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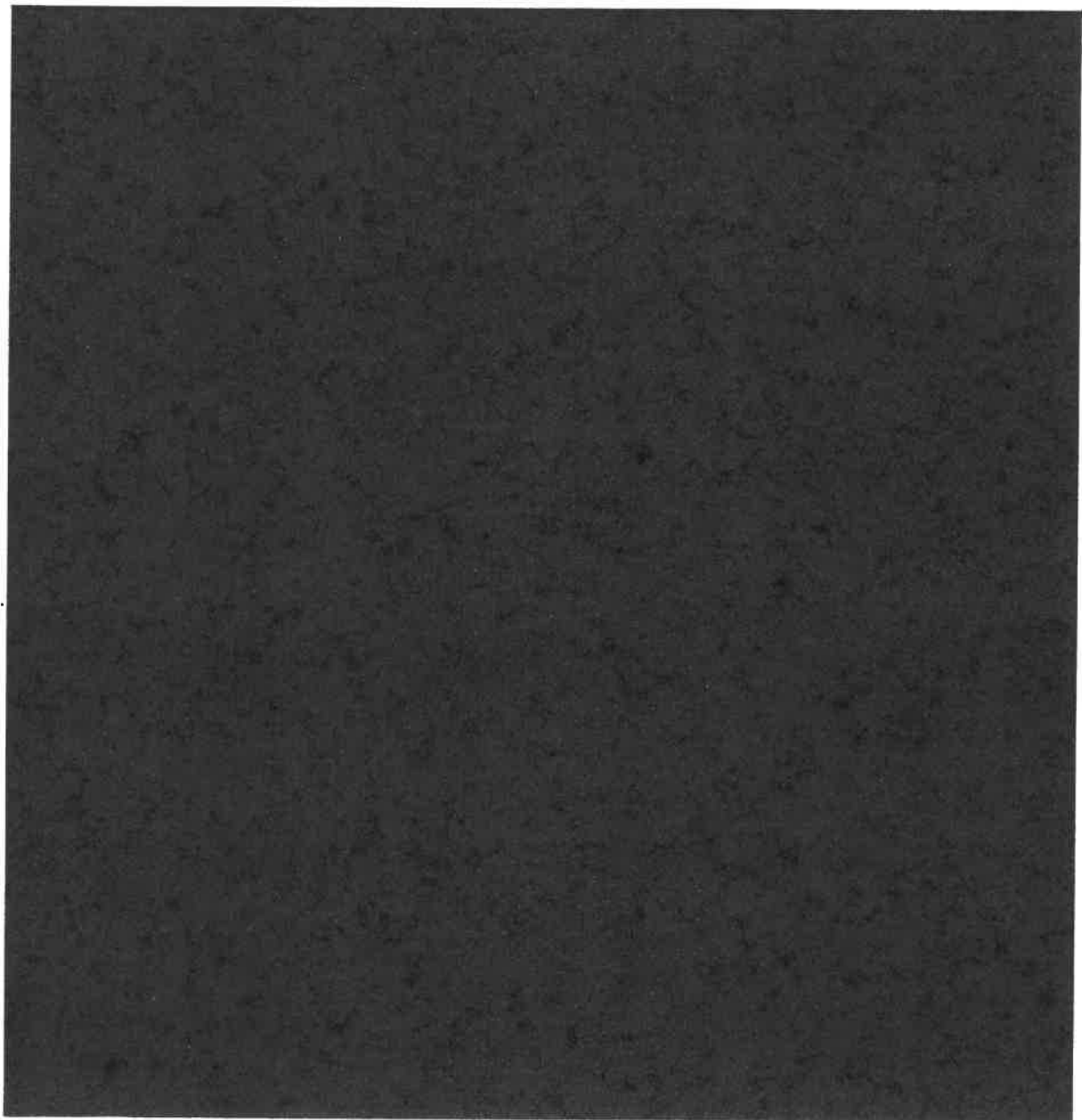
Our ref. TBA

20 February 2019

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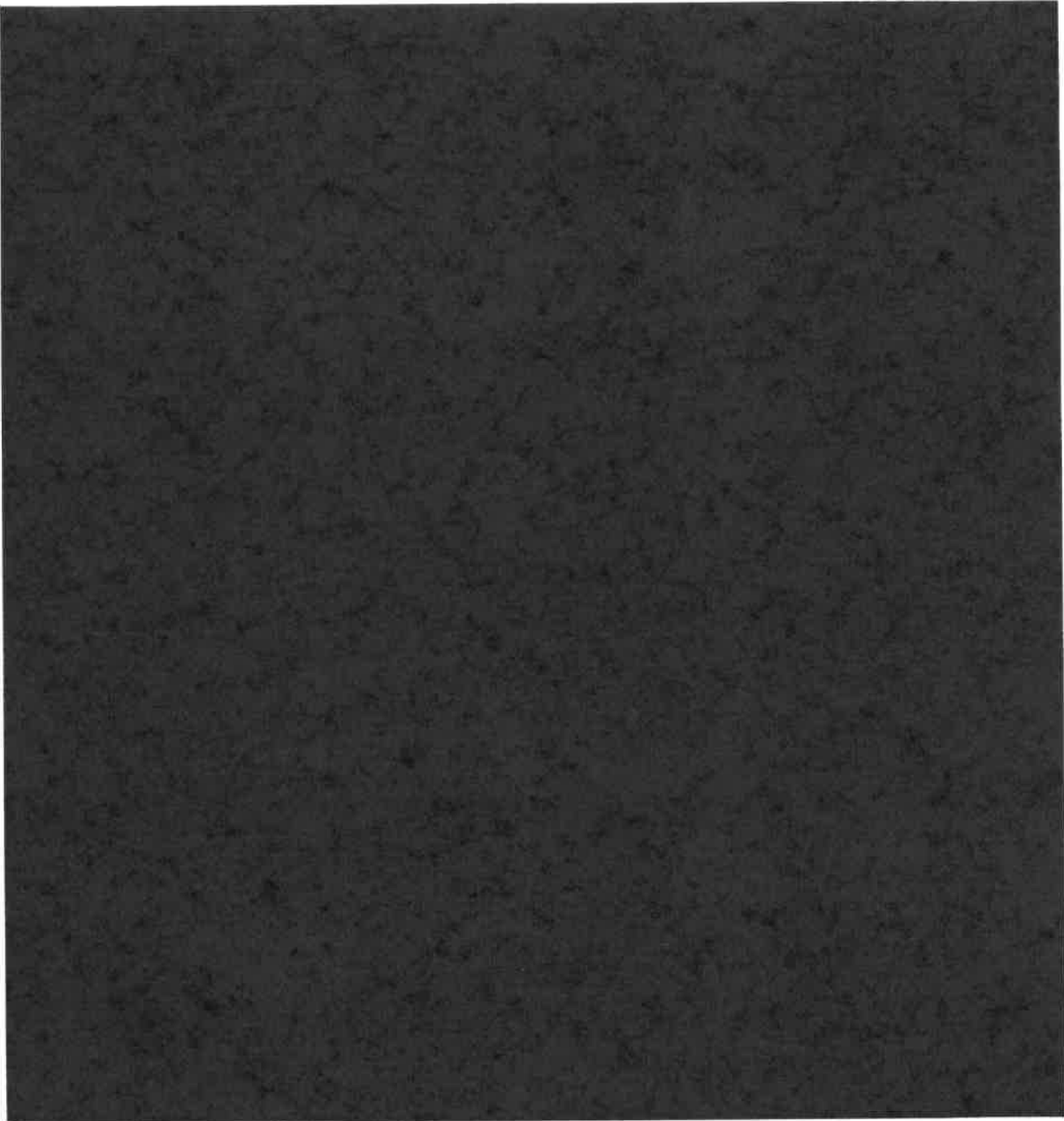
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[Redacted]
Advisor
Office of the Attorney-General



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Office of General Counsel

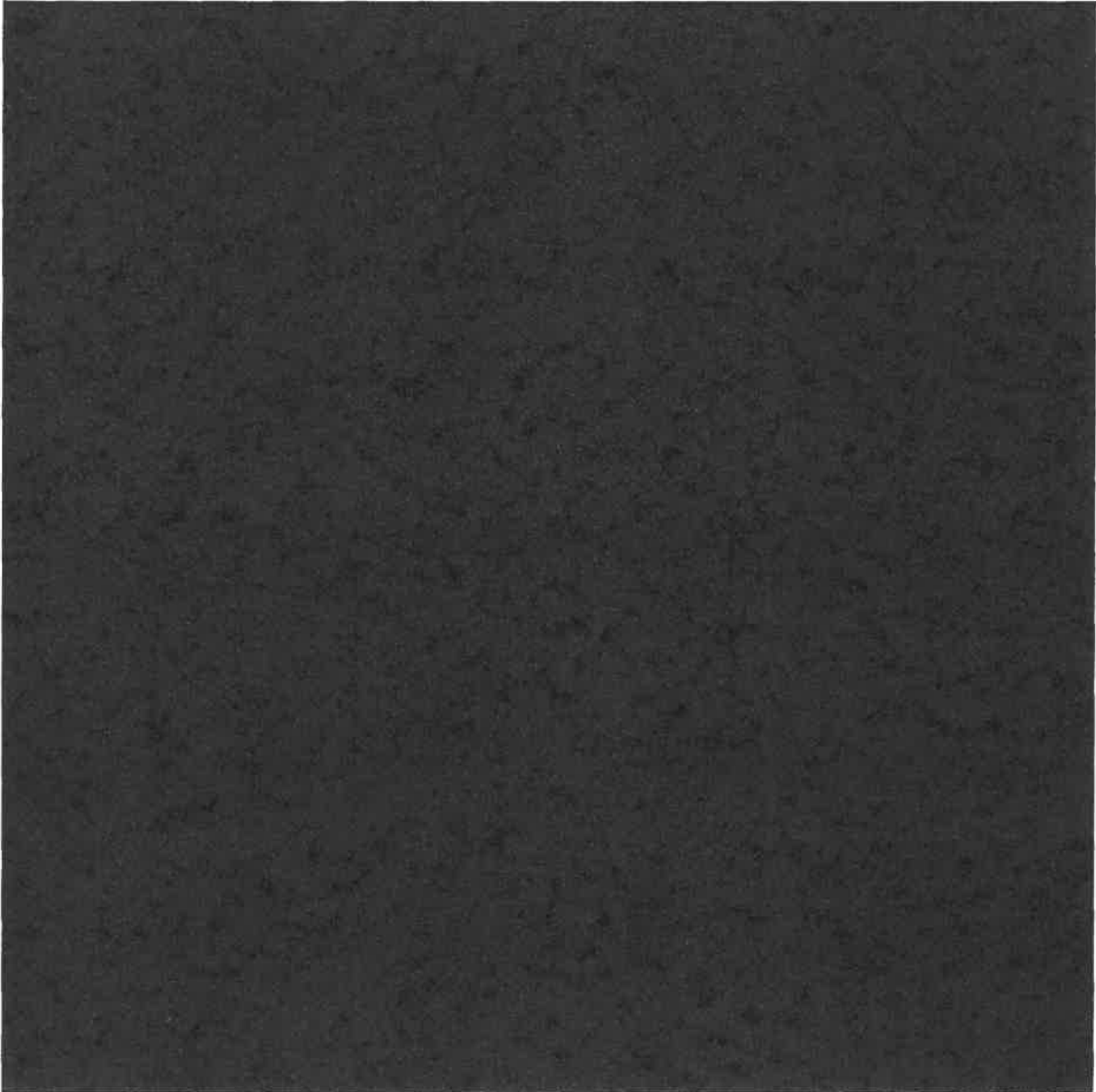


REASONS

Detaining the relevant transferees

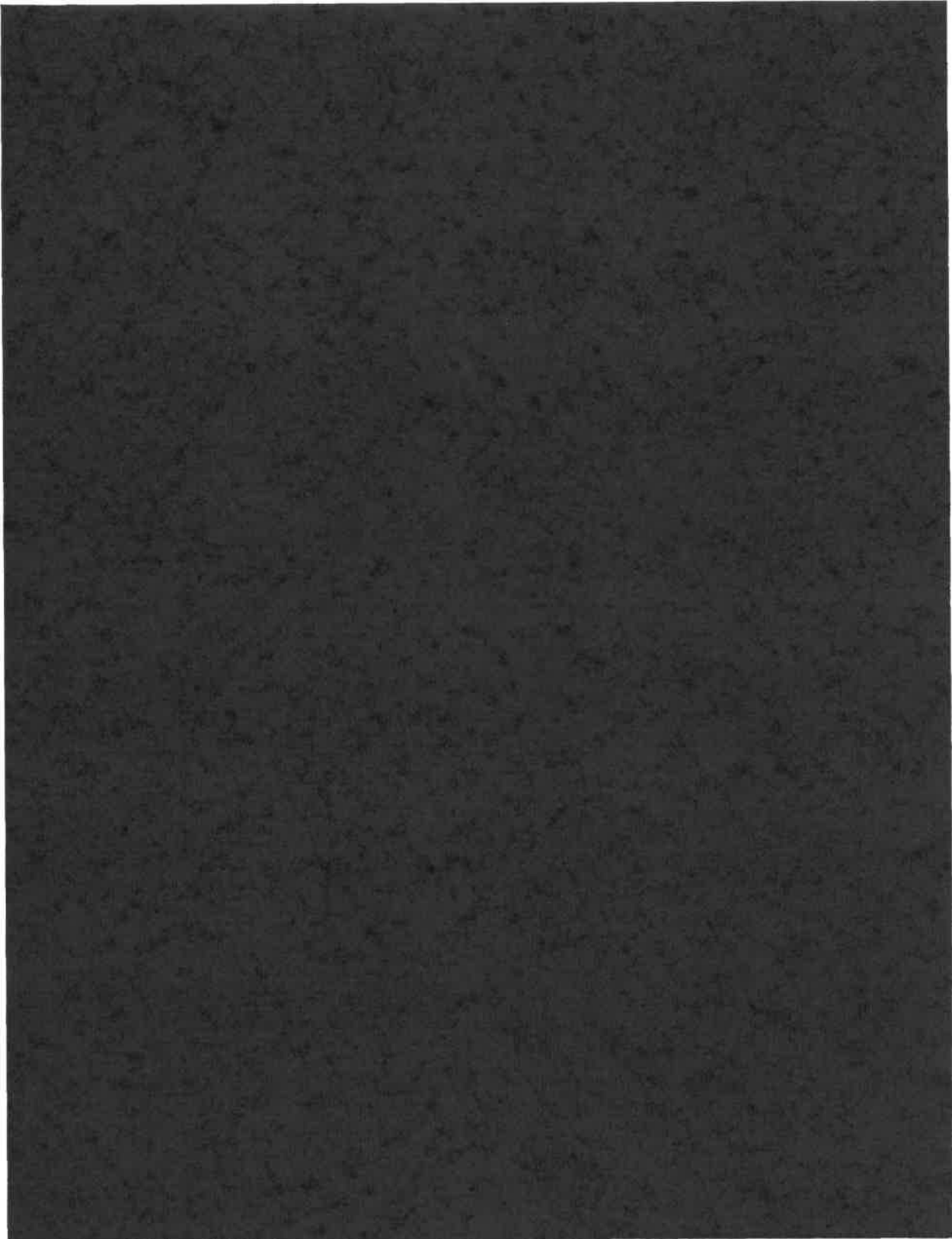
7. It is clear that once a transitory person is brought to Australia from a regional processing country under either s 198B or s 198C, s 189(1) of the Migration Act (or s 189(3) if in an excised offshore place) *requires* that person to be detained. This is because such a person will not hold a visa and will therefore be an unlawful non-citizen. Section 196 (1) then provides that such detention must continue until one or other of the events there referred to occurs.

8. This position is confirmed by a consideration of s 42(4), which relevant provides, in effect, that the fact that a non-citizen can be brought to Australia without a visa under s 198B or s 198C does not affect the non-citizen's status in the migration zone as an unlawful non-citizen.
9. Section 189 requires 'officers' to 'detain' persons who they know or reasonably suspect to be 'unlawful non-citizens'. The word 'detain', as defined in s 5 of the Migration Act, has two meanings: first, 'take into immigration detention', and secondly, 'keep, or cause to be kept, in immigration detention'. It is thus contemplated that an officer will, first, take an unlawful non-citizen into immigration detention and, thereafter, keep the person or cause the person to be kept in immigration detention.



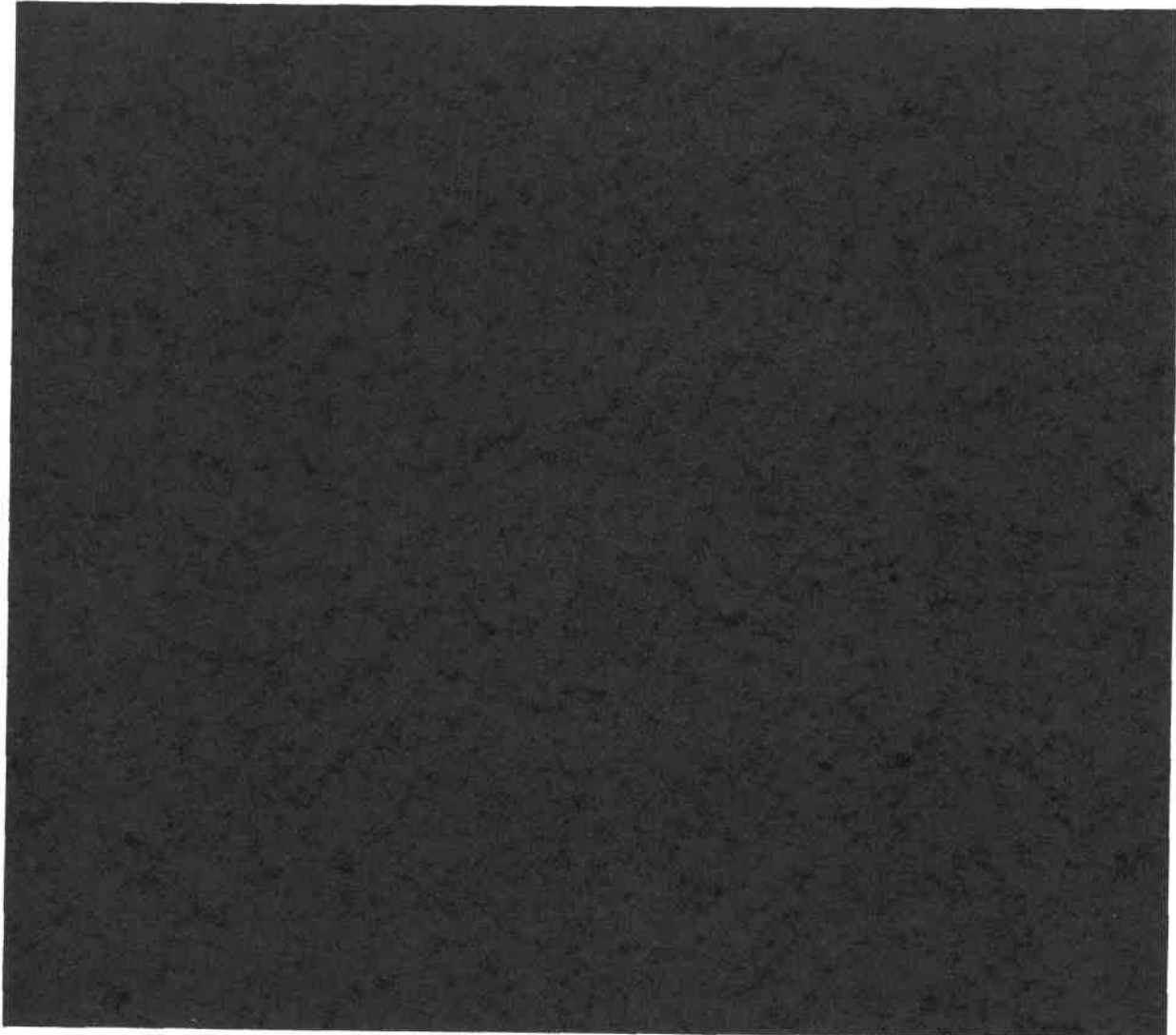
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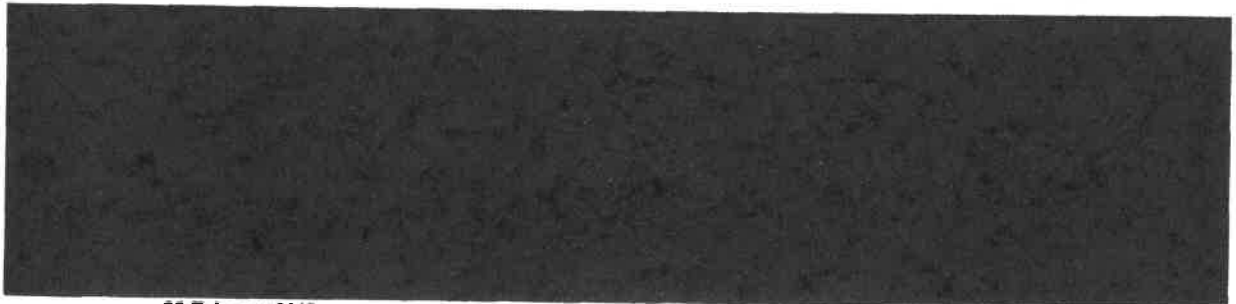


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27. As a starting point we note that the amendments have created, in s 198C, a separate and distinct power (and duty) to bring a 'relevant transitory person' (and family members) to Australia in the circumstances there specified. The clear intention is that, if the conditions specified in s 198C are satisfied, an officer 'must', as soon as practicable, bring the person to Australia for the relevant temporary purpose. This is clearly distinct from the *discretionary* power conferred on an officer under s 198B.



[REDACTED]

30. Here, we think it can readily be seen that the Migration Act deals specifically and comprehensively, in ss 198 and 199, with the power to remove unlawful non-citizens from Australia including a transitory person brought to Australia under s 198B for a temporary purpose – see s 198(1A)) and in ss 198AD and s 198AH, with the power to return transitory persons to a regional processing country when they no longer need to be in Australia for the temporary purpose for which they came.

[REDACTED]

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