



25 August 2017

DIBP RESPONSE TO AHRC RECOMMENDATIONS MARIBYRNONG IMMIGRATION DETENTION CENTRE

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 (induction process)

Facility staff should review induction procedures at Maribyrnong Immigration Detention Centre, to ensure that people in detention receive clear information about their rights and responsibilities in detention, and about internal facility rules and operating procedures.

The Reception and Induction process is designed to ensure all detainees entering a new facility are provided with information relevant to that particular facility. During this process, if a person presents with physical and/or mental health issues, a shortened version of the Reception and Induction programme may be provided in the first instance, with the more comprehensive programme being provided at a later date. The Induction process is undertaken by Serko and is required, under contract, to cover the following topics, in a language the person understands:

- the geographic location of the facility and surround environs
- individual rights and responsibilities whilst in immigration detention
- expected standards of behaviour
- living conditions in the facility
- how the facility operates
- the available amenities
- range of support services available and how to access them
- the complaints management process
- emergency procedures

The Department is satisfied that the Reception and Induction process provides people in detention with clear information about their rights and responsibilities while in detention, and about internal facility rules and operating procedures.

Recommendation 2 (communication about risk assessments)

The Department of Immigration and Border Protection and facility staff should ensure that:

- a) people in detention are given clear information about the types of conduct which may lead to particular risk ratings**
- b) people in detention are informed of the reasons for their individual risk rating (unless doing so would present an unacceptable risk)**

Detainees are provided with an information guide during their induction. The document clearly articulates the kind of behaviours which are unacceptable.

Detainees are also required to sign a document acknowledging that they understand the behaviour that is expected of them while in detention.

Both these documents are translated into 14 different languages (in addition to English) to ensure that it is provided to detainees in a language they understand.

Recommendation 3 (risk assessments)

The Department of Immigration and Border Protection should review the current risk assessment and rating process to ensure that:

- a) people in detention are not subject to more restrictive measures than are necessary in their individual circumstances**
- b) mental health status and other relevant vulnerabilities are adequately taken into account, with alternatives to restrictive measures considered where possible if vulnerabilities are identified.**

The Department can confirm that the current risk assessment and rating process does take into account individual circumstances, including a person's mental health and advised vulnerabilities. Restrictive measures are only considered where a person's risk rating deems it necessary.

Recommendation 4 (mechanical restraints)

The Department of Immigration and Border Protection and facility staff should review policies relating to the use of 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 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 and centrally available to all staff.

A revised Security Risk Assessment Tool (SRAT) was implemented 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 5 (transfers between detention facilities)

Where a person is being transferred between immigration detention facilities, the Department of Immigration and Border Protection and facility staff should ensure that the person:

- a) is given adequate notice of the transfer**
- b) receives a clear explanation of the reasons for the transfer**
- c) is given an opportunity to pack their belongings and notify family members, friends and legal representatives prior to the transfer.**

The Department notes that due to the risk profile of the current detainee population, the need to balance duty of care obligations against ensuring safety and security must be considered. Where possible, detainees will be provided adequate notice of their transfer and also reasons for the transfer. Unless a critical operational requirement or unacceptable level of risk to safety and security is presented, they will be given an opportunity to pack their belongings and make contact with family, friends and legal representatives prior to the transfer.

Recommendation 6 (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 MIDC.

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 operating models are continually being reviewed, including MIDC. This may include upgrades to infrastructure, the separation of detainees and certain cohorts, and controlled movements within an immigration detention facility.

Recommendation 7 (occupancy rate)

The Department of Immigration and Border Protection should maintain a maximum occupancy rate of two people per bedroom at the MIDC.

Accommodation arrangements at MIDC 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 8 (outdoor space)

Facility staff should implement strategies to provide greater access to outdoor space for all people detained at the MIDC, particularly those in Zones D and E.

In line with feedback from detainees through Detainee Consultative Committee Meetings, as well as reviews by internal and external stakeholders, daily structured and unstructured access to Zone A Courtyards has been introduced for detainees from all Zones at MIDC. This gives individuals from all Zones fair access to the Zone A Courtyard. This is in addition to the external courtyards in each Zone, which are accessible for detainees accommodated in the respective zone. The Zone A courtyard access is incorporated in the Programmes & Activities (P&A) schedule and displayed in each zone. The Department is satisfied that the additional courtyard access provides greater access to outdoor space for all people in MIDC.

Recommendation 9 (educational opportunities)

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

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 P&A schedules. Recent education offerings have included such topics as Customer Service, Australian History, Numeracy and Environmental Concerns.

Departmental policy allows people in detention to participate in workshops and non-award educational programmes, and to further enhance this, the Facility Detention Service Provider (FDSP) will be implementing a number of educational programmes from the ClickView curriculum (<https://www.clickview.com.au>) in the coming months.

Recommendation 10 (excursions)

Facility staff should introduce regular excursions for people detained at the MIDC, with access to excursions restricted only where a person presents an unacceptable flight or safety risk.

The FDSP is required to provide P&A, which are tailored to the individual, taking into account (amongst other things) factors such as age, gender, religious belief and ethnicity. One of the primary purposes of P&A is to promote the wellbeing and health of the detainees. P&A covers recreational, sporting, vocational, religious and educational activities. All detainees are afforded the opportunity to engage in P&A offerings advertised on the Facility Monthly P&A Schedule. The P&A Schedule includes external excursions, subject to appropriate detainee risk assessment outcomes which are reviewed regularly by the FDSP. At present, excursions are not being offered at the MIDC due to the risk ratings of the current cohort.

Recommendation 11 (points system)

Where a person is unable to participate in activities due to health issues, facility staff should adopt alternative methods for allocating points.

The administration of the individual allowance programme enables discretionary points to be awarded by the Centre Manager, or his delegate, to persons who are unable to participate in activities due to health issues, scheduled interviews, medical appointments etc.

Recommendation 12 (continuity of care)

The Department of Immigration and Border Protection should consult with facility staff to develop improved strategies for ensuring continuity of care for people entering or being released from immigration detention, particularly those who have been identified as vulnerable, such as those receiving treatment for substance abuse.

The Health Service Provider conducts a Health Induction Assessment (HIA) for all people entering into an immigration detention facility. A key purpose of the HIA is to establish whether a detainee has any health conditions, including mental health, requiring treatment and/or the development of an ongoing health treatment plan.

For detainees being discharged from an immigration detention facility, detainees undergo a Health Discharge Summary (HDS). The HDS is used to assist in the handover to future clinicians of other health and medical providers when a detainee is transferred to Community Detention, is granted a visa to remain in Australia or is being removed from Australia. A key component of the HDS is to determine any requirements the detainee may have for ongoing care or treatment following their discharge and to determine if a special needs health assessment is required to meet the detainee's health care requirements. A physical examination is offered to detainees, and must be consented to, as part of the HDS process.

The HDS is also required to provide notification about detainees who:

- Require significant levels of care or immediate attention.
- Are at risk of deteriorating.
- Have significant chronic disease.
- Have previously had or are at risk of a communicable disease.
- May require hospital admission in the future.
- Require referral for the engagement of mental health care arrangements.

Also included are any ongoing clinical needs and management requirements of the detainee's physical or mental health issues and detail follow up appointments that have been made or need to be made with external providers.

Recommendation 13 (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 14 (privacy of communication)

Facility staff should provide clear information to people in detention regarding the privacy of landline telephone calls and internet usage.

When detainees arrive at the MIDC, they are provided with an 'Information Guide for People in Detention'. This guide advises detainees of their right to privacy and the expectation that they will respect the privacy of others. The Department considers that this information is clearly communicated and addresses the concerns raised in this recommendation.

Recommendation 15 (visits)

The Department of Immigration and Border Protection and facility staff should review restrictive measures which currently apply to visits, to determine whether they are necessary to ensure safety and security in all circumstances.

The Department is committed to the safety, security and welfare of all immigration detention facilities including staff, visitors and detainees. The rules around visiting immigration detention facilities includes ensuring that prohibited or restricted items are not brought in and may also require the screening of persons and property entering a facility in certain circumstances.

The Department has seen an increase in the percentage of high-risk detainees, such as those with a criminal history and links to criminal associations including outlaw motorcycle gangs.

Arrangements for visits are required to be made in advance. The Department and the FDSP reserve the right to determine who can enter an IDF and the conditions upon which entry will be granted.

With prior approval, gifts are allowed; however, certain conditions apply. The Department encourages visiting community members, seeking to give a gift to a detainee, to contact the immigration detention facility in advance of their visit in order for the Department to carefully consider the proposed gift against the Department's responsibilities to maintain a safe and secure immigration detention network.

Recommendation 16 (family unity)

The Department of Immigration and Border Protection should seek to 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 17 (complaints processes)

Facility staff should implement strategies to promote greater awareness of the 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 18 (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 19 (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 20 (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 21 (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 22 (alternatives to detention for people whose visas have been cancelled on character grounds)

The Minister and Department of Immigration and Border Protection should routinely consider people who have been detained as a result of having their visa refused or cancelled under s 501 of the *Migration Act 1958* for release into community-based alternatives detention, on the basis of individualised risk assessments.

Individuals whose visa has been cancelled or refused under section 501 are considered to be a risk to the Australian community. Departmental guidance for Status Resolution officers provides that individuals in this cohort are subject to held detention, and placement in community detention will not be considered.

The Department is unable to consider the grant of a Bridging visa E to individuals whose visa has been cancelled or refused under section 501. Section 501E of the Act prevents these individuals from making an application for a visa, other than a Protection Visa or a visa specified in the regulations (currently only a Removal Pending Bridging visa, application for which can only be made at the invitation of the Minister).

Recommendation 23 (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 24 (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.