that is congruent with the [Serco] methodology and brings together the relevant experts in intelligence and law enforcement to inform the assessment. The methodology will include an assessment of what information can be made available to [Serco], and when, to allow them to manage the detainee of interest accordingly.

In response to a draft of this report, ASIO indicated there is a potential model that could be applied in sharing intelligence with Immigration in relation to immigration detention management decisions. Some further details are contained in the classified report.

The disclosure of information by government agencies is regulated by legislation including the *Privacy Act 1988*, the ASIO Act and the AFP Act. Any disclosure of information needs to comply with relevant legislation.

## Part 8 Decision to move Mr E to Villawood

On the evening of 17 April 2013 Mr E and his family were removed from the APOD and transferred to Sydney. On arrival Mr E was placed in Villawood IDC. The E family had been at the APOD for around eleven months prior to their move.

### 8.1 RECORDS OF REASONS FOR THE MOVE

The reasons why Mr E was moved were difficult to ascertain from the Immigration records.

A potential move was discussed in late January 2013. At that time the relevant acting Assistant Secretary advised the acting First Assistant Secretary (FAS) that the AFP was concerned Mr E may take flight and that she and the Regional Manager (the senior executive officer with responsibility for a number of immigration detention centres including the APOD where Mr E was located) were of the view he should be moved to Villawood IDC. The FAS agreed that this was a good approach. The Regional Manager advised that she then reflected on the matter further, noting that the Interpol red notice was fifteen years old and that the family had been compliant in detention and included a number of children. She then emailed the acting Assistant Secretary to advise that in her view:

... to move him to [Villawood IDC] and his family to [immigration residential housing] is going to aggravate the situation and turn a currently compliant family into a potentially non-compliant and difficult to manage group. They are a close family and our separation of them is going to be problematic and risky.

Towards the end of February 2013 a brief was prepared for the Minister for Immigration advising that it had been confirmed Mr E was the subject of an Interpol red notice. The brief advised that:

... given the nature of his offences overseas, his known associations with terrorist organisations and the possibility that he presents a flight or other behavioural risk, the department plans to move [Mr E] to a higher security facility.

The brief was signed by the acting Assistant Secretary of the branch that prepared the risk assessment referred to in Part 7 of this report on 21 February 2013. The background and risk information in the briefing has a number of similarities to the Immigration risk assessment. There is no record that this brief went to the Minister; instead it appears to have formed the basis of the brief that went on 17 April 2013.

Around a week later on 27 February 2013 there was a meeting of Immigration senior executives to discuss Mr E. The meeting included three deputy secretaries, two first assistant secretaries and two branch heads. Minutes of the meeting were taken and distributed by email later the same day. According to the minutes the main issue discussed was the fact that certain information had been released to Mr E by a third party (further details on this are contained in the classified report). In light of this disclosure, an action arising from the meeting was for the acting Assistant Secretary who had prepared the brief to:

... organise for the client [Mr E] to be moved to Villawood IDC and Family to [immigration residential housing] within the next week or 2 (sooner rather than later).

The meeting was advised that a draft submission to the Minister on transferring Mr E to Villawood had already been prepared.<sup>15</sup>

Two weeks later on 14 March 2013, in response to a request from Immigration, Serco provided an assessment of the relative risks of leaving Mr E at his current location and transferring him to Port Augusta. In summary the assessment identified that such a transfer would result in an overall increase in risk.

A further three weeks later on 5 April 2013 there was an email exchange about moving Mr E and the Regional Manager again expressed a preference to 'leave them where they are but we do need to be able to given them some info'. The acting Assistant Secretary who had been tasked with arranging for Mr E to be moved agreed and noted that most clients who have an adverse security assessment from ASIO are in low risk facilities.

On 17 April 2013 – the day the family was moved – there was a series of emails and phone calls about the proposed move. At 7.10 am the Regional Manager emailed the acting Deputy Secretary of the Immigration Status Resolution Group and other senior executives saying that:

I discussed with [the acting FAS Status Resolution Services] yesterday morning and he agreed with my approach that we review placement next week ... If it is the risk of escape we are trying to mitigate, our view is that is low and unlikely with a wife and [a number of children] and there is no escalation in his behavior since he received rife [sic] information on Friday.

At some stage in the morning the case manager was advised by telephone that there was to be media coverage about Mr E being housed in low security and that he now needed to be moved. The case manager was originally told he would be moved the next day but received another call saying Mr E and his family were to be moved that day. There is a record of Serco being formally advised of the transfer at 3.29 pm.

Reasons for the move are set out in an email from the acting Deputy Secretary of the Immigration Status Resolution Group to other senior executives at 3.45 pm and a ministerial submission that was sent to the Minister's office by Immigration at some point on that day. In the email the acting Deputy Secretary advised that in the past few days Mr E had become aware that the Interpol red notice had adversely impacted on his chance of community detention. (I note that Mr E was actually first advised of red notice by the AFP on 14 November 2012, though the specific charges were not disclosed.) The acting Deputy Secretary's email went on to say that in light of this disclosure:

... combined with his history ... I consider appropriate that [Mr E] be placed in a facility that affords higher security than is currently available at [the APOD] ... Recognising our network is not designed for people that may pose a high security risk and with reference to the engagement with AGD and AFP to date, I would now formally write at Deputy level as to future arrangements for this client.

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<sup>15</sup> In email correspondence with the AFP it was made clear that although the brief was drafted as though the Department was committed to moving Mr E to Sydney, there were good reasons to keep him and his family in their current location and that these were still being weighed up.

The acting Deputy Secretary of the Immigration Status Resolution Group made the decision to move Mr E. At the time he made the decision he did not have a copy of the Interpol red notice, had not seen the report of the AFP investigation about identity and the Interpol red notice dated 20 February 2013 and did not have access to any advice from ASIO. At interview the acting Deputy Secretary described certain information he recalled about Mr E. He indicated that the move was for the reasons stated in the email, being potential change in behaviour and security, as well as reflecting a change in posture driving the Immigration executive to place more emphasis on security risk. I also consider it likely the acting Deputy Secretary had been briefed on the basis of the flawed Immigration risk assessment discussed in Part 7.

The acting Deputy Secretary was not provided with complete and accurate information as held by Immigration and did not have the benefit of AFP and ASIO advice. A number of Immigration's senior executives, including the Chief Risk Officer and the acting Division Head of the Status Resolution Division, were copied into emails and attended meetings but there is no record of their responding by providing advice or information to the decision-maker who was newly appointed and under considerable work pressure from other emerging issues. Having said that, I am not of the view that the decision was necessarily unreasonable and it was within the range of decisions lawfully open to Immigration. The officer who made the decision was a very senior and busy officer within Immigration and, not unreasonably, he relied on the limited information provided to him at the time.

The submission sent to the Minister's office noted that Mr E had become aware that the allegations against him were impacting on his chance of receiving community detention and it was believed that this led to an increased flight risk:

[Mr E] has recently been provided with redacted information through [a third party] which included reference to the nature of his offences. [Mr E] has expressed concern regarding the 'allegations' and, in particular the fact that this has been a contributing factor to decisions regarding his eligibility for release into the community. Given [Mr E's] knowledge of the reasons for law enforcement interest in his case and the potential impacts on his release into the Australian community, the department considered that his risk of flight has increased.

Given the nature of his offences overseas, his known associations with terrorist organisations and the increased possibility that he presents a flight risk (with associated reputational impacts) or other behaviour risk, the department is planning to move [Mr E] to the Villawood Immigration Detention Centre (IDC).<sup>16</sup>

The submission also noted that the placement of the family at the APOD had not presented problems to date.

Although there are some records of the reasons why Mr E was moved to Villawood these are contained in emails and a ministerial submission and are not entirely consistent. A decision to move a person based on national security concerns is not common and Immigration would benefit from expert advice from other agencies in making such a decision, that advice (or the absence of it) should be referenced in the decision. The decision to move the E family was a significant one and the full reasons for that move should have been properly documented and linked to the records about these clients. Immigration records of the reasons for the move are not satisfactory.

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<sup>16</sup> Submission from DIAC to Minister for Immigration and Citizenship, 17 April 2013.

Because of the lack of a clear record of the reasons for the decision to move Mr E to Villawood it is not possible to say to what extent the risk assessment discussed in Part 7 was the basis for the move.

In response to a draft of this report Immigration advised that the risk assessment document:

... had no status in the decision-making process. The Acting [First Assistant Secretary] at the time has also advised that he was of the view the document had no status, nor had he sighted it ... the Acting Deputy Secretary was unaware of its existence and on seeing the document several weeks after the decision had been taken was of the view that the document itself was immature. In particular, the risk assessment document was incomplete and speculative in nature as it did not benefit from the intelligence holdings and information within the Department.

While the risk assessment document itself had no formal status there was no other record of a risk assessment by Immigration and, in my view, the similarity between the conclusions in the assessment, records of discussions about the move and a ministerial submission suggest the risk assessment was relevant to how Immigration viewed the case.

**Recommendation 5:**

Immigration should ensure that proper records are retained of a decision to place a person in a particular form of immigration detention on the basis of national security concerns.

## 8.2 REVIEW OF PLACEMENT IN LIGHT OF CHANGES TO RED NOTICE

The Interpol red notice was amended on 13 June 2013, about six weeks after Mr E moved to Villawood. The changes to the notice, made at the request of the issuing country, removed all charges relating to violent activity. The remaining charges are for membership of an illegally formed extremist organisation and forging travel documents.

The AFP had ceased its investigation in relation to Mr E by 1 May 2013. The AFP advised the inquiry that there was no requirement for the AFP to provide any further advice to Immigration in response to the charges and the Interpol red notice. No request for extradition has been received. The AFP has not charged Mr E with any offences.

Serco reports of Mr E's transfer to Villawood and the assessments of Mr E's behaviour describe him as calm and compliant and note that there have been no risk indicators or warnings. There does not seem to have been any significant changes to Serco's assessments after the Interpol red notice was amended on 13 June 2013. Four Serco security risk assessments were provided to the inquiry covering the period July to August 2013 and these do not refer to the changes. All these assessments note that:

28.5.2013 As per [Immigration] instructions client trigger moved to [named location] due to potential media interest risk rating increased to Extreme 16.7.2012 As requested by [Immigration] NSW Detention Centre Operations client is subject to a Interpol Red notice and Negative ASA [adverse security assessment] outcome. The client has been discussed in parliment [sic].

It is not clear why Serco believed that Mr E was the subject of an adverse security assessment. It is also not apparent what weight they placed on that incorrect information, how that

information affected the overall risk rating, or what impact the information had on ongoing decisions about his detention arrangements.

Where a person is in a relatively restrictive form of immigration detention and relevant new information comes to light there should be a system to ensure that the placement decision is reviewed. In the case of Mr E the decision should have been reviewed when the Interpol red notice was amended substantially. The decision should also be reviewed in light of any future ASIO advice.

Mr E's placement within Villawood was reviewed by Immigration in July 2013 and he was moved from one compound to another. This review appears to have been triggered by a refurbishment and to reserve the available space for the highest risk clients.

## Part 9 Arrangements for complex security cases

When initiating this inquiry the then Prime Minister requested that in addition to looking at the case of Mr E I consider and make recommendations more generally on the management by Australian agencies of persons seeking asylum who present complex security issues.

The analysis of the case of Mr E highlighted issues with recordkeeping and the lack of a coordinated whole of government approach to managing his case. These themes recurred in other categories of cases that I looked at.

Improvements to the ASIO community detention and bridging visa security checks introduced in early 2013 are likely to result in greater focus on potentially complex security matters at an earlier stage.

In other cases, particularly those where an adverse security assessment has been issued I am concerned that all of the information available to government is not being utilised in making detention management and risk mitigation decisions. As noted earlier the actual number of cases where a person seeking asylum in Australia presents potentially complex national security issues is low.

### 9.1 PEOPLE WITH ADVERSE SECURITY ASSESSMENTS

Australian Government policy requires that individuals who are the subject of an adverse security assessment in respect of their permanent visa application are kept in immigration detention and not community detention until such time as they can be removed from Australia. This policy is consistent with an internal ASIO briefing on the issue.<sup>17</sup> A practical consequence of this is that Immigration needs to manage the detention of these individuals for a long period. There are currently over fifty people in immigration detention who are the subject of an adverse visa security assessment. In terms of complex security cases this cohort is the highest identified risk group.

#### Adverse security assessments involve detailed analysis

ASIO issues an adverse security assessment only after careful inquiry and detailed assessment of a case. Significant government resources go into this type of analysis and the ultimate purpose of the assessment is to protect Australia's national security.

The reasons that an individual may be the subject of an adverse visa security assessment are varied. At one extreme the person may have a history of politically motivated violence and have been assessed by ASIO as likely to continue to engage in that type of violent behaviour in Australia. In other cases there may be a risk that the person will seek to radicalise others. Adverse visa security assessments could also be issued because of a likelihood that a person will undertake fundraising for a terrorist group or because they are believed to undertake

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<sup>17</sup> An internal ASIO briefing noted that 'consistent with ASIO's strong recommendation, the Minister for Immigration recommended to the Prime Minister in December 2011 that Adverse SA recipients remain in detention waiting for repatriation or third country resettlement'.

espionage on behalf of a foreign power. In each of these cases the best interests of Australia are served by having a detention management strategy that mitigates the identified risks.

Adverse security assessments are classified documents and need to be handled in accordance with the Protective Security Policy Framework. Broadly this framework includes measures to ensure that classified documents are stored appropriately and that only those individuals with an appropriate security clearance and a 'need to know' have access to the information.

Within ASIO all staff have high-level security clearances and ASIO premises are well equipped to store classified material. From an ASIO perspective it is appropriate that an adverse security assessment is given a high-level security classification as this allows the document to contain the detailed intelligence information that forms the basis of the assessment. ASIO prepares an unclassified summary of reasons underpinning an adverse security assessment for the purpose of an independent review; however these unclassified versions contain very little detail. Immigration officers interviewed who had seen one of the unclassified versions of an assessment said that it did not contain enough detail to provide any useful information for detention management purposes.

### **Immigration not utilising information in adverse visa security assessments**

Immigration is not an intelligence agency and very few staff in the Department have a security clearance high enough to allow them to access adverse security assessments. Immigration also has a limited ability to store classified material.

At interview a range of people in Immigration including senior staff in detention management and immigration intelligence roles were asked whether they had read any ASIO adverse visa security assessments and whether there was any system for incorporating information in those assessments into detention management decisions. Most had never seen an adverse security assessment and nothing in the interviews or any documents provided any indication that Immigration has an effective mechanism for utilising the information in adverse visa security assessments to develop tailored detention management strategies for people who are the subject of an adverse visa security assessment.

Even though they are not drafted for detention management purposes the information contained in adverse visa security assessments should be used in developing appropriate risk mitigation strategies for the detention management of persons with adverse security assessments.

ASIO has no expertise in detention management. Nor is Immigration an expert in security. However I think that it is reasonable to expect that ASIO, as the government agency with expertise in security, should provide whatever relevant information and expertise it holds in a way that can be used by Immigration to assist Immigration in the identification and management of risks posed by a relatively small number of people with adverse security assessments. The final decision about detention arrangements is still a matter for Immigration. Without security information and expertise from ASIO Immigration is not in a position to develop the most effective management strategies to mitigate national security risks. Depending on what risks have been identified Immigration may also need to seek input from the AFP or other agencies. Immigration also needs to take into account the actual behaviour of individuals in detention. One of the senior Immigration officers interviewed noted that some

individuals with adverse security assessments have been in low security immigration detention for several years without demonstrating any behaviours of concern since their adverse security assessment was issued.

In 2011 ASIO and Immigration senior executive level officers agreed that Immigration would review existing adverse security assessments to identify any issues that may be relevant to detention management strategies and arrangements. ASIO also offered to engage in discussion about security assessment findings on a case-by-case basis to assist Immigration consideration of detention management issues. ASIO was also going to develop some unclassified advice for use in immigration detention centre management. No information was provided to the inquiry to suggest that any of these initiatives were pursued at the time or remain current.

The inquiry found no evidence of a structured approach to using adverse security assessments for detention management purposes.

During the finalisation of the current inquiry report ASIO informed me that it is willing to work with Immigration to give advice on how to get the information needed from an adverse security assessment so that they can use it to make a decision.

The inquiry was also provided with a copy of a qualified security assessment ASIO provided to Immigration on 24 October 2013. The assessment represented ASIO concerns about a person currently in the community on a bridging visa. Although ASIO is still investigating the person, relevant information on the alleged threat was shared with Immigration to assist in their risk management and decision-making. I consider that the format and nature of this assessment is a good model for ASIO to consider for formal implementation.

## **9.2 OTHER INTELLIGENCE HELD BY ASIO**

### **Individuals in the community with an outstanding CMAL alert**

During the course of the inquiry I became aware of a number of recent cases where a person had been granted a bridging visa at a time when their case had been referred to ASIO but ASIO had not yet provided advice to Immigration. These cases were identified by Immigration, apparently after conducting a review triggered by the case of Mr E. The allegations about these individuals included that they had links with a terrorist organisation, held extremist views or were a member of a jihad group. At least two individuals were the subject of CMAL alerts. Immigration records about these cases were mostly in the form of emails and there was no consistency in recordkeeping or single repository of cases of security concern.

Under the policy that applied until early 2013 these individuals would have been cleared for bridging visas or community detention by ASIO because they were not previously the subject of an adverse ASIO visa security assessment, although as noted above some senior ASIO officers believed that immigration did not release people that had been cleared by ASIO from detention if they had an amber or red security CMAL alert.

In March 2013 ASIO and Immigration agreed that Immigration would continue to check each IMA against CMAL at the time the person was first granted community detention or a bridging visa and periodically afterwards (details of when these checks are now to occur are in the classified report). Any unresolved amber or red national security alert is to be referred to ASIO

for advice. It is not clear to me whether this periodic re-checking will also apply to those that may remain on community detention.

I was advised by ASIO that in one recent case, ASIO advised Immigration that an individual living in the community was the subject of a national security CMAL alert, Immigration made the decision to immediately re-detain the individual.

New ASIO processes summarised in the classified report of this inquiry are intended to enable ASIO to provide Immigration with interim advice while investigations are ongoing. This advice is intended to inform Immigration of the security concerns and enable Immigration to take any action it considered necessary pending formal security advice from ASIO. Such advice would of course need to comply with ASIO Act requirements and any action taken by Immigration needs to be consistent with the requirements of procedural fairness.

In early June 2013 the relevant Deputy Secretary in Immigration asked for a full list of clients of significant concern to intelligence agencies that are under management in the Immigration network. The inquiry was informed in November 2013 that the compilation of the list is complete, and clients on the list are under active case management with the assistance of external agencies on a case by case basis.

### **Prejudicial but uncorroborated intelligence**

Occasionally ASIO receives highly prejudicial but uncorroborated intelligence about an individual while they are waiting for visa processing. The classified report of this inquiry summarises one case that illustrates the complexity inherent in balancing the desirability of promptly passing relevant information to Immigration with the need to take steps to establish the veracity of the information and adhere to procedural fairness requirements.

Not every piece of unsubstantiated intelligence held by ASIO about a person seeking asylum should be passed to Immigration. ASIO is the agency with the skills and experience to assess the value of such intelligence. When making an assessment of the value of any such intelligence ASIO should actively consider the potential utility of the information in informing Immigration detention management decisions.

Immigration does not currently have an effective system in place to access and use this information. On a case by case basis it may be appropriate for ASIO to produce security assessments that relate to national security information to specifically inform immigration detention management decisions in potentially complex national security cases. I am aware that this would impose a resource cost on ASIO; however, it is important that in the small number of cases where there is a potential risk to national security Immigration decision makers have access to the best and most current advice.

#### **Recommendation 6:**

Immigration and ASIO should ensure that in the small number of cases where there are potentially national security issues all relevant information is taken into account by Immigration when making immigration detention management decisions. Where such a case also involves issues of serious criminality Immigration should also work with the AFP to ensure relevant AFP information is also obtained and taken into account. This recommendation is not intended to suggest that responsibility for the decision in relation to

the level of security for a person in immigration detention should rest with ASIO or AFP; that decision is ultimately one for Immigration to make based on the best available information and advice.

In response to a draft of this report ASIO provided four recent examples where it has provided information to Immigration. Two of these relate specifically to information that is potentially relevant to a decision on individuals remaining in the community on bridging visas pending finalisation of full security assessments. These examples indicate positive progress towards implementing this recommendation.

ASIO has noted that with respect to the sharing of this information with Immigration the relevant decision makers and support staff would need to hold an appropriate security clearance.

ASIO also commented on the complexities in relation to this recommendation and the need for ASIO and Immigration (and the AFP) to agree a protocol for such advice.

The disclosure of information by government agencies is regulated by legislation including the *Privacy Act 1988*, the ASIO Act and the AFP Act. Any disclosure of information needs to comply with relevant legislation.

## Part 10 Recent changes

At the time of writing this report, maritime arrivals are transferred to regional processing centres and are not released into community detention or given bridging visas in Australia. There remains about 32 500 individuals who arrived in Australia before the commencement of that policy. The majority of these, around 26 000, are living in the community on either a bridging visa or in community detention. Approximately 6500 are in some form of 'held' detention managed by Immigration (including detention centres, immigration residential housing or alternative places of detention). Of these about fifty are the subject of adverse visa security assessments. The need to properly manage complex security issues for all individuals in Australia who are seeking asylum is ongoing.

### 10.1 CHANGES TO ASIO PROCESSES

As noted earlier, ASIO introduced significant changes to community detention security assessment procedures prior to this case becoming a matter of public interest. Internal procedures for ASIO staff to follow were introduced in June 2013 and finalised in October 2013 and provide guidance to ASIO staff on resolving Immigration referrals.

In October 2013 ASIO advised the inquiry that most referrals are resolved within twenty-four to forty-eight hours, with a small percentage undergoing a full investigation. Those that proceed to full investigation are assessed at the same threshold as for a permanent protection visa regardless of whether they have been assessed as a refugee. Once the investigation is completed ASIO provide a non-prejudicial or adverse security assessment to Immigration which will apply to the community detention or bridging visa referral and could also apply to any permanent protection visa application. ASIO advised this process is sustainable and has been working well since it was implemented in early 2013.

In my view these new processes represent a significant improvement.