



25 August 2017

DIBP RESPONSE TO AHRC RECOMMENDATIONS MELBOURNE IMMIGRATION TRANSIT ACCOMMODATION (MITA)

The Department appreciates the Commission's role in overseeing detention operations and practices, and welcomes review of the immigration detention network that the Commission's report provides.

Recommendation 1 (mechanical restraints)

The Department of Immigration and Border Protection and facility staff should review policies relating to the use of holds and mechanical restraints, to ensure people in detention are not subject to more restrictive measures than are necessary in their individual circumstances. Particular consideration should be given to limiting the use of holds and mechanical restraints during medical consultations and during transit where the risk of escape is low.

The 'use of force' in immigration detention is governed by legislation and departmental detention policy and procedural instructions. Detention policy and instructions in relation to the 'use of force' were comprehensively reviewed in 2016 and updated in early 2017. These policy and procedural instructions are also included in the Department's Policy and Procedures Control Framework process currently being undertaken to ensure documents are in a consistent format and centrally available to all staff.

A revised Security Risk Assessment Tool (SRAT) was produced in 2016 to better support the changing nature of cohorts accommodated in the immigration detention network, and takes into account a broader range of considerations when assessing the risk of individual detainees. The SRAT provides a consistent and agreed set of principles around risk assessment and subsequent mitigation strategies. The SRAT considers each detainee's individual circumstances, including consideration of an individual's capability (e.g. age, frailty, medical condition) and intent (e.g. immigration pathway, behaviour, prevalence of incidents).

Detainees who are rated High or Extreme escort risk are restrained under pre-planned escort arrangements, noting Detention Superintendents are required to provide approval for all High or Extreme risk escort plans. If there are concerns that a detainee does not warrant mechanical restraint, then the appropriateness of the risk rating is reviewed and the matter escalated to the Detention Superintendent, who may, where necessary, provide alternative written direction on a case-by-case basis.

Similarly, should the detention Health Service Provider recommend that restraints not be used on medical grounds, this matter is escalated to the Detention Superintendent who may give final written direction on a case by case basis.

The Department's view is that the 'use of force' policy settings have been recently reviewed and updated, and while we acknowledge the AHRC's observations, our view is that the settings provide clear guidance to officers and provide flexibility regarding risk mitigation arrangements and the use of restraints on a case-by-case basis.

Recommendation 2 (searches)

The Department of Immigration and Border Protection and facility staff should ensure that searches of people in detention, their accommodation and personal effects are conducted only for sound security reasons and in a respectful manner.

The Department can confirm that all searches are conducted in line with relevant legislation, laws and contract requirements to ensure the safety of all persons, including staff and people in detention, as well as the security of a facility. The Department would welcome the provision of further information if the AHRC has specific claims it wishes addressed.

All searching operations are conducted in line with the Department's Duty of Care Obligations as well as with full regard to maintaining respect and dignity towards the detainee. All officers who undertake regular searching procedures are subject to rigorous training requirements in order to be authorised and undergo annual refresher courses to ensure currency of practice. Any suspected searching operations that breach Duty of Care obligations are investigated as a matter of priority by the Department and the Facilities and Detention Service Provider (FDSP).

Recommendation 3 (controlled movement policy)

The Department of Immigration and Border Protection should review the impacts of the controlled movement policy on conditions and access to facilities at the MITA.

In response to the changing demographics of the immigration detention population and the Department's commitment to the good order of the detention network, the centres and operating models are continually being reviewed, including MITA. This may include upgrades to infrastructure, the separation of detainees and certain cohorts, and controlled movements within an immigration facility.

Recommendation 4 (shared accommodation)

The Department of Immigration and Border Protection should seek to minimise shared accommodation arrangements at the MITA where possible.

Accommodation arrangements at MITA are in line with departmental policy, which includes detainees sharing accommodation. The Department works closely with Detention Service Providers, and where applicable other professionals, to determine if single accommodation should be provided on a temporary or permanent basis.

Recommendation 5 (outdoor space)

Facility staff should implement strategies to provide greater access to outdoor space for people detained in Bass compound at the MITA.

The Department can confirm that all programme and activities (P&A) schedules are designed to ensure they meet the needs of all people in the onshore immigration detention network.

The FDSP is required to develop strategies to encourage detainees to participate in P&A, noting that participation remains the choice of each individual. Detainees have Personal Officers, who actively encourage detainees to partake in P&A to promote the physical and mental health benefits as a result of P&A participation. The Department recognises the importance of P&A offerings to detainees residing in the immigration detention environment and, where possible, seeks to facilitate effective utilisation of outdoor space within the confines of immigration detention facilities to support activities offering mental and physical stimulation to detainees.

The Department can confirm that Bass Compound has an outdoor area with outdoor gym equipment. In addition to this, based on detainee feedback through consultative committee

meetings, additional access to the Avon soccer pitch has been arranged for Bass Compound detainees, providing more evenly balanced and fair access to the soccer pitch.

Recommendation 6 (educational opportunities)

Facility staff should implement strategies to provide greater access to educational opportunities for people detained at the MITA.

The Department can confirm that all P&A schedules are designed to ensure they meet the needs of all people in the immigration detention network. P&A activities with an educational focus are a common inclusion on monthly P&A schedules. The June 2017 schedule for the MITA included classes in Environmental Studies, Human Sciences and Public Speaking/Leadership Skills. Each P&A schedule for the monthly reporting period is approved by ABF Detention Operations and is inclusive of P&A options provided by IHMS at facility.

Monthly P&A schedules are developed monthly to ensure offerings meet cohort requirements. Departmental policy allows people in detention to participate in workshops and non-award educational programmes, and to further enhance this, the FDSP will be implementing a number of educational programmes from the ClickView curriculum (<https://www.clickview.com.au>) in the coming months.

Recommendation 7 (excursions)

Facility staff should increase the number and variety of excursions offered to people detained at the MITA, with access to excursions restricted only where a person presents an unacceptable flight or safety risk.

The Department works closely with the FDSP to ensure the volume and variety of excursions throughout the network are appropriate for detainees. The FDSP is required to develop strategies to encourage detainees to participate in P&A, including supervised external excursions, noting that participation is voluntary. P&A is designed to cater for the diverse needs and demographic of people in detention across the network. The FDSP will include supervised external excursions in the P&A offered to detainees to ensure all detainees have the opportunity to take part on a regular basis. All detainee excursions are risk assessed to ensure the safety and security of staff and detainees is appropriately discharged prior to excursions being approved. Some of the excursions provided at the MITA during June and July 2017 included: Geelong beach, religious venues, Broadmeadows Aquatic and Leisure Centre, Present Markets and the Botanic Gardens.

Recommendation 8 (independent health monitor)

The Australian Government should establish and resource an independent body to monitor the provision of physical and mental health services in immigration detention.

The Department's Chief Medical Officer/Surgeon General ABF(CMO/SG) oversees health standards and health related matters across the portfolio, including detention health, immigration health, and workplace health and safety. The CMO/SG has overall responsibility for providing expert clinical and high-level strategic advice to the Department's Executive.

The CMO/SG can draw upon the expert independent advice of the Independent Health Advice Panel (IHAP) members as required on portfolio-wide health matters. This includes, but is not limited to, physical and mental health services issues that arise in the immigration detention network, and at Regional Processing Centres (RPCs). IHAP meetings are held quarterly and are chaired by the CMO/SG.

Under the IHAP Terms of Reference, members may be asked to provide expert independent advice on systemic issues, departmental policies, individual cases, or specific incidents. As

independent experts, IHAP members are expected to give impartial advice in line with their area of expertise in clear and transparent terms.

Potentially, IHAP members could take on a greater role in providing advice to the CMO/SG through a more formal process of monitoring outcomes and provision of services in immigration detention.

To this end, Health Services and Policy Division (HSPD) has engaged two IHAP members to conduct a gap analysis of the fifth edition of the Royal Australian College of General Practitioners (RACGP) Standards for General Practices (2017) against the Australian Immigration Detention Centres Standards (2007). The intent of this gap analysis is to determine the applicability of the General Practices Standards in the Australian Immigration Detention context. The IHAP members will determine if there is a need to update the 2007 Immigration Detention Centre Standards or alternatively, develop specific RACGP Standards for the Australian Immigration Detention context. RACGP will be engaged to support this work at the conclusion of the IHAP gap analysis exercise.

The Department's contracted health service provider, International Health and Medical Services (IHMS) is currently working to achieve accreditation against the RACGP Standards for Health Services in Australia's Immigration Detention Centres.

Recommendation 9 (mobile phones)

The Department of Immigration and Border Protection should review its policy regarding the use of mobile phones in immigration detention facilities, with a view to restricting mobile phone usage only in response to unacceptable risks determined through an individualised assessment process.

The Department acknowledges that regular contact with family and friends supports detainee resilience and mental health, and is committed to ensuring detainees have reasonable access to means of maintaining contact with their support networks.

However, the presence of mobile phones in immigration detention facilities has been increasingly associated with serious threats to the safety and security of the immigration detention network.

On 21 November 2016 the Department implemented a policy to remove mobile phones from Immigration Detention Facilities in line with the Department's commitment to uphold the safety, security and good order of the immigration detention network and to meet duty-of-care obligations to all people accommodated and employed therein. However, on 19 February 2017 the Federal Court issued an injunction on the removal of mobile phones and SIM cards in the possession of detainees.

The Minister is presently considering his options in relation to this issue.

Should the Department be successful in removing phones and SIM cards, contact will continue to be provided via landline telephones, internet access, postal services and visits. The Department remains committed to providing detainees with access to legal representatives and will ensure these avenues are maintained and enhanced to enable detainees to progress their immigration status resolution in a timely fashion. Detainees and legal representatives will remain able to schedule telephone interviews ahead of time if they require access to a desk or private space. To mitigate any negative impact the removal of mobile phones may have on detainees (should they be successfully removed), an infrastructure survey was conducted across the immigration detention network to ensure adequate telephone, internet and facsimile services were available for detainees to contact and be contacted by family, friends and legal representatives. As a result of the survey, additional landline telephones were installed at most immigration detention facilities.

The Department believes that an individualised assessment process for the removal of mobile phones would create unnecessary risks to the safety and security of the immigration detention network as there are numerous documented instances pertaining to standover and coercive tactics being adopted by detainees in order to gain access to mobile phones. In concert, mobile phones have previously been used as a form of currency within immigration detention facilities and the removal of mobile phones through an individualised assessment process would only exacerbate this activity. By ensuring a nationally consistent approach, the Department is confident that these risks will be more effectively mitigated.

Recommendation 10 (family unity)

The Department of Immigration and Border Protection should ensure that people in immigration detention are accommodated as close as possible to family members and friends living in the Australian community.

The Department acknowledges the AHRC's recommendation and can confirm that family and community links are considered within the Department's National Detention Placement Model (NDPM). The NDPM provides a national risk-based approach to the placement of detainees within the immigration detention network.

Placement decisions are part of a process of assessing and minimising risk to other detainees, service providers, visitors and staff. Detainee needs are considered in line with the Department's duty of care to all detainees. In making placement decisions, medical needs are prioritised, and family and community links considered carefully.

Recommendation 11 (home visits)

The Department of Immigration and Border Protection and facility staff should facilitate home visits for people in detention who have relatives living in the Australian community, with particular priority given to people in long-term detention. Access to home visits should be restricted only where a person presents an unacceptable flight or safety risk.

The Department notes the AHRC's recommendation to reintroduce home visits, however due to safety and welfare concerns, the Department is not inclined to reinvigorate the home visit programme for people in detention at the MITA. All people in detention are able to request consideration of a Special Purpose Visit on compassionate or humanitarian grounds.

Recommendation 12 (complaints processes)

Facility staff should implement strategies to promote and facilitate access to the internal and external complaints processes available to people in immigration detention.

The FDSP is obliged to inform detainees of their right to complain, without hindrance or fear of reprisal, to the FDSP, its staff, the Department, the Australian Human Rights Commission, Commonwealth Ombudsman or other authorities. Placed in visible locations around the detention facility are complaints processes and contact details of internal and external bodies, should detainees wish to submit a complaint. The Department is satisfied that the existing strategies are appropriately raising awareness of the external complaints processes available to people in immigration detention.

Recommendation 13 (mandatory detention)

The Australian Government should introduce legislation to replace the current system of mandatory immigration detention with a case-by-case assessment process which takes individual circumstances into consideration.

Not agreed

Mandatory immigration detention is a necessary part of managing the status of unlawful non-citizens - people who do not have permission to arrive or stay in Australia. Immigration detention is an essential component of strong border control.

The decision to restrict a person's liberty is significant and it is not made lightly. Held detention is a last resort for the management of unlawful non-citizens. The decision not to grant a bridging visa (a non-substantive visa which enables a non-citizen to remain lawfully in Australia) and hence to detain a person, is based on an assessment of risk. The following groups of people will generally not be granted a bridging visa:

- all illegal arrivals - until the health, identity and security risks, which they present to the Australian community are resolved
- unlawful non-citizens who present unacceptable risks to the community, including persons with adverse security assessments
- unlawful non-citizens who have repeatedly refused to comply with their visa conditions.

Children who arrive illegally are initially accommodated in alternative places of detention, such as Immigration Residential Housing and Immigration Transit Accommodation. The priority remains that children, and where possible their families, are moved into community detention immediately following the completion of all necessary checks.

Recommendation 14 (prolonged and indefinite detention)

The Australian Government should introduce legislation to amend the Migration Act 1958 so as to provide that unlawful non-citizens may be detained only for a strictly limited period of time necessary to conduct health, identity and security checks. Continued detention beyond this period of time should only be permitted following an individual assessment by a court or tribunal of the necessity for this continued detention, with further assessments to occur periodically up to a maximum time limit.

Not agreed

The Australian Government's position is that indefinite or otherwise arbitrary immigration detention is not acceptable. The length and the conditions of immigration detention are subject to regular review by senior Department of Immigration and Border Protection officers and the Commonwealth Ombudsman. These reviews consider the lawfulness and appropriateness of the person's detention, their detention arrangements and placement, health and welfare and other matters relevant to their ongoing detention and case resolution.

Within the *Migration Act 1958* (the Act) detention is not limited by a set timeframe, but is dependent upon a number of factors, including identity determination, developments in country information and the complexity of processing due to individual circumstances relating to health, character or security matters.

- These assessments are completed as expeditiously as possible to facilitate the shortest possible timeframe for detaining people in immigration detention facilities.

- Individuals with an adverse security assessment remain in immigration detention until they can be removed from Australia, either to their country of origin or a third country, where it is safe to do so.

In addition to review by the Commonwealth Ombudsman and the Australian Human Rights Commission, the immigration detention system is also subject to regular scrutiny by external agencies such as, the Office of the United Nations High Commissioner for Refugees and the Minister's Council on Asylum Seekers and Detention. Representatives of these bodies are granted access to detention centres upon request.

If applicable, a detainee can also seek merits and judicial review of the visa refusal or cancellation decision that has resulted in them being an unlawful non-citizen, including a decision to refuse a bridging visa once they are detained.

Australia is committed to ensuring that all people in administrative immigration detention are not subjected to harsh conditions, are treated fairly and reasonably within the law, and are provided with a safe and secure environment.

Recommendation 15 (people facing indefinite detention due to security or character assessments)

The Department of Immigration and Border Protection should urgently review the cases of people who cannot be returned to their countries of origin and face indefinite detention due to adverse security or character assessments, in order to:

- a) identify possible risks in granting the person a visa or placing them in community detention**
- b) determine how any identified risks could be mitigated, for example by a requirement to reside at a specified location, curfews, travel restrictions, reporting requirements or sureties.**

Detention Review Committees conduct formal monthly reviews of case management efforts to progress detainees towards status resolution outcomes within held detention. The purpose of the Committees is to ensure that:

- Where a person is managed in a held detention environment, that the detention remains lawful and reasonable.
- The location of the person whether held detention, specialised detention, community detention or in the community on a Bridging visa, remains appropriate to the person's situation and conducive to status resolution.
- Where a person is managed in the community, either in Community Detention or through a Bridging Visa, community risk is regularly and appropriately considered.
- Regardless of which location a person is being managed in, their status resolution is progressing and the appropriate departmental services are being put in place to progress to an outcome.
- Whilst status resolution is being progressed, appropriate services are being provided in an effective and cost efficient manner.

These reviews include consideration of referral for assessment against the guidelines for referral to the Minister under section 195A of the Act, for of grant of a visa, or section 197AB, for residence determination. These assessments take into account risk to the community and any mitigating factors or circumstances.

Recommendation 16 (alternatives to detention)

The Minister and Department of Immigration and Border Protection should routinely consider community-based alternatives to closed immigration detention. Closed detention should only be used as a last resort for people who are individually assessed as posing an unacceptable risk to the Australian community, in circumstances where that risk cannot be managed in a less restrictive way.

People in immigration detention have their cases regularly reviewed by departmental case managers, who consider placement and immigration status resolution options, consistent with legislation and government policy.

Depending on the circumstances of the case, the case manager may have an option to grant a bridging visa, provided the detainee meets the legislated requirements for grant. Alternatively, the case manager may have an option to refer the case to the Minister for the grant of a bridging visa under section 195A of the Act, or to make a residence determination under section 197AB of the Act. Both of these provide alternatives to held immigration detention and allow that person to reside in the community, while they resolve their immigration status.

While the Minister's powers under sections 195A and 197AB are non-compellable, the Department's Immigration Detention Values also state that detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.

Recommendation 17 (communication of reasons for detention)

The Minister and Department of Immigration and Border Protection should ensure that all people in detention are kept informed of the reasons for their detention, including where ongoing detention is determined to be necessary.

The Detention Services Manual (available on LEGENDcom) provides instructions for inducting persons into immigration detention. This manual provides that, when conducting induction, consideration should be given to ensuring the detainee understands that they are in immigration detention and why.

Following induction, for individuals who remain in detention longer than 28 days, Status Resolution officers are in regular contact with the persons whose cases they manage and are primarily responsible for the consistent, frank and frequent articulation of the department's strategic communication framework and current policy settings. Status Resolution officers ensure the person understands the circumstances of their immigration status and, based on this, has clear and realistic expectations of the process and timeframes associated with their projected immigration pathway.

Recommendation 18 (case management)

The Department of Immigration and Border Protection should review the case management system for people in immigration detention to determine:

- a) the extent to which the case management system addresses the needs of people in detention
- b) whether the case management system is operating as effectively as possible to facilitate status resolution, including through ensuring that people in detention have access to sufficient advice about their status and options for resolution.

The overarching objectives of the Department's status resolution service is to:

- effectively manage risks to ensure that barriers to status resolution are identified and levels of service provision are appropriate for the management of vulnerability or case complexity
- progress cases towards a timely immigration outcome by promoting the person's active engagement in the status resolution process and management of their own health and welfare
- support the person to make active decisions by communicating key messages and providing relevant information about their status resolution pathway
- manage, collect and share information to build an accurate, timely and reviewable record of case circumstances for the purpose of accountable and efficient programme delivery.

Status Resolution Officers promote self-agency by:

- talking early and often to the person
- speaking candidly about dual pathway options
- reinforcing the responsibility the person has to stay engaged and make decisions
- providing the person with information about the immigration process in which they are engaged through verbal information sessions and the provision of fact/information sheets
- referring the person to relevant support services (for example a migration agent, International Organization for Migration (IOM), and other relevant stakeholders)
- ensuring the person understands how to access appropriate information products
- ensuring the person understands that the department and any other decision makers can only make a decision based on the credibility of presented claims and submitted supporting documents.

Status Resolution Officers are in regular contact with the persons whose cases they manage and are primarily responsible for the consistent, frank and frequent articulation of the Department's strategic communication framework and current policy settings. A Status Resolution Officer:

- provides basic, factual information about eligibility, restrictions and processing arrangements
- empowers the person to make informed decisions about their immigration pathway and highlights their role as active participants in the progression of their own circumstances
- recurrently engages in discussions with the person regarding options for voluntary return and the prospect of enforced removal if there is no legal right to remain in Australia

- promotes awareness of, and reinforces departmental messaging, regarding expectations of behaviour both in detention and in the community.

Recommendation 19 (migration and legal advice)

Recognising the limited role of case managers, the Department of Immigration and Border Protection should introduce capacity for case managers to provide people in detention with appropriate information and referrals to migration and legal advice.

As soon as reasonably practicable after a person is detained under section 189 of the Act, they are provided with a Very Important Notice (VIN). The VIN sets out information that is required to be given to a detainee under section 194 of the Act. Besides stating that a detainee is eligible to apply for a visa within certain timeframes and their options for leaving Australia, the VIN also advises that a detainee may seek help from a lawyer.

Under section 256 of the Act, detainees must be given reasonable facilities for obtaining legal advice and/or representation in relation to his or her immigration detention, should they wish to access such services. Detainees may access the information necessary for them to choose their legal representative. This may be done through a community telephone directory or via public domain information via the Internet. The Department does not make recommendations or endorse any particular provider of legal services.