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Australian Government
Department of Home Affairs

Submission

For information
PDMS Ref. Number: MS22-001397
Date of Clearance: 14/07/2022

To Minister for Immigration, Citizenship and Multicultural Affairs

Subject Alternatives to Held Detention Program

Timing At your convenience

Recommendations

That you:

1. note the Alternatives to Held Detention – Phase 1 Program report at **Attachment A**; — noted / please discuss

2. note that the Department of Home Affairs is currently considering a range of short, medium and long term options on alternatives to held detention; — noted / please discuss

3. agree to the Department of Home Affairs progressing the development of Alternatives to Held Detention proposals for further consideration, including: — agree / please discuss

   - the engagement of external expertise to consider a revised risk assessment framework and dynamic risk assessment tools;
   - the establishment of an independent panel to consider cases of individuals who are in held immigration detention but present with low to medium community protection risk factors;
   - the exploration of Residence Determination and Bridging visa conditions including advice on the legal basis for electronic monitoring (and other monitoring alternatives) and case plan requirements for individuals transitioning from held detention to a community setting.

Minister for Immigration, Citizenship and Multicultural Affairs

Signature.....

Date: 22 / 8 /2022

inister's Comments

Rejected	Timely	Relevance	Length	Quality
Yes/No	Yes/No	☐ Highly relevant ☐ Significantly relevant ☐ Not relevant	☐ Too long ☐ Right length ☐ Too brief	Poor 1.....2.....3.....4.....5 Excellent **Comments:**

Key Issues

1. This submission provides you with information about the Alternatives to Held Detention (ATHD) Program and seeks your agreement to the Department of Home Affairs (the Department) continuing to explore a range of initiatives under this program.
2. The immigration detention landscape has changed in recent years and the population composition of detainees has evolved. Approximately 85 per cent of the current immigration detention population is comprised of persons who have criminal records. The timeframes for status resolution and removal pathways have also increased, meaning detainees are spending longer in held immigration detention. This issue has been exacerbated by the emergence of an 'intractable' caseload of individuals who fail the character test and face significant external removal barriers, including *non-refoulement* obligations.

4. In March 2020, Robert Cornall AO delivered the Independent Detention Case Review (IDCR) to the Secretary and the Commissioner of the Australian Border Force (ABF). The IDCR reviewed the Department's management of unlawful non-citizens held in immigration detention facilities (IDFs).
   - The IDCR found that in most cases of long-term detainees, the Department could not resolve immigration status without ministerial intervention. It found that some long-term detainees have no pathway to a visa and there are significant barriers preventing the Department from removing those individuals from Australia. Further, barriers occur for reasons beyond the control of the individual or the Department. A summary of the IDCR and status of the recommendations is at **Attachment B**. In response to the IDCR, the Department is investigating alternative approaches to held immigration detention.

5. Portfolio Ministers have personal, non-compellable, public interest powers under the *Migration Act 1958* (the Act) to grant a visa to a person in immigration detention (section 195A of the Act) or to make a Residence Determination (section 197AB of the Act) placing a person in community detention. The Department will provide you with an overview of your Ministerial Intervention powers in MS22-001050 and subsequently engage with you on the establishment of new Ministerial Intervention guidelines. While the sections 195A and 197AB powers enable a Minister to determine an alternative placement to held detention these powers are non-compellable and the Minister is not required to intervene or consider intervening in a case. The Department considers that further exploring alternatives to held detention is critical to addressing the risks associated with long term detention, particularly in light of the changed composition of the detention population over time.

6. In further response to the IDCR, the Department established the ATHD program. In Phase 1 of the ATHD program, the Department conducted research and analysis concerning a number of subjects. This included international detention models, the use of parole and bail in domestic jurisdictions, dynamic risk assessment models, and how electronic monitoring could be utilised in an immigration context.

   - The outcome of Phase 1 was the ATHD Phase 1 Program Report at **Attachment A**.

7. The Department has commenced Phase 2 of the ATHD program. This phase will focus on the development and design of options to better enable the management of detainees within a community setting, including comprehensively assessing community protection risk and mitigating against residual risk. This will include the consideration of a step-down model, whereby an individual might transition from a held detention environment to Residence Determination in the first instance. Key initiatives under Phase 2 of the ATHD program are outlined below.

Risk assessment tools and independent panel

8. The purpose of this stream of work is to establish a revised risk assessment framework for the status resolution continuum and develop potential operating models for an independent panel to assess certain detainee's circumstances and advise on placement options.

   - The ATHD Phase 1 Program Report at **Attachment A** includes future state risk assessment framework principles which will inform this work. External experts will be engaged to develop a revised risk assessment framework, which will likely include the development of a new or updated risk assessment tool(s).

9. The future state of risk assessment processes utilised across the status resolution continuum needs to enable dynamic and nuanced assessment of risk. A more strategic approach to how the Department views risk across the status resolution continuum would take into account the different types of risks being assessed (such as security risk or community protection risk).

   - Alignment and/or enhancement of risk assessment tools that have different purposes will offer a contemporary and more holistic view of an individual's risk. This will include more focussed consideration of dynamic factors that go beyond an individual's previous criminal history. This would support transparent and defensible decisions, informed by relative risks, and improved status resolution outcomes.

10. A qualified and well constituted independent panel would be well placed to conduct a complete and nuanced assessment of a detainee's risk, including risks related to their physical and mental health. The appointment of suitable experts, in a similar model to that employed by state and territory parole boards, would allow a range of information to be considered.

11. Through this work potential operating models for an independent panel will be developed with consideration to how it might interact with and leverage existing departmental processes. Consideration of community based placement for detainees with complex circumstances and residual risk could be informed by the advice of an independent panel whereas less complex matters may be considered under existing mechanisms.

    - In a step-down model, an individual might transition from a held detention environment to Residence Determination in the first instance, and later to a Bridging E visa (or any other type of visa deemed appropriate in the individual circumstances).
    - Transition though the step-down model may be informed by an independent panel's assessment and could be dependent on compliance with new or enhanced requirements to engage with status resolution processes and/or other conditions.
    - Non-government organisations will be consulted to provide input into whether support services may be required to compliment a desired future state model.

Residence Determination and Bridging visa conditions, compliance and electronic monitoring

12. Increasing community based placements and managing residual risk for an individual may require, or be better supported by, enhanced Residence Determination and visa conditions. An important aspect of the role of the independent panel will be to advise what visa or Residence Determination conditions should be imposed on an individual released from held detention. Referenced conditions would seek to address community risk factors posed by the individual in consideration of their history and a post-release transition plan.

13. Ensuring compliance with these conditions, progress through a step-down model and managing post-release support (detainee welfare and access to transition services) may require the implementation of a strengthened support, compliance and monitoring framework.

    - The Department will further explore Residence Determination and Bridging visa conditions, post-release support, compliance and monitoring options. This will include seeking legal advice to explore the potential use of electronic monitoring technologies (recommended by the ICDR) and other monitoring alternatives and the legal basis to do so prior to any further exploration of this option.

Background

14. In March 2020, Robert Cornall AO delivered the IDCR to the Secretary and the Commissioner of the Australian Border Force (ABF). The IDCR reviewed the Department's management of unlawful non-citizens held in immigration detention facilities (IDFs).

    - The IDCR sought to determine whether those held in IDFs should remain so, whether they have appropriate access to services, and, whether appropriate steps are being taken to resolve their immigration status. The review provided commentary on what alternatives to held detention are available to the Department and how they may be explored.

15. The Australian Human Rights Commission (AHRC) delivered a separate report titled *Immigration detention following visa refusal or cancellation under section 501 of the Migration Act 1958* (Cth) (2021) in February 2021 into complaints of arbitrary detention and arbitrary interference with families.

- The report relates to 11 individual complaints made by unlawful non-citizens held in immigration detention whose visas were either refused or cancelled under section 501 of the Act. The report examined steps taken by the Department to resolve each complainant's immigration status. The report found that some complainants were subject to arbitrary detention contrary to Article 9(1) of the *International Covenant on Civil and Political Rights*.

Consultation – internal/external

16. Compliance and Community Protection Policy Branch, National Immigration Detention Command, Detention Contracts Management Unit, Migration and Citizenship Law, Clinical Assurance and Contract Management and Detention Governance and Strategy and Standards Branch were consulted on the contents of this submission.

Consultation – Secretary

17. The Secretary was not consulted on the approach in the submission.

Client service implications

18. Not applicable.

Sensitivities

19. The information contained in this submission is classified and should not be publicly released without the authority of the Department. In accordance with our long standing practices, should you wish for unclassified media lines to be prepared in relation to this issue please contact the Home Affairs Media Coordination team – media@homeaffairs.gov.au.

20. Longer detention timeframes are detrimental to the detainee's wellbeing and increase the risk of successful litigation, which may threaten the detention model. Further, longer detention timeframes increase the likelihood of detention becoming arbitrary, contrary to Australia's obligations at international law. Long-term detention is also the subject of consistent adverse findings from the AHRC, the UN Human Rights Committee, and the United Nations Working Group on Arbitrary Detention.

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Attachments

Attachment A Alternatives to held detention – Phase 1 Program Report

Attachment B Independent Detention Case Review summary and recommendations

Authorising Officer
Cleared by: Belinda Gill A/g First Assistant Secretary Status Resolution and Visa Cancellation Division Date: 14 July 2022 Mob: s. 22(1)(a)(ii)

Contact Officer: Nigel Muir, Senior Director Program Management and Redesign, Status Resolution and Visa Cancellation Division, s. 22(1)(a)(ii)

CC Secretary
ABF Commissioner
Deputy Secretary, Immigration and Settlement Services Group
A/g Deputy Commissioner, North, West and Detention
Group Manager Legal

Australian Government
Department of Home Affairs

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Independent Detention Case Review summary and recommendations

1. Independent Detention Case Review summary

In March 2020, Robert Cornall AO delivered the IDCR to the Secretary and the Commissioner of the ABF which reviewed the Department's management of unlawful non-citizens held in IDFs. The IDCR sought to determine whether those held in immigration detention should remain in held detention, whether they have appropriate access to services, and, whether appropriate steps are being taken to resolve their immigration status. The IDCR provided commentary on what alternatives to held detention are available to the Department and how they may be explored.

The IDCR found that immigration detention is failing to meet the key principles that underpin immigration detention in Australia, that is:

- immigration status should be resolved as quickly as possible
- people should be managed in the community while their immigration status is being resolved unless they pose a risk to the community.

The IDCR acknowledged that departmental officers are doing their part to achieve timely outcomes. However, there are significant external factors beyond the control of the Department that impact efficiency and effectiveness. Factors include:

- the complexity and interaction of the Migration Act, applicable case law and Australia's international obligations
- delays in establishing identity or obtaining security clearance
- statutory barriers to visa applications and mandatory visa cancellations
- the need for ministerial intervention in cases where resolution (other than continuance of the status quo) depends on the Minister exercising discretionary statutory powers
- protracted merits and judicial review and appeals.

The IDCR's overall assessment was that every aspect of immigration status resolution needs to be sped up.

The IDCR found that there were three main health and welfare issues of concern which included long-term immigration detention damaging detainees' mental health, availability and use of illicit substances and the higher percentage of section 501 character cases in detention.

The IDCR considered the role of the Community Protection Assessment Tool (CPAT) and determined that the risk assessment tool achieves its purpose in determining if community placement is suitable whilst status resolution is pursued. However, it found that the CPAT lacks the flexibility and comprehensiveness of an individual dynamic risk assessment that may assist in consideration of whether a detainee could be managed in an alternative setting to held detention.

The IDCR found that in most cases of long-term detainees, the Department could not resolve immigration status without ministerial intervention. It found that some long-term detainees have no pathway to a visa and face significant external barriers to removal. It follows that they could remain in detention indefinitely unless there is a change in Government policy or the facts of their case change. The IDCR suggested that unless there are concerns about issues such as identity, national security or danger to the Australian community, the person's situation may be regularised temporarily by the grant of a short-term visa allowing them to reside in the community while their immigration status is resolved.

The IDCR contained eight recommendations, recommendations 2 and 4 are relevant in the context of alternatives to held detention:

- Recommendation 2 – *That the Secretary and the Commissioner consider if section 501 detainees (or at least those with a low or medium risk assessment) could be issued with a short term pending removal visa with appropriate conditions if they cannot be removed reasonably quickly.*
- Recommendation 4 – *That the Department develop an individual dynamic risk assessment (in addition to the Community Protection Assessment Tool) which could result in a detainee being assessed as a low or medium risk and released into the community on a bridging visa subject to stringent conditions which would include ongoing supervision and could include electronic monitoring.*

2. Recommendation status

Table 1: Independent Detention Case Review recommendation status

#	Recommendation	Department response	Status
1	That a working group comprising the ABF, IHMS, Serco and the detention oversight bodies be established to identify systemic operational problems and individual detainee concerns within detention centres including APODs and seek to find and implement operational improvements and outcomes through constructive collaboration	Partially Agree.	Closed.
2	That the Secretary and the Commissioner consider if section 501 detainees (or at least those with a low or medium risk assessment) could be issued with a short term pending removal visa with appropriate conditions if they cannot be removed reasonably quickly.	Partially agree. This recommendation will be considered as part of Recommendation 4.	Briefing the Minister of the status.
3	That the Secretary and the Commissioner consider whether high risk offenders whose visas have been cancelled can, with the agreement of the relevant Corrections authority, be kept in gaol after their sentence ends as an alternative place of detention pending removal from Australia.	Agree.	Closed.
4	That the Department develop an individual dynamic risk assessment (in addition to the community protection assessment tool) which could result in a detainee being assessed as a low or medium risk and released into the community on a bridging visa or a bridging visa subject to stringent conditions which	Partially agree.	Briefing the Minister of the status.

#	Recommendation	Department response	Status
	would include ongoing supervision and could include electronic monitoring.		
5	That the Secretary establish a review of the ministerial guidelines governing the use of the Minister's detention intervention powers with a key focus on any possible ways to speed up the intervention process.	Partially agree.	Closed.
6	That the Department review the file of every detainee who is or may be a refugee in light of the Federal Court decision in BAL19 v Minister for Home Affairs and, if the judgment applies to that detainee's circumstances, re-determine the matter according to law.	Partially agree.	Closed.
7	That the Secretary reconsider Mr GH's case and Mr IJ's case taking into account the details in Section 9.1 and the views about war crimes and crimes against humanity set out in Section 9.2.	TBC	TBC
8	That the Secretary request assistance from the Attorney-General's Department to seek agreement from the tribunals and courts (other than the High Court) hearing migration cases to establish a hearing express lane for merits review and judicial appeal cases involving persons in immigration detention.	Agree.	Closed.

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TO: Andrew Giles

TITLE: Alternatives to Held Detention Program

DATE: 30/11/2023

NUMBER: MS22-001397

TIMING: At your convenience

Australian Government
Department of Home Affairs

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Alternatives to held detention 1 July 2022

Phase 1 Program Report

Table of Contents

1. About this report

In March 2020, Robert Cornall AO delivered the Independent Detention Case Review (IDCR) to the Secretary and the Commissioner of the Australian Border Force (ABF). The IDCR reviewed the Department of Home Affairs (the Department) management of unlawful non-citizens held in immigration detention facilities (IDFs). The review sought to determine whether those held in IDFs should remain so, whether they have appropriate access to services, and, whether appropriate steps are being taken to resolve their immigration status. The review provided commentary on what alternatives to held detention are available to the Department and how they may be explored.

The Australian Human Rights Commission (AHRC) delivered a separate report titled *Immigration detention following visa refusal or cancellation under section 501 of the Migration Act 1958 (Cth) (2021)* in February 2021 into arbitrary detention and arbitrary interference with families.[1] The basis of this report relates to 11 individual complaints made by unlawful non-citizens held in immigration detention whose visas were either refused or cancelled under section 501 (s 501) of the *Migration Act 1958* (the Migration Act). The report examined steps taken by the Department to resolve each complainant's immigration status. The report found that some complainants were subject to arbitrary detention contrary to Article 9(1) of the International Covenant on Civil and Political Rights.

The Status Resolution and Visa Cancellation (SRVC) Division commenced a program to explore alternative models to held detention[2] in July 2021. The objective of Phase 1 of this program was to explore options for alternatives to held detention and increase the tools available to manage detainees in community settings.

Research and analysis was conducted into international detention models, the use of parole and bail in state jurisdictions and how electronic monitoring could be used in an immigration context.

Extensive consultation was also conducted with stakeholders internally and external to the Department. Internally this included the SRVC Division, Australian Border Force (ABF), Chief Medical Officer, Immigration Integrity, Assurance and Policy Division, Major Capability Division and Procurement, Property and Contracts Division. External consultations were held with corrections authorities in Queensland, Victoria, New South Wales and Australian Capital Territory, AHRC and the Centre for Multicultural Youth. Internationally, regular and ongoing dialogue has taken place with the Canadian Border Services Agency (CBSA).

In completing this report, previous work conducted by the Department has been taken into account, such as the Detention Capability Review and the previous work undertaken investigating Canada's model of alternatives to detention, including electronic monitoring in 2017.

[1] Australian Human Rights Commission, *Immigration detention following visa refusal or cancellation under section 501 of the Migration Act 1958 (Cth)* [2021] AusHRC 141 https://humanrights.gov.au/our-work/legal/publications/immigration-detention-following-visa-refusal-or-cancellation-under

[2] ADD2021/5234645

2. Executive Summary

The immigration detention landscape has significantly shifted in recent years and subsequently the population composition of detainees has evolved. Legislative changes to strengthen character settings and the introduction of mandatory visa cancellations in December 2014 advanced the former Government's community protection agenda. At the same time, this policy shift has led to an increased immigration detention footprint of detainees with a criminal history.

Alternatives to detention are commonly used in the immigration systems of our international partners. Each country takes a slightly different approach due to their legislative and policy requirements. Approaches include independent review boards, use of bond and securities, electronic monitoring and case management and supervision programs. Research and consultations have shown that the issues that the Department is facing are relatively unique due to our mandatory detention requirement. Without this requirement, non-citizens in the United Kingdom (UK), the United States of America (USA) and Canada spend considerably less time in detention overall. The average length of time in detention in Australia is significantly higher than in Canada, the UK or the US. In Canada a period of detention over 99 days is considered long term.

Australia's immigration detention network (IDN) is under significant pressure. The nature of the caseload, the volume of inflows, and constraints on outflows have impacted the status resolution continuum in a way that is not sustainable. Immigration detention is administrative and lacks the legislation, infrastructure and services required to manage high need and high risk cohorts and the tools to identify and manage risk flexibly for all detention cohorts s. 47C(1)
s. 47C(1)

s. 42(1)

s. 42(1) The Department is also the subject of increasing external scrutiny regarding the length and perceived arbitrary nature of detention, and its proportionality to community protection risk s. 47C(1)

s. 47C(1)

These issues have also been highlighted through a range of internal reviews and cannot be resolved with a sole focus on increasing detention capacity. Held detention is not a status resolution outcome, rather one component of the end-to-end status resolution continuum.

Over time, a range of risk assessment and case prioritisation tools have been developed to inform placement recommendations and assess the risk in relation to immigration detainees. The risk rating assigned by these tools have implications for detainees and the Department. Existing detainee risk assessments have not been academically validated and do not adequately assess, through the collection and consideration of both static and dynamic criteria, community protection risks posed by individual detainees.

s. 47C(1)

More targeted, individualised programs and activities in IDFs would provide better opportunities for detainees to actively engage in meaningful activities whilst detained. This may promote overall detainee wellbeing and

[3] Australian Human Rights Commission, *Immigration detention following visa refusal or cancellation under section 501 of the Migration Act 1958 (Cth)* [2021] AusHRC 141 https://humanrights.gov.au/our-work/legal/publications/immigration-detention-following-visa-refusal-or-cancellation-under

decrease an individual's residual risk to the community should they be released. This is shown to be the case in the correctional approach where the Risk-Needs-Responsivity (RNR) model is used.[4]

A properly qualified independent panel would be well-placed to be able to make an informed and nuanced assessment of the risk posed by an individual should they be granted a visa by the Minister. It would be able to take into account a range of information in order to recommend how the risk could be mitigated through conditions tailored to specifically address the cause of the offending behaviour, such as continuing drug and alcohol treatment. Along with addressing community protection risk, the panel would also be able to make an informed recommendation on the risk of the person disengaging with the Department. The panel would not be a decision making body, their recommendation would be considered as part of the Department's advice to the Minister in Ministerial Intervention submissions. s. 47C(1)

s. 47C(1)

Further controls enhancing community-based alternatives to held detention, for low to medium community protection risk rated detainees will promote detainee compliance and behaviour in detention. The implementation of such an option would promote IDN safety, security and good order by incentivising detainees to more actively engage to achieve resolution of their individual immigration status.

A transition towards low to medium risk rated detainees being released into the community would require the implementation of a strengthened compliance, monitoring and governance framework. This would ensure and promote continued engagement and compliance in an alternative community setting. Pairing these alternatives with stricter conditions, tailored to the individual and recommended by the independent panel, will ensure that there is a strong compliance focus. Subject to further evaluation and consideration, this could include forms of electronic monitoring. Conditions should focus on support and protective factors that help to prevent problematic behaviours, and crafting suitable conditions to mitigate risk.

It is possible to achieve most of these outcomes within existing government policy. Updating risk assessment tools sits within the Department's control, and the independent panel could be constituted without the need for any Government policy amendment. Legislative change would be required to introduce any new visa or community detention conditions (including electronic monitoring and individual post-release plans).

[4] 'Investigation into the rehabilitation and reintegration of prisoners in Victoria' (2015) *Victorian Ombudsman* <https://assets.ombudsman.vic.gov.au/assets/Reports/Parliamentary-Reports/1-PDF-Report-Files/Investigation-into-the-rehabilitation-and-reintegration-of-prisoners-in-Victoria.pdf?mtime=20191217123824>.

3. Background

The immigration detention landscape has changed in recent years and subsequently the population composition of detainees has evolved. Approximately 85 per cent of the current immigration detention population is comprised of persons who have criminal records.

The timeframes for status resolution and removal pathways have also increased, meaning detainees are spending longer in held immigration detention. This issue has been exacerbated by the emergence of an 'intractable' caseload of individuals who fail the character test and face significant external removal barriers, including *non-refoulement* obligations.

Long-term detention s. 42(1) nd adversely impacts detainee mental health. Corresponding with the increase in average length of detention, is the increase of non-citizens detained who are in detention due to the cancellation or refusal of a visa under s 501. s. 47C(1) s. 47C(1) s. 47C(1) The Australian immigration detention environment is administrative and is not supported by legislative controls and levers to support the management of such issues. s. 47C(1) s. 47C(1)

3.1. Independent Detention Case Review

In March 2020, Robert Cornall AO delivered the IDCR to the Secretary and the Commissioner of the ABF which reviewed the Department's management of unlawful non-citizens held in IDFs. The IDCR sought to determine whether those held in immigration detention should remain in held detention, whether they have appropriate access to services, and, whether appropriate steps are being taken to resolve their immigration status. The IDCR provided commentary on what alternatives to held detention are available to the Department and how they may be explored.

The IDCR found that immigration detention is failing to meet the key principles that underpin immigration detention in Australia, that is:

- immigration status should be resolved as quickly as possible
- people should be managed in the community while their immigration status is being resolved unless they pose a risk to the community.

The IDCR acknowledged that departmental officers are doing their part to achieve timely outcomes. However, there are significant external factors beyond the control of the Department that impact efficiency and effectiveness. Factors include:

- the complexity and interaction of the Migration Act, applicable case law and Australia's international obligations
- delays in establishing identity or obtaining security clearance
- statutory barriers to visa applications and mandatory visa cancellations
- the need for ministerial intervention in cases where resolution (other than continuance of the status quo) depends on the Minister exercising discretionary statutory powers
- protracted merits and judicial review and appeals.

The IDCR's overall assessment was that every aspect of immigration status resolution needs to be sped up.

The IDCR found that there were three main health and welfare issues of concern which included long-term immigration detention damaging detainees' mental health, availability and use of illicit substances and the higher percentage of s 501 character cases in detention.

The IDCR considered the role of the Community Protection Assessment Tool[5] (CPAT) and determined that the risk assessment tool achieves its purpose in determining if community placement is suitable whilst status resolution is pursued. However, it found that the CPAT lacks the flexibility and comprehensiveness of an individual dynamic risk assessment that may assist in consideration of whether a detainee could be managed in an alternative setting to held detention.

The IDCR found that in most cases of long-term detainees, the Department could not resolve immigration status without ministerial intervention. It found that some long-term detainees have no pathway to a visa and face significant external barriers to removal. It follows that they could remain in detention indefinitely unless there is a change in Government policy or the facts of their case change. The IDCR suggested that unless there are concerns about issues such as identity, national security or danger to the Australian community, the person's situation may be regularised temporarily by the grant of a short-term visa allowing them to reside in the community while their immigration status is resolved.

The IDCR contained eight recommendations, recommendations 2 and 4 are relevant in the context of alternatives to held detention:

- Recommendation 2 – *That the Secretary and the Commissioner consider if section 501 detainees (or at least those with a low or medium risk assessment) could be issued with a short term pending removal visa with appropriate conditions if they cannot be removed reasonably quickly.*
- Recommendation 4 – *That the Department develop an individual dynamic risk assessment (in addition to the Community Protection Assessment Tool) which could result in a detainee being assessed as a low or medium risk and released into the community on a bridging visa subject to stringent conditions which would include ongoing supervision and could include electronic monitoring.*

3.2. External Scrutiny

The Department faces ongoing scrutiny with regard to people in held immigration detention. Findings from the Australian Red Cross, AHRC and the Commonwealth Ombudsman have consistently recommended that the Department continue to explore avenues to reduce the number of people in held immigration detention.

The AHRC delivered a report[6] in February 2021 into arbitrary detention and arbitrary interference with families. The basis of this report relates to 11 individual complaints made by unlawful non-citizens held in immigration detention whose visas were either refused or cancelled under s 501 and what steps the Department has taken to resolve each complainant's immigration status. The report found that some complainants were subject to arbitrary detention contrary to Article 9(1) of the International Covenant on Civil and Political Rights.

The AHRC report recommends a number of measures in response to their findings, including:

- greater use of Residence Determination or bridging visas with stricter conditions
- the use of electronic monitoring
- amending the CPAT so that a person refused or cancelled a visa under s 501 is not automatically recommended for held detention and amending the CPAT to consider a broader range of risk factors at the point of assessment

[5] The Community Protection Assessment Tool (CPAT) is described in detail in Section 5.2

[6] Australian Human Rights Commission, *Immigration detention following visa refusal or cancellation under section 501 of the Migration Act 1958 (Cth)* [2021] AusHRC 141 https://humanrights.gov.au/our-work/legal/publications/immigration-detention-following-visa-refusal-or-cancellation-under

- the appointment of an independent reviewer to examine the decision to detain, and provide a report on the ongoing community protection risk that the person poses.

Australia has been referred to the United Nations Working Group on Arbitrary Detention (WGAD) council twenty times since 13 September 2001. Australia has been delivered a negative opinion by the WGAD in the majority of council opinions since 2015, finding that the detainees' detention inside the IDN has been arbitrary.[7]

The Department has continued to receive scrutiny regarding the long-term detention cohort. Arbitrary detention and increasingly, the obligation to treat all persons deprived of their liberty with humanity and respect for their inherent dignity[8] has been a prevalent theme in findings. s. 47C(1)

s. 47C(1)

3.3. Current State - Detention and Status Resolution Pressures

Mandatory character cancellation settings have increased the number and ratio of high security placement risk individuals placed in IDFs. The majority of detainees in held immigration detention have a high community protection risk-rating under current risk assessment methodologies which limit the use of community based alternatives[9]. s. 47C(1)

s. 47C(1)

As at 31 December 2021, there were 626 people in held immigration detention for two years or more, approximately 41 per cent of the held detention population. This proportion of people in held immigration detention continues to increase compared to 443 people in held detention for two years or more on 1 June 2020 (30 per cent of the total population). The longest period in detention is over 14 years and 165 people have been in held detention in excess of five years.

Many of these detainees are persons who have been identified as engaging Australia's protection obligations who will not be able to be removed due to *non-refoulement* obligations and third country resettlement options are unlikely. External scrutiny of the long-term detained cohort highlights the heightened risk of arbitrary detention under international human rights law if continued detention is not justified as reasonable, necessary and proportionate on the basis of the individual's particular circumstances.

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

[8] Article 10 of the ICCPR) International Covenant on Civil and Political Rights.

[9] See Section 5.2

3.4. Increased risk – Long term detainees, external scrutiny and detainee wellbeing

Long-term detention is detrimental to detainee physical and mental wellbeing and leads to behavioural issues which increase the overall risk profile of IDFs[10]. s. 47C(1)

s. 47C(1)

Deteriorating mental health also prevents detainees in some cases from being able to make reasoned and considered decisions on their futures, such as decisions to assist with their removal, awaiting revocation offshore and departing voluntarily. The rising incidence of detainees with a dual diagnosis, such as both a mental health concern and drug addiction, adds further demands to an already stretched capacity to offer complex care.

3.4.1. Litigation risk

s. 42(1)

s. 47C(1)

Most recently, the majority of the High Court in *Commonwealth of Australia v AJL20* [2021] HCA 21(*AJL20 HCA*) found that the Department's failure to comply with the duty to remove as soon as reasonably practicable does not render a person's detention unlawful or enable a Court to order their release from detention. It instead provides a basis for an order of *mandamus*, requiring officers to fulfil the duty to remove the person as soon as reasonably practicable. The Federal Court had previously found that AJL20 was unlawfully detained because the Department had failed to make arrangements for his removal to Syria, which was the primary purpose of his detention.

s. 42(1)

s. 42(1) *non-refoulement* obligations. This policy position has since been enacted through the amendments to the

[10] I Verhülsdonk, M Shahab and M Molendijk, 'Prevalence of psychiatric disorders among refugees and migrants in immigration detention: systematic review with meta-analysis' (15 November 2021) Volume 7 Issue 6 *BJPsych Open*.

Migration Act 1958 made by the *Migration Amendment (Clarifying International Obligations for Removal) Act 2021.* s. 42(1)
s. 42(1)

Another recent example of the court's scrutiny of the detention of long term detainees is the matter of *AZC20 v Minister for Home Affairs* [2021] FCA 1234 where the Federal Court ordered a long-term detainee's detention to be at a specific residential address, and outside of the IDF environment, having found that the Secretary failed to perform the duty under s 198AD, in circumstances where it became reasonably practicable to take the applicant to Nauru eight years prior to the court's decision. s. 47C(1)
s. 47C(1)

3.5. Future state - Alternatives and Flexibility

The future detention program should provide infrastructure and services that are flexible, targeted and cohort specific. Services should contain enough flexibility to support the management of low and medium risk detainees both within the community and a detention facility. s. 47C(1)
s. 47C(1)
In order to support a cohort of low and medium risk detainees in the community, a strengthened compliance and monitoring framework will need to be implemented to promote status resolution outcomes.

Detention for short periods will also be required for unauthorised arrivals, for initial health, identity and security checks. Detention places should also be available for effecting involuntary removals for UNCs who do not comply with their status resolution outcome but do not pose a community protection risk.

As detainees spend longer in detention, enhanced services relating to an ageing cohort and increased complex health needs, including mental and physical health are also required. Services should be aimed at maximising the potential for positive post-release outcomes for individuals being managed under any alternative to held detention arrangements. This will mitigate risk to the community and encourage detainees to meaningfully engage with the Department to resolve their immigration status as quickly as possible.

Targeted services for detainees that address individual risk factors and health needs would lead to better outcomes and increased engagement by the detainee on their post-release pathway. Wellness programs would play an important role as a risk mitigation in facilitating good health and order whilst awaiting a status resolution outcome. A more flexible approach to applying individualised programs, particularly for the post-prison intake, will support the continuation of programs detainees may have accessed in prison (including s. 47C(1) drug and alcohol dependency and literacy programs). The support of targeted services that are future focussed and recognise the value of pro-social factors will assist in managing the behaviour of detainees. In turn, the detainee may maintain a higher level of resilience and be able to manage their immigration outcome, whether that is in the positive or negative.

Renewed contractual arrangements for the IDN will provide the opportunity to implement better aligned and nuanced dynamic risk assessment tools and incident reporting frameworks. Such opportunities would strengthen the status resolution continuum (particularly where there is a potential for community placement) and mechanisms for ongoing case reviews. Current detainee risk assessment tools are primarily static and do not consider dynamic risk factors such as a detainee engagement with services, community support and other pro-social factors.

4. International comparisons

Alternatives to detention are commonly used in immigration systems amongst our international partners. Each country takes a slightly different approach due to their relevant legislative and policy requirements. Research and consultations have shown that the issues that the Department is facing are relatively unique. Without the requirement of mandatory detention, the table below highlights that non-citizens in the UK, the USA and Canada spend considerably less time in detention overall.

Our international partners do not have a general policy that those who have committed offences are kept in held detention and are more likely to use alternatives to detention to manage that population in the community.

4.1. Canada

The Canadian Border Services Agency (CBSA) has authority to arrest and detain foreign nationals, including refugee claimants and permanent residents, within Canada where an officer has reasonable grounds to believe that they are inadmissible to Canada and constitute a "danger to the public," or are unlikely to appear for an examination or other proceeding.[11] A CBSA officer must review the reasons for detention within 48 hours. Officers may decide to release the individual with or without conditions depending on the circumstances.[12] According to the *Immigration and Refugee Protection Act* (IRPA), people are only detained when grounds for detention exist, and after all alternatives to detention have been considered. Several factors must be considered when deciding to detain, including the availability and potential use of alternatives to detention.[13]

The Canadian alternatives to detention program includes all conditions that CBSA can impose to reduce the risk posed by an individual in relation to the enforcement objectives of IRPA and the CBSA's mandate.[14] Prior to the launch of the expanded alternatives in 2018, the nationally available conditions were general conditions, deposits, guarantees and in-person reporting. The expanded program provides officers with an expanded set of tools and programs that enable them to manage individuals released into the community more effectively. This includes Community Case Management and Supervision (CCMS) and two new electronic monitoring (EM) tools.

CCMS provides released individuals with services in the community that reduce the risk they pose through case management and pro-social treatment options. CCMS is delivered by existing non-governmental organisations and community organisations contracted by the CBSA to provide these services. Designated CBSA officers or the Immigration and Refugee Board[15] determine which conditions are to be used and through a risk assessment process. The expanded program is a mechanism to protect the integrity of Canada's immigration detention system by ensuring individuals are treated fairly and in accordance with the overarching principle that detention is a measure of last resort, and the decision to detain or release an individual is based on the risk they present related to the objectives of the IRPA and the enforcement mandate of the CBSA.

[11] Canadian Immigration and Refugee Protection Act, section 55.
[12] Arrests, detentions and removals - Detentions (cbsa-asfc.gc.ca)
[13] National Immigration Detention Framework (cbsa-asfc.gc.ca)
[14] Canada Border Services Agency "ENF 34: Alternatives to Detention Program" https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf34-eng.pdf
[15] The Immigration and Refugee Board is Canada's independent administrative tribunal. It is responsible for making well-reasoned decisions on immigration and refugee matters, efficiently, fairly and in accordance with the law.

4.2. United Kingdom

The UK Home Office have "General Instructions" on the use of immigration detention, where policy on detention states that there is a presumption in favour of immigration bail over held detention, and require that alternatives to detention be used when possible. Detention is most usually appropriate:

- to effect removal
- initially to establish a person's identity or basis of claim
- where there is reason to believe that the person will fail to comply with any conditions attached to the grant of immigration bail.[16]

As well as the presumption in favour of immigration bail, special consideration must be given to family cases where it is proposed to detain one or more family member and the family includes children under the age of 18.

Cases concerning foreign national offenders are subject to the general policy, including the presumption in favour of immigration bail and the special consideration in cases involving children. The starting point in these cases remains that the person must be granted immigration bail unless the circumstances of the case require the use of detention. To protect the public from harm, the risk of re-offending or absconding must be weighed against the presumption in favour of immigration bail in cases where the deportation criteria are met. If detention is indicated, because of the higher likelihood of risk of absconding and harm to the public on release, it will normally be appropriate to detain as long as there is still a realistic prospect of removal within a reasonable timescale.[17]

There are three alternatives to detention in the UK: temporary admission, release on restrictions, or bail.

The distinction between these three options is that temporary admission and release on restrictions may be ordered prior to any detention being imposed, whereas bail is granted only after a person has been detained. As part of their release, foreign nationals granted immigration bail may be subject to a series of electronic monitoring conditions.

4.3. United States of America

The USA Immigration and Customs Enforcement (ICE) manages and oversees their immigration detention system, detaining individuals while their removal proceedings are ongoing or to effect their departure from the USA after a final order of removal from a federal immigration judge. ICE detainees are housed in a variety of facilities across the United States, including but not limited to ICE-owned-and-operated facilities; local, county or state facilities contracted through Intergovernmental Service Agreements, and contractor-owned-and-operated facilities.[18]

The ICE alternatives to detention program uses technology and other tools to manage undocumented individual's compliance with release conditions while their cases are pending or removal is deferred for other reasons. The ICE alternatives to detention program does not replace the need for detention facilities, but allows ICE to exercise increased supervision over a portion of those who are not detained.

There are varying degrees of supervision and monitoring options available. These include global positioning system (GPS) tracking devices, telephonic reporting (TR), or a smartphone application (SmartLINK) – and case management levels, which include frequency of office or home visits. ICE may adjust the level of supervision required as the level of compliance either increases or decreases.

[16] Detention General instructions (publishing.service.gov.uk)
[17] Ibid
[18] Immigration and Customs Enforcement Detention Management (https://www.ice.gov/detain/detention-management)

Alternatives to detention allows for closer monitoring of a portion of non-detained cases awaiting immigration court proceedings or final orders of removal. The level of supervision and technology assigned to participants is based on:

- current immigration status
- criminal history
- compliance history
- community or family ties
- being a caregiver or provider
- other humanitarian or medical conditions.[19]

[19] https://www.ice.gov/doclib/detention/atdInfographic.pdf

4.4. Detention statistics comparison

The following table provides a comparison of how detention and alternatives are used in Australia, Canada, the UK and USA. Due to how immigration statistics are reported and the timeframe of the data available, the table below does not provide a direct comparison. It is illustrative of the different use of detention in the four countries. The average length of time in detention in Australia is significantly higher than in Canada, the UK or the US. In Canada a period of detention over 99 days is considered long term. There is limited data available that compare differences between status resolution outcomes.

Table 1: International detention statistic comparisons

	Australia[20]	Canada[21]	United Kingdom[22]	United States of America[23]
Number in detention	**1,395** (at May 2022)	**130** (daily average reported in Q3 FY2020/21)	**1,033** (at Mar 2021)	**21,566** (at Sep 2021)
Detained for character reasons	**1241** (or **89%** of the current detention population have a criminal history)	**307** (In the first three quarters of 2020/21 or **25%** of the total) (No breakdown of the current detention population is available.)	Not available	**4,553** (or **21%** are convicted criminals)
Average length of time in detention	**843** days	**29.4 days** (Median length of detention 8 days)	**97%** of detainees are released within 6 months	**45.7** days
Long term detention	**570** detained over 2 years	**59** over 99 days	**5** people over 24 months	Not available
Monitored through Alternatives to Detention	**569** (in the community under residence determination)[24]	Not available	**10,209** monitored on immigration bail	**136,026** (at Sep 2021)

More information on international models is provided in Sections 6, 7 and 8 of this report.

[20] Long Term Detention Overview – Ministerial submission (MS22-001225)
[21] Canada Border Services Agency "Quarterly detention statistics: Third quarter (Q3) fiscal year 2020 to 2021" https://www.cbsa-asfc.gc.ca/security-securite/detent/qstat-2020-2021-eng.html (accessed 30 November 2021)
[22] U.K Home Office, "Immigration Statistics year ending March 2021, Detention – Summary Tables" https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/987793/detention-summary-mar-2021-tables.ods (accessed 30 November 2021)
[23] U.S. Immigration and Customs Enforcement, "ICE Detention Statistics" for Fiscal Year 2020/21, https://www.ice.gov/doclib/detention/FY21_detentionStats11122021.xlsx (accessed 30 November 2021)
[24] This does not include persons who are detained and released on Bridging E Visas

5. Detainee risk assessment

5.1. Evolving risk – the Immigration Detention Network

The detention population has transitioned from a predominately IMA based cohort, to one where the majority have criminal backgrounds. In consideration of that change, risk settings and frameworks have been greatly impacted. Over 85 per cent of detainees in the IDN now have a criminal history. This group are complex and challenging to manage in an administrative setting. The criminal cohort includes detainees with a range of criminal convictions, from relatively low-level offending to serious convictions relating to violent, sexual and drug related offences.

The ABF balances the detention population and security risks across various facilities around Australia. The ability to facilitate detainee security placement and population rebalancing across the IDN has been curtailed due to COVID-19 restrictions, including border closure. s. 47C(1)

s. 47C(1)

To better understand risk assessments used in correctional settings, significant consultation has taken place with state-based correctional stakeholders from Victoria, New South Wales, Queensland and the Australian Capital Territory. Discussions held focused on risk settings and the application of various detainee risk assessment tools. Whilst it is acknowledged that the correctional and detention environments differ in many respects, there are a number of key similarities, specifically the detainee population and cohort composition.

s. 33(b)

5.1.1. Dynamic risk assessment

Dynamic risk assessment tools are used in all corrective services departments that we spoke to in Australia. In comparison to static risk assessment tools, which largely use historical and unchangeable data, a dynamic risk assessment tool takes into account contemporary information. In this way, dynamic tools are able to provide a more complete and nuanced assessment of risk, and enables an individual's risk rating to be adjusted based on changeable factors such as positive engagement, behaviour, rehabilitation efforts and peer association.

Research indicates that a dynamic risk assessment tool used to measure the likelihood of recidivism (or community protection risk) takes into account eight main factors. These are generally described as:

- History of offending – whether or not a person has multiple offences or just a single instance, the seriousness of the crime.
- Family – strong family links are considered a protective factor, while the absence of family, or estrangement is considered a risk factor.
- Use of substances – evidence strongly points to the use of illegal substances, or the misuse of legal prescription medicines as a predictive indicator of risk.
- Peers – separate from family, this factor relates to the type of people the person has within their social group.
- Leisure and recreation – having a consistent structure that is full of healthy leisure and recreational activities are seen as a protective risk factor, where idleness is a risk factor.

- Antisocial attitudes – a person's attitude to justice and law.
- Personality and behaviours – this factor measures how a person behaves at their core across a range of settings and with a range of people.
- Education and employment – engagement in education and employment is a protective factor, those not engaged in a positive routine have a higher risk factor.

s. 47B(a)
s. 47B(a) Appropriate resourcing and staff training is a vital component to the holistic risk process.

5.1.2. Level of Service Inventory – Revised (LSI-R)

s. 47B(a)

s. 47B(a) An advantage to this tool is that it can be completed by non-clinical staff, although it was still noted that training was important, as officers have a tendency to add their own bias into the scoring when using the tool.

It is important to note that the primary purpose of this risk tool within correctional facilities is to align services to the prisoner with their rehabilitation needs. While the risk assessment tool does play a role in the parole system it is not its primary purpose.

s. 47B(a)

A further issue identified with actuarial tools is the effectiveness in managing the diverse cultural cohort that is held in immigration detention. Most of these tools were developed for a North American prison population and fail to take into account cultural differences that may be relevant. Any actuarial tool that was deployed for use in the detention network would need to take this into account in development and training of staff.

5.1.3. Structured Decision Making Tools

Structured decision making (also known as Structured Professional Judgement tools) build on the actuarial tools to provide a more complete assessment of risk for certain higher risk offenders. These tools identify factors to consider in assessing risk (usually based on prior research and/or theory). Unlike the actuarial tools, these items are not scored and instead it involves a discretionary assessment reliant on evidence-based guidelines to systematise the exercise of that discretion.

A common example of this type of tool that is used in Australian correction environments is the Historical Clinical Risk Management-20 (HCR-20). The HCR-20 is utilised internationally to assess an individual's risk of violence. The Department uses the Violent Extremist Risk Assessment – Version 2 (VERA-2R) structured decision making tool. It is used to assess the risk of extremist violence for social cohesion. Structured decision making tools make assessments in consideration of specific offences such as sexually based crimes, fire setting and terrorism etc.

Given the discretion in this type of risk tool, assessors are required to hold a higher level of qualification, generally in social work, psychology or other related fields. Such tools are licensed to prisons and are highly regulated (facilitators must demonstrate their credentials to use the tool and obtain a license). They allow clinicians to make informed decisions concerning recidivism and primarily focus on general risk (probability) and specific types of offenses.

These types of tools can only be purchased if the relevant qualifications are held. Generally this would mean holding a degree in psychology with post-graduate training in psychological tests.

5.1.4. Approach of the CBSA

s. 33(b)

5.2. Detainee risk assessment tools utilised by the Department

A number of risk assessment tools have been utilised to manage the detention cohort. Tools are used by various teams and stakeholders for distinct purposes (objectives) and in some cases they interrelate. However, ratings produced do not uniformly represent consistency and/or continuity of an individual's risk across the status resolution continuum. All of the tools described below can be considered as mostly static tools.

- **Community Protection Assessment Tool (CPAT):** The CPAT is a decision support tool to assist a Status Resolution Officer (SRO) assess which of four placement options is appropriate for an individual while status resolution processes are being undertaken. The CPAT recommendation is based on an assessment of low, medium and high factors and produces two placement outcomes: a low risk assessment is a Tier 1 decision resulting in a bridging visa or Residence Determination; or a Tier 2, Tier 3 or Tier 4 decision all of which result in some form of held immigration detention.
  - s. 47E(d)

    Following s 501 cancellation, a placement other than held detention is only possible (irrespective of a CPAT recommendation) if a Minister uses ministerial intervention powers to grant a bridging visa or to place a person in a Residence Determination placement. s. 47E(d)

s. 47E(d)

s. 47E(d)

s. 47E(d)

- s. 47E(d)

5.3. The Griffith University Report: Improving risk assessment for immigration detainees

In 2018, the ABF contracted Griffith University to undertake a project (the Project) targeted at improving the risk assessment process for immigration detainees. s. 47E(d)
s. 47E(d)
s. 47E(d) The first of three stages of the Project was preparing a report based on the analysis of administrative data provided by the ABF. In late 2019, Griffith University provided its final report (the Report) to the ABF. s. 47E(d)

s. 47E(d)

s. 47C(1)

5.4. Risk level of current detention population

s. 47E(d)

s. 47E(d)

- **Case example 1:** Long term IMA detainee who has been in held detention for s. 47F(1) The SRAT provides a score of 'high' for this detainee. The detainee has been involved in s. 47F(1) incidents in the time of his detention, none of them are noted as being serious or recent. The SRAT justifies the high rating based on a significant prison sentence and an assessment that the person is 'likely' to have a 'gaol mentality'. It is acknowledged that the detainee has a violent crime s. 47F(1) reflected in their criminal history. However, in reference to the detainee's primary offence, at the point of sentencing, the judge noted a range of extenuating factors that led to the criminal behaviour. These are dynamic factors that the SRAT doesn't account for or acknowledge. Further, during and post custodial incarceration, the detainee has not demonstrated a serious pattern of violent behaviour or incidents. The assessment does not take into account the lack of recent incidents in detention, and does not take into account his noted good behaviour in immigration detention.
- **Case example 2:** The SRAT example evidences ABF having to 'trigger' Serco to reassess a questionable SRAT rating. The long term detainee was rated as 'high' but has been involved in minimal incidents over a prolonged period of time. Further, the detainee has no apparent risk factors that would justify or realistically indicate them being threat to security. In consideration of the detainee's stated criminal history, all referenced offences are non-violent and concern fraud s. 47F(1) and narcotic distribution s. 47F(1) The ABF noted the detainee was compliant and since s. 47F(1) had not been involved in a single adverse incident. Further, when analysed, previous incident history for the detainee did not warrant or justify a 'high' risk rating. As such, despite Serco reviewing the detainee's SRAT every 28 days, ABF had to trigger a reassessment and subsequently the detainee's risk rating was overridden. This raises concerns as to Serco's capacity to assess individual detainee risk without the assistance of a psychometrically valid tool.

5.5. Future state - Strategic risk thinking

The detention environment has changed significantly since 2014 and current challenges are expected to continue and become more prominent. With the evolution of risk, there should be an evolution of how risk is managed. The predominant detention cohort's pathway to detention follows visa cancellation due to character concerns through mandatory cancellation policy. This is driving the composition and numbers in detention. The IDN is currently constrained with overpopulation and capacity issues. Additionally, detainees are spending longer periods of time in detention. These issues highlight a strategic need a more nuanced approach to detainee risk and alternative placement options.

The application of revised risk assessment processes would ensure that placement decisions are better informed and status resolution outcomes are promoted and achieved. It would provide a degree of certainty that only those detainees who are considered the highest risk to the community are in detention and litigation risk may be mitigated. Further, eternal scrutiny criticism concerning prolonged detention, particularly with regard to the intractable caseload, may be alleviated.

Public safety and the minimisation of risk to the community is pivotal to determine detainee eligibility for alternatives to held detention. The Department would benefit from a risk tool that has been developed and validated specifically for the migration context.

Ideally, the most effective way to develop an appropriate risk framework would be the appointment of appropriate experts to conduct an analysis and assessment of current risk assessment tools across the status resolution continuum. This analysis would then lead into the creation of a revised risk tool(s) that would be consistent across the continuum and provide an accurate and nuanced assessment of the person's risk to the community. The alignment of individual risk tools would promote not only consistency but it would ensure individual risk is strategically assessed. This would involve broad analysis, inclusive of not only historical information but also valid contemporary data and dynamic factors.

Strong and defendable risk practices are foundational in support of a safe and secure operational environment. A strong risk framework will also support policy decisions and objectives, and allow the Department to provide the Minister with the best possible advice in support of them exercising ministerial intervention powers and minimising community protection risk. Referenced practices would also support departmental decision-making and case prioritisation activity.

5.5.1. Risk assessment framework and principles

The below projected future state risk assessment framework principles will underpin a future risk assessment framework for the Status Resolution Continuum. Prior to the establishment of a revised framework, further analysis must be undertaken to highlight and promote risk tool alignment. It is acknowledged that various tools have specific and defined purposes however, there is substantial scope concerning this work to enhance data-based and narrative based interaction-between tools.

The risk assessment framework:

- Aligns with and supports Government policy and objectives (legislative or otherwise).
- Aligns with the Department's Risk Management Framework and supports management of risks within the Department's appetite and tolerances.
- Promotes collaborative efforts among respective stakeholders to ensure alignment of assessment activity.
  - Ensures information and data inputs are not unnecessarily repeated and replicated across various lines of effort.
  - Common data inputs and information sources, including existing assessments (undertaken internally and external to the Department) must be made accessible to all relevant line areas via a central repository.
- Supports the placement of individuals into the most appropriate setting based on risk ratings and needs.
- Provides a holistic view of an individual's risk ratings across all categories, inclusive of security, health, transport and escort, and placement (either in the community or within the IDN) risks across the status resolution continuum.
- Supports and ensures public safety, minimisation of risk to the community and to Department and service provider staff who work in the IDN.
- Enables risk continuity supported by the alignment of individual risk assessment tools utilised.
  - Separate risk assessment tools may exist within the framework independently but risk outcomes must align and not be contradictory.

Risk assessments:

- Support transparent and defensible decisions to be made informed by relative risks.
- Are framed within a migration specific context, inclusive of input relating to an individual's immigration history and current status within the status resolution continuum.
- Include dynamic risk inputs and prosocial features to support a more nuanced assessment of risk.

  - Input includes historic and contemporary information.
  - Input goes beyond an individual's historic criminal antecedents.
  - Where services are delivered by contracted service providers, risk inputs are not linked to financial payments (in order to ensure the integrity of the risk assessment).

- Are academically and scientifically informed.

  – Clinical and 'expert' observations must inform risk outcomes.
  – Risk rating definitions are clearly identifiable and understood.

- Are undertaken by appropriately trained staff or qualified practitioners.
- Are subject to rigorous quality management assurance processes.

6. Independent panel

6.1. Background

The IDCR and the AHRC report into immigration detention following visa refusal or cancellation under s 501 both note that the Australian parole system provides a good model of how potential risks posed by individuals with a criminal history could be managed. There are differences between the objective of the parole system and the function an independent panel would perform in the migration context. Parole or the conditional release from prison is intended to balance the priorities of rehabilitating and reintegrating an offender with the safety of the community. Parole relates exclusively to criminal detention which differs from immigration detention, which is administrative and non-punitive. In the immigration context, an individual cancelled under s 501 is on a removal pathway and is not assumed to require reintegration into the Australian community.

Despite the difference in objective, the parole decision-making framework and conditions imposed as part of parole are useful to consider how to manage any risk, real or perceived, that a detainee may pose to the community. As part of exploring options for alternatives to held detention, states and territories were consulted on their practices relating to parole systems. This exploration has focussed on how findings could be adopted in the migration context through an independent panel. In the migration context, an independent panel's role could use similar methodology for assessing an individual's risk to the community and provide a recommendation to the Department which would support submissions to the Minister. Similar systems are in use amongst our international partners, in particular the model adopted by the CBSA.

6.2. Parole models in Australia

There are nine different legislative regimes for sentencing and parole in Australia: one federal system and eight states and territories. Parole is administered differently across each state, within each state's equivalent of a Department of Justice, encompassing Community Corrections. The administration of parole is very similar and operates under the same general principles across jurisdictions.

Jurisdictions consulted as part of the exploration of alternatives to held detention all spoke of the importance of a case management approach to offender management. The case management approach provides individualised service delivery based on comprehensive assessment of risk and need that is used to develop a case plan. This approach is underpinned by the Risk Needs Responsivity (RNR) model which is the most widely used and evidence-based model of offender management:

- Risk principle:
  - Assess criminogenic needs (such as pro-criminal thinking, substance use, family problems) and target them in treatment. Match the level of service to the offender's risk to re-offend. The highest risk individuals receive the most intensive programming.
- Need principle:
  - The programming targets the individual's criminogenic needs. The variable risk factors that may be driving their offending, such as substance use treatment for an offender with substance use problems.

- Responsivity principle:
  - Individual characteristics that affect treatment response are taken into account when determining treatment strategy. The offender's ability to learn from a rehabilitative intervention is maximised by providing cognitive behavioural treatment and tailoring the intervention to the learning style, age, culture/ethnicity, motivation, abilities and strengths of the offender. [25]

6.3. International approaches

6.3.1. Canada

Canada's immigration detention regime is built on the principle that detention should be used as a last resort, when necessary and proportionate, taking alternatives to detention into consideration. In 2016 with the National Immigration Detention Framework, the Canadian government committed itself to expanding alternatives to detention by expanding community programs and voice reporting and other forms of electronic supervision.[26]

People facing criminal inadmissibility and awaiting deportation can be placed in one of the three dedicated immigration detention centres or in a provincial jail cell rented out and paid for by the CBSA for the purpose of immigration detention. They can also be released into the community until the bureaucratic steps are fulfilled to enforce the removal order. Alternatively an Immigration and Refugee Board (IRB) commissioner who is appointed by the Governor in Council can release them pending deportation after evaluating that they do not constitute a flight risk or a danger to the public, or by judging that these jeopardies are manageable by the state via conditions of release.[27] An officer may impose conditions, require a deposit of money, or direct that a person participate in a third party risk management program.

Once a non-citizen has been detained under the Immigration and Refugee Protection Act for more than 48 hours, the Immigration Division of the IRB has sole and exclusive jurisdiction under the statute to maintain detention or order the detainee's release. To release a person into the community, members must assess whether the person represents a "present and future danger to the public". In determining future danger, the probability of danger has to be determined from the circumstances of each case.[28] Factors assessed in determining danger to public include:[29]

- assessment related to present or future danger based on prior history
- positive danger opinion from the Minister
- association with criminal organisations, including people smuggling and human trafficking (membership is not required, just association; a criminal record is not required either)
- convictions in Canada for offences involving violence or drug trafficking
- charges or convictions outside Canada involving violence or drug trafficking

[25] D Draw bridge, 'Risk–need–responsivity: Evaluating need to service matching with reach, effectiveness, adoption, implementation, maintenance' (2020) 39(1) *Behavioral Sciences & the Law*.
[26] Mary Bosworth, 'Alternatives to Immigration Detention: A Literature Review' (2018) *Criminal Justice, Borders and Citizenship*.
[27] S Benslimane and D Moffette, 'The Double Punishment of Criminal Inadmissibility for Immigrants' (2019) 28 *Journal of Prisoners on Prisons*.
[28] Chairperson Guideline 2: Detention (April 2021) Immigration and Refugee Board of Canada <https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDir02.aspx>.
[29] Canada Border Services Agency "ENF 34: Alternatives to Detention Program" https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf34-eng.pdf

- age of convictions must be considered, as the more time that has passed since the convictions the lesser the risk, taking into account efforts by the individual to rehabilitate, including any associated factors, such as substance addiction (more weight should be given to this factor if the individual has been living in the community as opposed to in detention, where there is limited opportunity to re-offend)
- parole and bail decisions are good references when evaluating the level of danger (both decisions take danger into account but use different criteria)
- nature of the risk posed, for example, if an individual presents a very likely risk of serious harm to the public, the risk should be significantly reduced by the conditions being imposed. If the risk posed to the public is based on predictive factors and is more general in nature, the imposed conditions should reasonably be expected to reduce the general risk posed.

6.3.2. United Kingdom

The United Kingdom (UK) has adopted wide-ranging alternatives to detention.[30] The Secretary of State decides whether secure detention is warranted on the basis of risk of harm to the public and risk of absconding. The power to grant immigration bail is available to the Secretary of State (or delegate). The power to grant immigration bail is available to the First-Tier Tribunal if the person is already detained. The tribunal has no power to grant immigration bail if the person liable to detention is not detained. If detained, a foreign national may apply to the First-Tier Tribunal for bail. If bail is granted, its terms will be tailored by the tribunal around the conditions of any parole licence.[31]

6.4. Purpose of an independent panel

In Australia's immigration detention context, an independent panel could assess a range of information and provide advice to the Department on mitigating risks of an individual (be it community protection or risk of absconding) with strengthened conditions and monitoring, and based on dynamic risk factors. This is not a primary assessment that is currently undertaken within departmental processes whether in Ministerial Intervention (MI) processes or within the decision to grant a bridging visa. These processes currently consider information such as criminal history and behaviour in detention, but is not well-placed to assess a range of information to weigh up the detainee's overall risk level and the extent to which risks could be mitigated.

The independent panel would bring together external expertise from a number of different disciplines, such as criminal justice, psychology and sociology, giving the panel the ability to make robust, defensible, evidence-based advice that would stand up to external scrutiny.

The independent panel role would be similar to that performed by parole boards in the criminal context. Where the panel members agree that individuals would be likely to comply with conditions and the risk to the community can be effectively managed, they would provide advice to the Department that would then inform internal decisions and form part of a MI submission for the Minister to consider. s. 47C(1)

s. 47C(1)

[30] Mary Bosworth, 'Alternatives to Immigration Detention: A Literature Review' (2018) *Criminal Justice, Borders and Citizenship*.

[31] *Foreign National Prisoners Guidance* (November 2020) the parole Board <Foreign National Prisoner Guidance - November 2020.pdf (publishing.service.gov.uk)>.

6.5. Operating model of an independent panel

If the Department were to establish an independent panel to consider suitability of low to medium risk detainees for alternatives to held detention, an operating model would need to be developed and it would need resourcing allocated to support its ongoing management. The triggers for which suitable detainees for referral to the independent panel would need to be considered, this could include factors such as:

- estimated timeframe to resolve status
- barriers to removal
- risk rating using an appropriate assessment method (such as a dynamic risk assessment tool, if developed for this purpose)
- behaviour in the detention environment
- age
- medical circumstances.

An information package of all relevant and available details of the detainee's history and circumstances would be prepared. A report of this nature may build on information compiled for existing MI processes, but could include information of a dynamic nature that is not readily available within the current environment. The review by the independent panel would most likely be conducted on the information available without holding a hearing. To afford procedural fairness, detainees would need to be invited to comment on adverse information. A potential operating model for an independent panel is described below.

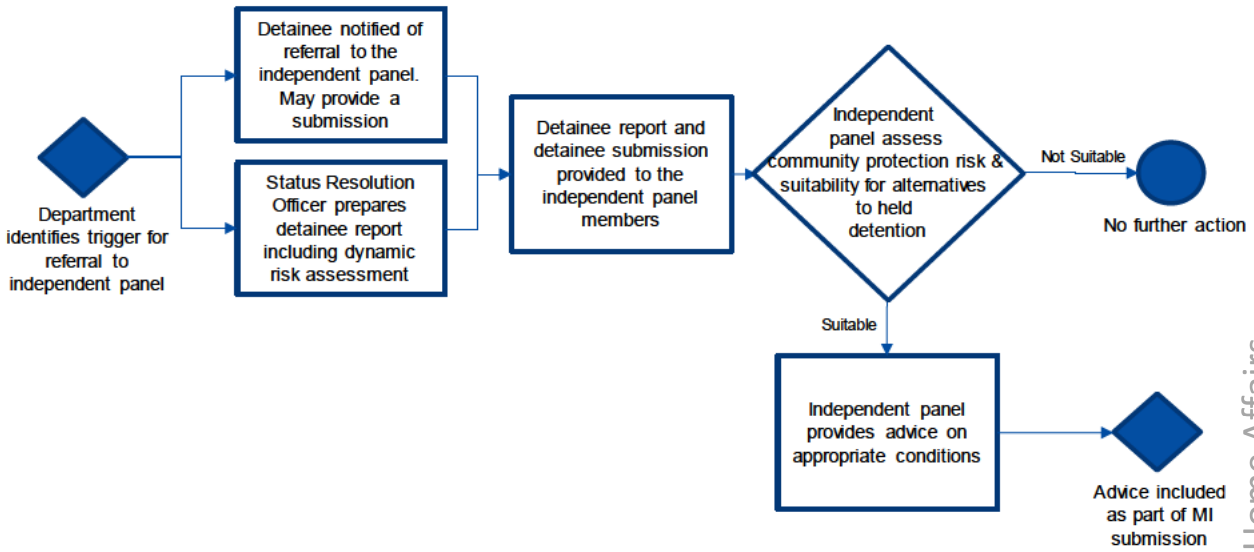


Figure 1: Indicative operating model of the independent panel

Consideration would need to be given to how the independent panel would be established, membership and selection process, funding and secretariat support.

An independent panel may have panel members sit on a rotational or sessional basis and dependent on the circumstances of the individual (e.g. mental health considerations would require a psychiatrist on the panel sesssion). Cohort based processing could be used when referring cases for consideration to the independent panel.

6.6. Skills and qualifications of panellists

Parole boards commonly have a judicial membership, comprised of former judges, magistrates and occasionally senior lawyers, correctional services membership, comprised of officers from within the relevant

correctional authorities, and a community membership, comprising of forensic psychologists,[32] and others experienced in matters associated with victims of crime, sociology, criminology or penology.[33]

Judicial members give decisions authority while specialist, non-legally trained, members provide greater legitimacy to the decision-making in technical or complex areas, or where particular understanding of the context is important.[34]

Skill sets associated with successful performance of the key functions of parole authorities include:[35]

- ability to lead and achieve consensus with regard to the vision, mission, goals, and objectives
- knowledge about objective risk and need-assessment instruments
- knowledge about the jurisdictional demographics (e.g. educational opportunities, poverty, employment, housing, health services, substance abuse, gangs, and other protective and aggravating factors) and their effect on recidivism outcomes.

Given the different purposes of parole boards and the independent panel, replicating the composition of parole boards may not be appropriate. Consideration will need to be given to the appropriate membership of the independent panel in order to provide risk advice and recommendations in the context of administrative detention.

It would be important to have medical professionals on an independent panel, or the ability for medical professionals to provide medical advice, for input on cases where the individual suffers from a medical condition, or where an aged detainee may be deemed to pose minimal recidivism risk. Medical experts would also be useful for discussions of compassionate release where detainees have a terminal prognosis and might be given the opportunity to die in the community.[36] There would be opportunities to leverage existing panels for clinicians such as through the Department's Clinical Advice and Support contract.

To maintain its independence, it is not recommended that any departmental staff sit on the panel. The Department's views will be provided in the form of a submission similar to a report corrections officer may prepare for parole considerations including the dynamic risk assessment to the panel.

[32] The increase in training and research in forensic psychology and the development of specialist techniques and tools for court assessments have made it a specialist activity that is beyond the competence of generalist psychologists in A Allan et al 'Psychologists as expert witnesses in courts and tribunals' (2010) 32 *InPsych*.
[33] Adult Parole Board Victoria <https://www.adultparoleboard.vic.gov.au/frequently-asked-questions-faqs#2> and Parole Board of Tasmania <https://www.justice.tas.gov.au/__data/assets/pdf_file/0012/440301/Parole-Board-Information-Pack-for-applicants.pdf>.
[34] R Creyke, 'Tribunals 'Carving out the philosophy of their existence' the challenge or the 21st century' (2012) 71 *Australian Institute of Administrative Law* <http://www.austlii.edu.au/au/journals/AIAdminLawF/2012/22.pdf>.
[35] M Paparozzi et al, 'The Giant That Never Woke Parole Authorities as the Lynchpin to Evidence-Based Practices and Prisoner Reentry' 2009 25:4 *Journal of Contemporary Criminal Justice* 397.
[36] G Pro et al, 'Medical Parole and Aging Prisoners: A Qualitative Study 2017 23(2) *Journal of Correctional Health Care* 162.

7. Stricter conditions

External stakeholders noted that the relative success of parole or alternatives to detention can be linked to appropriate post-release support services. This support, which is enforced through the use of directions or conditions, seeks to address the behaviour that is linked to the persons offending. Conditions are set with the aim of preventing that behaviour. A simple example of this is a person who has identified that abuse of drugs lead to their offending, conditions would be imposed that require the person to continue drug rehabilitation courses and not associate with those people in their lives who are drug takers. An independent panel would be well-placed to determine conditions that would be appropriate to individual detainees, taking into account a broad range of information.

Ensuring compliance with these conditions and managing post-release support would require the implementation of a strengthened compliance and monitoring framework. This monitoring framework serves two purposes, firstly, continuing engagement with the detainee once released and moving the person towards a status resolution outcome, secondly, early identification of when they have broken that engagement and/or are no longer actively contributing to achieving a suitable outcome.

The purpose of post-release support and monitoring would be to ensure that the individual is meeting the conditions set out in their case plan (rather than social support). An assessment needs to be undertaken of whether such a service would be able to be provided through an independent body or by the Detention Service Provider in terms of post release support and monitoring as a continuation of services provided within held detention.

7.1. Case plan for detainees recommended for visa grant

An important aspect of the role of the independent panel will be to advise what conditions should be attached to either the visa granted for the detainee's release, or the conditions of their residence determination. The independent panel will weigh up all relevant information and would suggest visa conditions to be imposed, as well as an individualised post-release plan that would include conditions that typically sit outside those contained in the *Migration Regulations 1994,* where it is warranted based on the risk of the individual.

S. 47C(1)

This type of plan could not be accommodated within the current conditions that are applicable to bridging visas and residence determinations. It is likely that new conditions would be required to provide the Department with the ability to establish these types of conditions. An individualised release plan would provide a greater risk offset than generic conditions. Conditions with increased risk offset are intended to reduce the specific risk to the community posed by an individual and address specific negative behaviours of the individual while ensuring that any limitations on human rights are necessary, reasonable, and proportionate to the legitimate objective of protecting the Australian community. The figure below depicts the level of risk offset by imposed conditions.

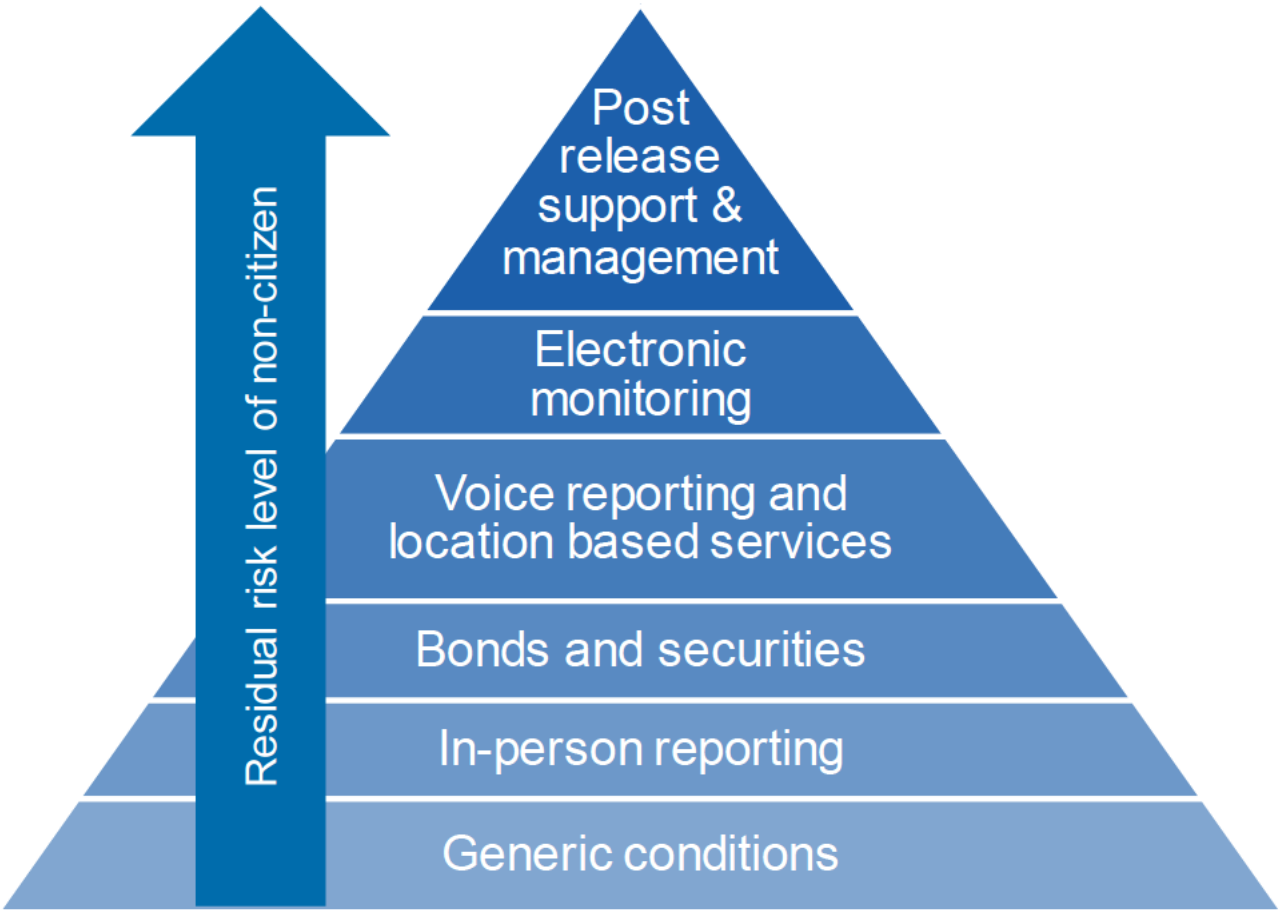


Figure 2: ***Level of risk offset provided by alternative to held detention options***

7.2. Use of securities

Securities are currently available to be used by SROs when considering the grant of a bridging visa, however are not currently widely used due to administrative difficulties and concerns as to how effective they are in securing compliance. Securities (or bonds) are used in the migration context internationally, and are considered to be a good way to secure a person's compliance. Further consideration will be given to the operational policy around use of securities.

7.2.1. Canada

A key difference in the approach to bonds in Canada is that the detainee is not able to pay the bond themselves and instead a person known to them must nominate to be a bondsperson.

A person who puts themselves forward as a bondsperson must meet a set of criteria which are assessed by the IRB when making a decision on a person's release from detention, this includes an assessment on whether the person is deemed suitable to assist the non-citizen meeting the conditions of their release. A bondsperson must explain to the IRB where the money for the bond has come from, and it cannot be funds from the person in detention.[37] Typically a condition of release is that the detainee must reside with the bondsperson. The bondsperson is also legally obligated to notify CBSA if the person is no longer meeting the conditions of their release, and provide information on their whereabouts if the person absconds.

[37] https://irb.gc.ca/en/information-sheets/Pages/ib-ic.aspx

Bonds can be applied in Canada either by the detaining officer, in which case the sum of the bond is typically in the range of $1,000 - $5,000, or can be imposed by the IRB in which case the sum is often much higher, with some as much as $50,000.

CBSA noted that they use bonds extensively with their alternatives to detention programs and it is an effective way of securing compliance. They noted that the bondsperson is an important part of this process, as they are obligated to ensure that the person continues to comply with relevant conditions, which assists with the person remaining engaged with CBSA. Importantly, where a person absconds, the bondsperson is legally obligated to provide any information about their whereabouts (if they do provide information that leads to the person's arrest they are likely to have their bond refunded) and this helps significantly with compliance efforts.

General conditions that are routinely imposed by CBSA are: keep the CBSA updated with a current address, report criminal charges and convictions, co-operate with obtaining an identity or travel document, keep the peace and maintain good conduct and/or not violate any Act of Parliament in Canada, do not work or study in Canada without authorization, surrender passport or travel document, cooperate with removal efforts, report for making removal arrangements, and report as directed. Beyond these general conditions, alternatives to detention include Community Programming and Electronic Supervision.

Community Programming allows individuals to live in the community supported by family/kin or by a service provider who specialises in community services. Program options can be used alone or together and include deposits and guarantees, in-person reporting, and Community Case Management and Supervision. The intensity of conditions are intended to match the person's risk to Canada's national security and public safety, such that higher risk individuals should receive more intensive conditions.

7.2.2. United Kingdom

The UK's immigration bail scheme is designed to facilitate the release of persons in immigration detention awaiting the outcome of an application for a visa or removal from the UK. The power to grant immigration bail is conferred on both the Secretary of State (who has more power and flexibility) and the First-Tier Tribunal (part of the courts and tribunals service of the UK).

Bail can be imposed even where there is no realistic prospect of the person's removal taking place within a reasonable time (i.e. if they are stateless). Of thousands of bail hearings each year, more than half are granted, accounting for around a quarter of all releases from detention.[38] The judiciary of the First-Tier Tribunal comprises tribunal judges and other members. Tribunal judges are legally qualified and responsible for ensuring the individual tribunal hearings they chair make the correct decision in law. Tribunal members are the specialist non-legal members of the panel. New judges and members are appointed by the Judicial Appointments Commission (an independent commission that selects candidates for judicial office in courts and tribunals).

When exercising the power to grant immigration bail, the Tribunal must have regard to the following:

- the likelihood of the person failing to comply with a bail condition
- whether the person has been convicted of an offence
- the likelihood of a person committing an offence while on immigration bail
- the likelihood of a person's presence in the UK while on immigration bail causing a danger to public health or being a threat to the maintenance of public order
- whether the person's detention is necessary in that person's interests or for the protection of any other person

[38] bid.

- such other matters as the Tribunal thinks relevant.[39]

Detainees are more likely to be granted bail if they can demonstrate that they have a place to stay and that they have at least one 'Financial Condition Supporter' who will attend the necessary hearings on their behalf and guarantee payment of any financial penalties on their behalf if bail conditions are not complied with.

[39] *Guidance on Immigration Bail for Judges of the First-tier Tribunal* (15 January 2018) Tribunals Judiciary <Guidance on Immigration Bail for Judges of the First-tier Tribunal: Immigration and Asylum Chamber (judiciary.uk)>.

8. Electronic monitoring

8.1. Background

The IDCR highlighted the use of electronic monitoring (EM) schemes in other jurisdictions, such as Canada and the United Kingdom, as a method to reduce the community risk posed by a detainee being released into the community.

The IDCR recommended the Department develop an individual dynamic risk assessment which could result in detainees that are assessed as low or medium risk being managed in the community on a bridging visa. The validity of the visa would be subject to stringent conditions and ongoing supervision, including EM.

8.2. Use of electronic monitoring internationally

8.2.1. Canada

Following recommendations from the United Nations High Commission for Refugees (UNHCR), CBSA commenced the Alternatives to Detention (ATD) program, which provides officers with an expanded set of tools and programs that will enable them to more effectively manage their client-base while achieving balanced enforcement outcomes. s. 33(b)

s. 33(b)

The current monitoring programs under the ATD that relate to EM:

The Voice Reporting (VR) Program

For those who agree to participate in the VR program, participants provide voice samples which are stored and compared / matched against future voice reporting events. Once enrolled in VR, individuals are required to call at regular intervals, at which time their voice is compared to the recordings obtained at the time of VR enrolment.

The types of personal information collected for VR includes name, address, contact details, and other related information which is most often collected by Immigration Refugees and Citizenship Canada (IRCC) or CBSA during the immigration or refugee application stage. However, the new VR solution also collects a participant's voice recording and, for those ordered to have VR with location based services, Global Positioning System (GPS) coordinates will be collected in specific situations.

To collect the GPS coordinates, the CBSA has entered into a contract with a service provider who will collect the GPS coordinates from cellular providers. The voice recording and GPS coordinates are collected and stored in the voice reporting system, as well as in the existing immigration enforcement case management system. s. 33(b)

s. 33(b)

The Electronic Monitoring Program

In July 2018, along with the other elements of the ATD Program, the CBSA deployed an EM Pilot Project in the Greater Toronto Area Region (GTAR). This is intended to facilitate the release of selected high-risk individuals. The EM system is built upon real-time location data collected and analysed in a central facility and reported to regional staff to investigate for enforcement purposes as appropriate. The CBSA is utilising the services of Correctional Service of Canada (CSC), who currently maintains a successful, national EM program. The CBSA and CSC have signed a Memorandum of Understanding (MOU) to address the details related to policies, procedures, privacy, information sharing and financial arrangements.

s. 33(b)

8.2.2. United Kingdom

As part of the UK immigration bail scheme foreign nationals granted immigration bail, may be directed to comply with a series of EM conditions including:

- reporting at a specific location at specified times
- ensuring absence from certain locations at specified times.

Whilst on immigration bail, participants must:

- wear an electronic monitoring device and cooperate with service providers to allow for the installation of electronic monitoring equipment their home address
- report to authorities at agreed intervals.

EM is more likely to be appropriate as a condition of bail where a person poses a high risk of harm to the public on the basis of criminality and/or in cases concerning national security. EM is less likely to be appropriate in any case where a person is granted immigration bail from a position of liberty (for example, on arrival at the border or submission of an in-country application). EM must not be imposed on a person under the age of 18. EM may be accompanied by one or more of the following supplementary conditions:

- a curfew (requirement to remain at a specified address during specified periods of time)
- an inclusion or exclusion zone (requirement to remain within, or not to enter, a specified area).

The Home Office has historically used an electronic monitoring device which uses radio frequency technology in its immigration EM programs. The UK is transitioning to the use of GPS supported devices. During the transition period both technologies will be in operation and may require different additional conditions, until transition is complete. The Home Office plans to phase out radio frequency technology in the long term.

It is necessary to support the technology through ongoing monitoring on a continuous 24/7 basis to ensure it achieves the best results. This is done using a contracted service provider operating a monitoring centre. It is also required to have associated immigration bail conditions including imposed curfews, specified addresses where someone subject to monitoring must reside, and/or exclusion locations/zones they must stay out of.

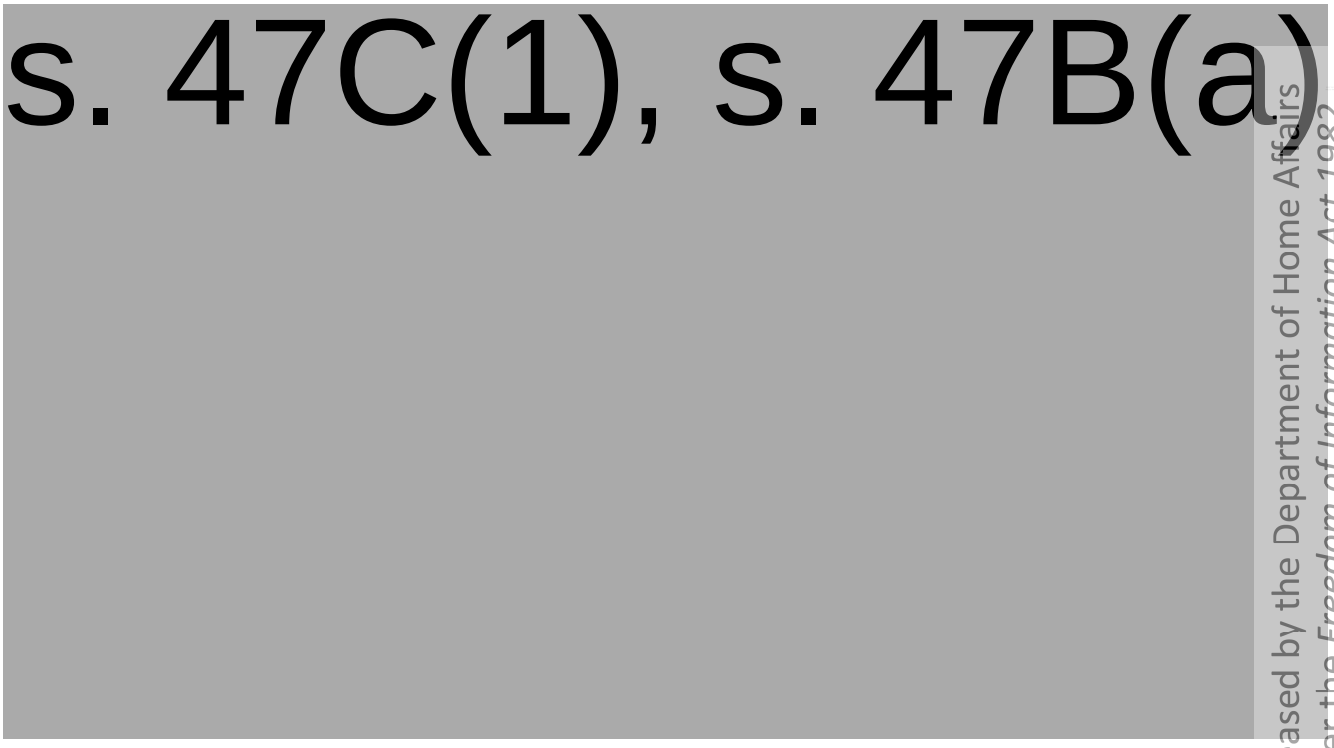
8.3. Electronic monitoring in Australian jurisdictions

EM of defendants and offenders has been operating within Australia for many years. Initially, it commenced via the use of radio frequency (RF) technology in the 1980s as part of a bid to promote community-based sanctions, but it did not build momentum until the early 1990s. RF's popularity was then superseded by GPS technology in the late 1990s.

GPS-enabled technology enables a greater degree of supervision and surveillance due to its greater capacity for accurate geo-location in close to real time, as well as being able to detect the breaching of a number of pre-programmed zones that either the user is prohibited from entering or leaving. Due to the numerous tracking functions that GPS-enabled technology offers, all state and territories in Australia that use electronic monitoring have now transferred to primarily using GPS-enabled technology.

Some examples of how EM is used in state criminal jurisdictions are outlined below:

8.4. Feedback on electronic monitoring and further consideration



8.5. Use of electronic monitoring in the migration context

Electronic monitoring has significant benefits for an integrated compliance model and could be further investigated. Different forms of electronic monitoring could be used to manage different cohorts depending on the level of risk that they pose.

s. 47C(1), s. 33(b)

Traditional electronic monitoring systems, such as ankle tags, are likely to be more costly and administratively burdensome to manage, however, may be appropriate for certain higher risk detainees who are released from detention by a court. Having access to this infrastructure would enable the Department to put greater controls on someone in the community to manage the community protection risk the person poses.

s. 47C(1)

From: s. 22(1)(a)(ii)
Sent: Tuesday, 23 August 2022 2:03 PM
To: s. 22(1)(a)(ii)
Cc: s. 22(1)(a)(ii)
Subject: RE: Minister Signed - MS22-001397 - Alternatives to Held Detention Program [SEC=OFFICIAL:Sensitive]

Categories: Submissions/ briefs - s. 22(1)(a)(ii)

OFFICIAL: Sensitive

Hi s. 22(1)(a)(ii),

Fine to shred, thank you.

Kind regards,

s. 22(1)(a)(i)

s. 22(1)(a)(ii)
Executive Assistant to First Assistant Secretary Justine Jones
Status Resolution and Visa Cancellation Division
Immigration and Settlement Services Group
Department of Home Affairs
s. 22(1)(a)(ii)
s. 22(1)(a)(ii)

OFFICIAL: Sensitive

From: s. 22(1)(a)(ii)
Sent: Tuesday, 23 August 2022 1:54 PM
To: s. 22(1)(a)(ii)
Cc: s. 22(1)(a)(ii)
Subject: Minister Signed - MS22-001397 - Alternatives to Held Detention Program [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Good afternoon

I am writing to let you know that MS22–001397 has been returned to the Department signed by the Minister, please see attached.

Please advise if you would like that hard copy delivered or if we can shred it on your behalf.

Please note you can also access this through PDMS.

Kind regards,

s. 22(1)(a)(ii)
Ministerial Executive Coordination
Ministerial & Parliamentary Branch | Executive & International Group
Department Of Home Affairs
s. 22(1)(a)(ii)

OFFICIAL: Sensitive