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**HOME AFFAIRS RESPONSE TO THE AUSTRALIAN HUMAN RIGHTS COMMISSION
(AHRC) RISK MANAGEMENT IN DETENTION REPORT - 2019**

Recommendation 1

The Department of Home Affairs should request that the external consultant commissioned to review the Security Risk Assessment Tool consider options for revising risk assessments downwards over time in response to positive behaviour.

The external consultant procured to undertake the independent review of the Security Risk Assessment Tool (SRAT), has been given a clear scope of review and this has been designed at the discretion of the Australian Border Force (ABF), to ensure the review is fit for current and future purpose.

Recommendation 2

The Department of Home Affairs and facility staff should ensure that people in immigration detention are informed of their risk rating and of the reasons for this rating, unless doing so would present an unacceptable risk.

The detainee risk rating as assessed by the Facilities and Detainee Services Provider (FDSP) is not a 'score', but an assessment of the risk presented to and by a detainee in the context of immigration detention, based on qualitative and quantitative information which is available to the FDSP. A detainee's risk rating is one of a range of factors the ABF considers when assessing requests such as placement and excursions.

The ABF is satisfied that there are mechanisms whereby a detainee can request their risk rating and the reasons for that particular rating should they wish to ascertain this information provided that the disclosure of such information does not place personnel and detainees themselves at risk or compromise intelligence capabilities.

Recommendation 3

The Department of Home Affairs should commission an independent review of the response to the September 2018 incident at the Yongah Hill Immigration Detention Centre, with a view to improving responses to similar incidents in the future.

The ABF is satisfied that current incident review mechanisms adequately provide assurance of ABF's incident response and management procedures. This includes the requirement, following a major disturbance, for the ABF to lead debriefings with stakeholders, and the FDSP to complete a Post Incident Review.

In addition, the Department's Detention Assurance Team (DAT) also conducted a review into the circumstances leading up to the self-harm and subsequent death of a detainee at Yongah Hill Immigration Detention Centre (YHIDC) on 5 September 2018, providing a second line of assurance of the Department's processes.

The objectives of this review were to:

- establish the facts of the detainee's case history with the Department and its service providers;
- evaluate whether appropriate actions were undertaken to manage the detainee's case and the self-harm incident, in accordance with relevant policies, procedures and contractual obligations;
- identify any gaps in the delivery and/or availability of services, for which the detainee was eligible; and
- make any recommendations necessary to improve management of similar cases in the future.

The report is currently in draft and will be provided to the accountable areas for comment and development of a management action plan.

The disturbance that took place at YHIDC shortly following the transfer of the detainee to Royal Perth Hospital, resulting in extensive damage to the facility, did not fall within scope of this review. The Department's service provider conducted a post incident review and there was a separate police investigation into the disturbance.

Recommendation 4

The Department of Home Affairs should consider family links as a priority when making decisions about placements across the detention network.

Placement decisions are part of a process of assessing and minimising risk to other detainees, service providers, visitors and staff. In making placement decisions, medical needs are given priority, and family and community links are carefully considered.

In considering the placement of an individual, the broader immigration detention network (IDN) is also considered. There is finite capacity across the national network and there is often an operational need to transfer detainees to rebalance the network and ensure detention facility stability. This means that detainees cannot always be placed close to family links.

Placement decisions are reviewed through various meetings such as the Individual Management and Placement Review Committee Meeting (IMPRC), Detention Review Committee (DRC), Person of Interest Meetings (POI) or via a detainee request form.

Recommendation 5

In consultation with facility staff, the Department of Home Affairs should review the risk assessment process used to inform transfers between detention facilities, with a view to minimising disruption for people subject to transfer.

The National Detention Placement Model utilises a risk-based approach to the placement of detainees, whereby the detainee's risk assessment and the risk rating of the facility are matched. This approach utilises the assets available to the Department and is designed to ensure the safety and security of detainees in immigration detention.

Generally, where the transfer is a voluntary transfer, it is anticipated that the detainee would be advised of the transfer at least the day before to allow them to pack their belongings and contact family and/or legal representatives.

Where a detainee is not aware of a prospective transfer (i.e. 'involuntary' transfers), transfer operations are usually conducted at short notice to the detainee(s). Involuntary transfers may provide enough time for the detainee(s) to collect their property, however, this is secondary to the safety and security of the transfer operation, the property will follow the detainee(s) in this circumstance.

Recommendation 6

The Department of Home Affairs should develop a protocol for consulting with facility staff in advance of significant transfers, with a view to minimising possible negative impacts of transfers on conditions of detention.

Transfer operations are conducted at the direction of the Australian Border Force (ABF) with instructions provided to Serco. The instructions include approval of proposed itinerary, flight plans, use of restraints (where appropriate) and other aspects of the transfer.

Operational safety and security remains the primary consideration for the detainee(s) being transferred and staff facilitating the transfer.

Transfer of detainees between facilities in rebalancing operations is a common occurrence within the immigration detention network. Both sending and receiving facilities are fully cognisant of all details relating to detainees being transferred, as per policy and procedures, including risk and any other mitigating factors.

Recommendation 7

The Department of Home Affairs should expand the terms of reference for the current review of the Security Risk Assessment Tool to include specific consideration of policies and practices regarding the use of restraints.

The Department's use of force in immigration detention is extensively documented and governed by the *Migration Act 1958* (the Act), as well as detention policies and procedures.

Recommendation 8

The Department of Home Affairs should only restrict access to excursions when it is necessary and proportionate in an individual's circumstances.

The FDSP is required to provide meaningful programs and activities (P&A) to the detainee cohort in immigration detention facilities.

P&A refers to the range of structured and unstructured social, welfare, recreational and educational events available to detainees. The monthly P&A Schedule takes account of a range of factors, including age, gender, religious beliefs, as well as a range of safety and security considerations.

It is the ABF position that meaningful P&A can be delivered to detainees which meets their individual needs, without the requirement to facilitate external excursions.

The provision of P&A to detainees is governed by departmental policy and procedural instructions, whilst maintaining the integrity of Australia's migration program and its legal framework.

The P&A policy settings, including the availability and eligibility of excursions, has been recently reviewed, and while the AHRC's observations are acknowledged, the Department's view is that the current settings are appropriate to the current cohorts in immigration detention.

Recommendation 9

The Department of Home Affairs and facility staff should implement strategies to provide increased access to outdoor space and facilities for exercise, activities and recreation for people detained in medium- and high-security compounds (such as rostered access to facilities in adjacent lower-security compounds).

Refer to the response to recommendation 8.

Recommendation 10

In consultation with facility staff, the Department of Home Affairs should modify infrastructure (including fixtures and finishings) in the new high-security compounds at BITA, MITA and YHIDC, with a view to lessening harsh and restrictive conditions wherever possible.

The Department is working with operational staff and scrutiny bodies, to modify infrastructure to address the issues raised (where possible), while taking into account safety and security considerations.

Recommendation 11

In consultation with facility staff, the Department of Home Affairs should review the planned construction works at the VIDC, with a view to reducing or modifying harsh and restrictive elements where possible.

The Department is working with operational staff and scrutiny bodies, to modify infrastructure to address the issues raised (where possible), while taking into account safety and security considerations. This includes consideration of these issues as part of planned construction works at VIDC.

Recommendation 12

As a matter of urgency, the Department of Home should cease using the Blaxland compound at the VIDC. All people currently detained in this compound should be moved into alternative arrangements at the VIDC or other detention facilities as appropriate.

Blaxland compound at VIDC is due to close in the second half of 2019, and at that time the construction work on the new Blaxland compound should be complete. Detainees will then be relocated.

Recommendation 13

The Department of Home Affairs should ensure that the BRP is only used for short periods of detention.

The Broadmeadows Residential Precinct (BRP) is designated as an Alternate Place of Detention (APOD) and is therefore suitable for those detainees where less restrictive placement is appropriate. There is finite capacity across the national network and there is often an operational need to place detainees in the BRP.

Recommendation 14

The Department of Home Affairs should upgrade the BRP to include additional facilities for exercise, activities and recreation.

Detainees accommodated at the BRP are provided with services commensurate with those provided to detainees at the Melbourne Immigration Transit Accommodation with the additional benefit of being able to self-cater and cook. Detainees at the BRP are afforded excursions that are determined in conjunction with detainees, the FDSP and the ABF.

The Department is continually working to upgrade and improve exercise and recreational facilities at all detention sites within the onshore network.

Recommendation 15

The Department of Home Affairs should review the impact of ‘controlled movement’ and ‘lock down’ policies on conditions of detention and access to facilities across the immigration detention network.

The ABF, in conjunction with the FDSP, regularly reviews operating models at each IDF. The use of ‘controlled movement’ and ‘lock down’ within IDFs is designed to provide optimal rights and privileges while maintaining requisite safety and security provisions.

Recommendation 16

The Department of Home Affairs should consult with facility staff about the use of curfews at the Brisbane Immigration Transit Accommodation and Melbourne Immigration Transit Accommodation facilities, with a view to removing curfews that are not strictly necessary to ensure safety and security.

As per the ABF’s response to recommendation 15, the ABF, in conjunction with the FDSP, regularly reviews operating models at each IDF. The implementation of curfews, where appropriate, is based on cohort and infrastructure considerations with specific arrangements agreed by ABF and the FDSP.

Recommendation 17

The Department of Home Affairs should ensure that hotels are only used as Alternative Places of Detention in exceptional circumstances and for very short periods of immigration detention.

Hotels are designated as APODs, and are used as transit accommodation. Transit accommodation is generally used for detainees required to be in held detention for a short period, detainees subject to airport turnaround and detainees ready to be removed.

Recommendation 18

The Department of Home Affairs should implement strategies to provide greater freedom of movement and access to outdoor space for people detained in Alternative Places of Detention.

In addition to the response to recommendation 17, the ABF works with the FDSP to provide appropriate services to detainees accommodated in temporary APOD arrangements.

Recommendation 19

The Department of Home Affairs should ensure that people detained in Alternative Places of Detention are only subject to continuous monitoring by staff in cases where it is necessary, reasonable and proportionate in the circumstances.

In addition to the responses to recommendation 17 and 18, the ABF seeks to balance safety and security risks, and the need to maintain an individual’s administrative detention in a way that respects the inherent dignity of the detainee. Serco staff are not posted inside bedrooms in all circumstances, but only where assessed as necessary to ensure safety and security with privacy afforded to detainees as far as possible.

Recommendation 20

The Department of Home Affairs should commission an independent review of the use of single separation and other separate detention in immigration detention facilities, with a view to determining:

- whether current practices are compliant with international human rights law and departmental policy**
- alternative options for separating people in detention in circumstances where separation is necessary but the use of ‘high-care accommodation’ would be unreasonable or disproportionate**
- the additional facilities required to provide appropriate alternative options for separate detention.**

The ABF’s use of high care accommodation is governed by departmental policy and is subject to regular review. High-care accommodation is to be used in the best interest of a detainee or in the best interest and safety of other detainees, departmental staff and contractors. High-care accommodation must always be for the shortest practicable time.

Placement in high-care accommodation must be approved by the relevant ABF Detention Superintendent (Facility) for periods of less than 24 hours and by the ABF Commander Detention Operations (National) for periods exceeding 24 hours. This demonstrates the governance and oversight placed on approving this type of accommodation.

Recommendation 21

In consultation with facility staff, the Department of Home Affairs should consider providing additional training on the conduct of searches to staff working in immigration detention facilities.

Detention Operations Branch currently delivers Detention Essentials Training to ABF staff before they commenced work in Detention Operations roles at an IDF.

Since June 2018, this training has included training for ABF staff on best practice in search and screening processes, which is relevant to accommodation and common area searches. This content is delivered by training professionals from New South Wales Corrective Services, and has been tailored for the immigration detention environment. This training is refined and improved at each delivery according to feedback received. The AHRC Risk Management in Detention January 2019 report will be taken into account in the planning for future search training as appropriate.

Search trained ABF staff participate in some ABF-led search operations which may involve the search of accommodation and common areas. The FDSP conducts their own training in search operations in accordance with contractual requirements, including the search of detainees’ persons.

The Department acknowledges that there have been isolated complaints from some detainees, where the detainee has expressed concern about officers conducting room searches, and allegedly leaving detainee’s property in an unreasonably messy state. Serco officers are routinely advised that detainee property should be left in a similar state of tidiness as the state in which it was found so far as reasonably practicable.

Serco must ensure that room searches and pat searches are always digitally recorded and are always conducted with a minimum of two officers, with at least one of the same sex as the detainee. Only staff who have completed the appropriate training and received the appropriate certification will be utilised in any searching tasks. If a specific instance is found to have been conducted inappropriately however, this is addressed on a case-by-case basis accordingly.

The Department recognises that searches of property and pat searches can be interpreted by detainees as being invasive or in some way inherently disrespectful, however, Serco Officers are professionally trained to best balance safety and security requirements with the respect for personal dignity.

Serco has advised the Department that it does not believe that there is a systemic issue or that further training is reasonably warranted at this time. All specific reported incidents will be considered and the findings used to identify any requirement for appropriately targeted guidance and training if necessary and to inform continuous improvement more broadly.

Recommendation 22

The Department of Home Affairs should amend the Detention Services Manual to stipulate that items that do not present inherent risks to safety and security may only be prohibited in immigration detention:

- **on the basis of individual risk assessments**
- **where there is evidence that the person has used or is reasonably likely to use the item in a manner that presents clear risks to safety or security**
- **where those risks cannot be managed in a less restrictive way.**

It is the Department's position that it only controls the entry of specific items into an IDF that have been deemed to present a significant risk to the safety of persons in the IDF, threaten the good order of the IDF, or that may be used to aid the escape of a detainee. This is articulated in relevant policy and procedural guidelines.

Where an item is lawful in the Australian community and there is no clear connection between possession of the item and maintaining safety, security and the good order of an IDF, it may be brought into an IDF. Items such as bluetooth speakers, headphones and clothing with hoods, mentioned in the report, are permitted items under current policy, USB sticks are issued to detainees by the FDSP.

Also, under current policy the relevant ABF Detention Superintendent may approve an item to enter an IDF on a case by case basis.

As acknowledged in the report, the Department is working with the FDSP to improve national consistency in the control of items such as electric shavers or beard trimmers and also the list of items that are available for purchase from canteens using points awarded under the Individual Allowance Program.

Recommendation 23

The Department of Home Affairs should introduce drug and alcohol rehabilitation programs as a core component of service provision in immigration detention.

The Department has reviewed drug and alcohol support services that are available within the general Australian community, and the Australian corrections environment, with the aim of mirroring and providing similar services in immigration detention.

Advice was sought from drug and alcohol specialists who currently work in corrections, as well as other key stakeholders, to determine the best clinical practice. As a result of this, the Department is currently implementing new policy regarding the provision of nationally consistent drug and alcohol support services, within the IDN. This includes counselling, Opiate Substitution programs and peer support arrangements.

Recommendation 24

The Department of Home Affairs should commission a review of existing laws and policies that may assist in addressing concerns regarding inappropriate use of mobile phones in detention.

The Department acknowledges the AHRC recommendation in relation to inappropriate use of mobile phones in detention, and continues to explore options to address this issue. On 13 September 2017, the Australian Government introduced the *Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2017* (the Bill) into the House of Representatives. The Bill was passed by the House of Representatives on 7 February 2018. The Bill seeks to strengthen the ability of authorised officers to conduct searches for, and to seize mobile phones, SIM cards other electronic devices designed to be capable of connecting to the internet. The measures proposed in the Bill support the ongoing order, safety and security of IDFs. The Bill is awaiting debate in the Senate.

Pending the outcome of the Bill, the ABF is managing the risks posed by the use of mobile phones by detainees in IDFs through operational procedures. A mobile phone may be seized in circumstances where it is demonstrated objectively that it is reasonably necessary to do so in order to keep a person in immigration detention (for instance, to prevent an escape); or in a situation of imminent danger to life or property. Where there is evidence that a detainee is using a mobile phone to engage in illegal activity, the matter is referred to police.

Recommendation 25

The Department of Home Affairs should revise entry conditions for external visitors, with a view to applying conditions and restrictions only when necessary to manage specific risks in a visitor's individual circumstances.

The Department does not support the recommendation to revise the conditions of entry for visitors to an IDF, because the Department is committed to maintaining the safety and security of all people in an IDF.

The Department imposes conditions on the entry of visitors to IDFs, as it has a duty of care to provide a safe and secure environment for all people within the IDF. A measure adopted by the Department to meet this duty of care is to exercise its legislative and common law powers to determine who may enter an IDF, and the conditions upon which entry may be granted.

Information on the visitor application process and the conditions of entry is available on the Department's website in fifteen languages, is displayed in the IDF reception area and all people seeking to visit an IDF must acknowledge these conditions as part of the application process.

From the introduction of the revised visitor application arrangements on 22 January 2018 to 19 February 2019, the Department has received over 80,000 applications to visit an IDF. Almost 78,000 (or 95%) of the applications were made through the new online application process, with only 5% of applicants opting to use the paper application that are also available in fifteen languages.

The Department does not agree with the Commission's view that "*the requirement to submit a separate application and identification for every visit is unnecessarily cumbersome for regular visitors who are known to staff*", because the process cannot reasonably rely on individual staff member's knowledge of individual visitors.

Changes to detention visitor entry conditions were introduced to increase the safety of all visitors, detainees and staff by ensuring that the Department has accurate information about the identity of individuals visiting its facilities, and to increase the ability to address contraband entering IDFs.

Food policy measures were introduced to ensure crucial food health and safety standards are maintained, and to address the use by some visitors of outside food to smuggle contraband into IDFs.

Given the limited powers the Department has to search for and seize illegal and dangerous contraband within IDFs, the visit conditions and outside food policies represent effective measures to secure IDFs against the entry of illicit substances and other contraband.

Screening technology further reduces the risk of contraband entering IDFs. The Department has recently introduced new trace detection technology which returns very few false positives and can detect a wider range of substances, thereby providing an effective deterrent to those who may consider bringing illicit substances into IDFs through visits.

Personal visitor applications are ordinarily to be lodged five business days before the proposed visit. If the online option is not readily accessible, a paper application can be lodged directly with the IDF.

In certain circumstances, applications for a personal visit lodged less than five days before the proposed visit date may be given consideration at the discretion of the relevant ABF Detention Superintendent. The five business day requirement enables the visit application to be assessed, consent to the visit to be confirmed with the detainee and confirmation of the detainee's availability at the time of the visit to be confirmed prior to making a decision on the visit application.

Requiring 100 points of identity documentation ensures that visitors entering an IDF are who they say they are, and can be properly assessed for any risks they may pose.

Recommendation 26

The Department of Home Affairs should consider extending the 'trusted visitor' pilot to individual visitors who routinely comply with entry conditions.

The Department does not agree with this recommendation. There is no plan to roll out the trusted visitors pilot to individuals at this time. The trusted visitor pilot was introduced in recognition of the specific administrative burden placed on community support sector groups, who frequently apply to visit large numbers of detainees on a regular basis. Updates and improvements to the visits system in line with feedback received may be considered for future implementation.

Recommendation 27

Facility staff should review strategies for providing information about standards of behaviour to people in immigration detention, to ensure that this information is communicated effectively, and not only on arrival.

In addition to the induction briefing, the Department can confirm that Serco is contractually required to prominently display the policy on illegal and anti-social behaviour in all relevant languages throughout each facility.

Since receiving the AHRC Report, the Department has received advice from Serco confirming that 'Detainee Rights and Responsibilities' in IDFs notices are provided to detainees at the time of their arrival at each facility, and are available in languages appropriate for the detainee cohort. These notices are also displayed throughout each facility.

There are a number of mechanisms, in addition to detainee induction processes, by which detainees are informed of appropriate detainee behaviour standards that are expected in immigration detention. These include during individual interactions between detainees and staff, as well as in group forums such as the Detainee Consultative Committee.

Recommendation 28

The Department of Home Affairs and facility staff should ensure that people in detention are routinely provided with explanations of decisions that affect them, including those relating to the use of restraints, transfers and placements.

Transfer operations are conducted and completed in accordance with the Australian Border Force (ABF) instructions provided to Serco. The instructions includes approval of proposed itinerary, flight plans, use of restraints (where appropriate) and other aspects of the transfer. Where appropriate, detainees should be advised of a decision to transfer within the IDN during business hours, no later than the day prior to the day of intended transfer.

Where there are operational concerns about the safety and security of the detainee, staff or detention centre, the detainee may be given reduced notification of a transfer based on a security risk assessment. The detainees will pack their own property in accordance with policy.

Placement decisions are reviewed through various meetings such as the Individual Management and Placement Review Committee Meeting (IMPRC), Detention Review Committee (DRC), Person of Interest Meetings (POI) or via a detainee request form. ABF endeavours to provide detainees with responses to all of their placement requests.

Recommendation 29

The Department of Home Affairs should review its policy on access to vocational training in immigration detention, with a view to enhancing access to educational opportunities for people held in immigration detention for prolonged periods.

The Department will continue to consider how access to educational opportunities for detainees held in detention for prolonged periods may be enhanced in future.

Recommendation 30

In consultation with facility staff and people in detention, the Department of Home Affairs should explore options for enhancing access to meaningful activities in immigration detention.

The FDSP is required to provide meaningful programs and activities (P&A) to the detainee cohort in immigration detention facilities. P&A refers to the range of structured and unstructured social, welfare, recreational and educational events available to detainees.

The monthly P&A Schedule takes account of a range of factors, including age, gender, religious beliefs, as well as a range of safety and security considerations. It is the ABF position that meaningful P&A can be delivered to detainees which meets their individual needs, without the requirement to facilitate external excursions.

Recommendation 31

The Australian Government should introduce legislation to ensure that closed immigration detention is used only as a last resort in circumstances where a person has been individually assessed as posing an unacceptable risk to the Australian community, and that risk cannot be managed in a less restrictive way.

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.

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; or
- 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 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.

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.

Recommendation 32

The Australian Government should introduce legislation to ensure that the necessity for continued immigration detention is periodically assessed by a court or tribunal, up to a maximum time limit.

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 departmental 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.

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

The Commonwealth Ombudsman is required by the Act to review immigration detention arrangements for each person detained for more than two years, and then every six months if they remain in immigration detention.

Within the Act, detention is administrative and the timeframe 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.

The Australian Government is committed to ensuring that all people in immigration detention are not subjected to harsh conditions, are treated fairly and reasonably within the law, are provided with a safe and secure environment, and are only in immigration detention for the shortest practicable time.

Recommendation 33

The Department of Home Affairs should conduct a review to identify:

- factors contributing to the high average length of immigration detention since 2015**
- strategies to reduce the average length of immigration detention.**

The length of a person's detention can be influenced by a number of factors including the complexity of the case and where there are character, security or identity concerns. In some cases, a detainee's immigration status can be resolved through departmental processes, including removal from Australia or the grant of a visa. In other cases, Ministerial Intervention may be required to enable management of a detainee within the community.

The Department conducts regular reviews of persons in detention, to ensure status resolution options are being progressed and the appropriateness of their detention. Reviews are conducted monthly by Status Resolution officers, and the Department also has a statutory reporting obligation to the Commonwealth Ombudsman for any person detained for two years or more. Following review of a person's case, if it is assessed that their detention may no longer be appropriate and the Department is unable to resolve the detainees' status through departmental processes, the detainee may be referred for consideration under the Minister's personal intervention power.

The Minister's Intervention powers are non-delegable and non-compellable, meaning that only a portfolio Minister can exercise these powers and the Ministers are under no obligation to consider exercising or to exercise these powers in any case.

Ministerial Guidelines have been issued which provide advice on the types of cases which are to be referred for consideration and those that should not be referred. Only cases which meet the Minister's guidelines are referred for consideration.

Recommendation 34

The Minister and Department of Home Affairs should routinely consider all people in immigration detention for release into alternative community-based arrangements.

The Department conducts regular reviews of persons in detention. As part of this review, Status Resolution officers consider whether a community placement may be appropriate in the individual's circumstances.

Where appropriate, the person's case will be referred for assessment against the Minister's Intervention guidelines, in line with the process outlined in response to Recommendation 33.

Only cases which meet the Minister's guidelines are referred for Ministerial consideration. The Minister Intervention powers are non-delegable and non-compellable.