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JOINT STANDING COMMITTEE ON MIGRATION (JSCM)
INQUIRY INTO IMMIGRATION DETENTION IN AUSTRALIA
44 QUESTIONS

Response from the Department of Immigration and Citizenship

People not lawfully detained

26. How many people have been identified by the Ombudsman as not lawfully detained?

The Ombudsman's office has advised that the Ombudsman does not make a finding as to whether someone has been detained unlawfully. Views of the Ombudsman on particular cases can cover a range of issues but the Ombudsman's office does not record the appropriateness or otherwise of a person's detention. We therefore cannot provide a definitive number of people identified by the Ombudsman as not lawfully detained.

In respect of the 247 immigration detention cases referred to the Ombudsman in 2005 and 2006 for investigation, the Ombudsman's office did not conclude whether people's detention was lawful or not; rather they recommended that DIAC should review the circumstances of some people's detention as it was possible that it was wrongful or invalid.

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30. Who makes the decision whether a person should be detained or be permitted to reside in a community-based alternative?

A Compliance Officer makes the decision whether a person is granted a Bridging E Visa, detained or permitted to reside in a community-based alternative based on the person's assessed risk to the community. Where a person is detained, the officer will make an initial recommendation of the most appropriate immigration detention accommodation for the person based on their individual circumstances.

The Detention Centre Executive (DCE) will be consulted in all placement decisions and will support or vary the preliminary placement recommendation within their state/territory.

In some cases the final decision on immigration detention placements are not made by the DCE, and are instead escalated to National Office for decision. These are:

- Residence Determination – s197AB of the *Migration Act 1958* (the Act) requires that Minister personally intervene to place persons into community detention.
- complex cases (including vulnerable people).

The Minister has a non-delegable and non-compellable power to intervene under section 197AB of the Act to place a person or persons in Community Detention (that is, to make a Residence Determination). Such decisions are normally made after receipt of advice from the Department, as in making a Residence Determination the Minister must specify an address at which the person/s will reside in the community.