



8 December 2017

DIBP RESPONSE TO AHRC RECOMMENDATIONS YONGAH HILL IMMIGRATION DETENTION CENTRE (YHIDC)

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

Recommendation 1 (physical safety)

Facility staff should continue to monitor concerns relating to physical safety and implement additional strategies to address these concerns as needed.

The Department takes very seriously its duty of care to all staff and detainees within the immigration detention network and has a number of measures in place to ensure their physical safety.

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. This includes the separation of detainees and certain cohorts as well as controlled movements within an immigration facility.

Detainees are also provided with an information guide during their induction into immigration detention centres. This document clearly articulates the kind of behaviours which are acceptable and is available in 14 languages. An induction process is also undertaken by Serco and is required, under the contract, to cover the expected standards of behaviour. This must be delivered in a language the detainee understands. Detainees are also required to sign a document acknowledging that they understand the behaviour that is expected of them while in detention. Any breaches to the expected standards of behaviour are dealt with through a number of processes such as Behaviour Management Plans and more restrictive placements.

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. The SRAT provides a consistent and agreed set of principles around risk assessment and subsequent mitigation strategies. The SRAT considers each detainees' individual circumstances including behaviour.

All placement decisions are undertaken as part of a national risk based approach to assessing and minimising risk to detainees, service providers, staff and visitors to all centres. Risk minimisation may include the separation of detainees and certain cohorts, as well as controlled movements, within an immigration facility.

Recommendation 2 (relationships with staff)

The Department of Immigration and Border Protection and facility managers should monitor interactions between staff and people in detention to ensure that respectful relationships are maintained.

The Department has well-defined processes in place to ensure all staff interact with detainees in a respectful way.

The Facilities and Detention Services Provider (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. The contact details and complaints processes, of internal and external bodies, are placed in visible locations throughout the centre.

Any alleged incidents that are substantiated are dealt with appropriately. Outcomes may include the removal of staff members from immigration detention facilities, dismissal and/or referral to law enforcement agencies.

All personnel that work in detention centres undergo mandatory training to ensure they have the appropriate skills to carry out their role including induction training and ongoing refresher courses. The Department and the FDSP work together to ensure continuous improvement in all aspects of detainee care and are committed to ensuring all staff follow the highest standards of integrity.

Recommendation 3 (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, including use of mechanical restraints, 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 4 (information sharing on use of mechanical restraints)

As part of broader efforts to ensure people in detention are not subject to more restrictive measures than are necessary in their individual circumstances, facility staff should document and share information regarding strategies to limit the use of restraints where possible, particularly during escort to medical consultations.

It is extremely rare for detainees in the Western Australian region to be restrained in a vehicle or a medical facility. Approval is required at the Superintendent for the planned use of restraints. This is approved for use in vehicles or clinics only where the detainee represents a significant risk to themselves, the community or others, and there are no other mitigations available. Arrangements are also in place through the approval process for strategies to limit the use of restraints such as the use of additional staff, and the application of Enhanced Escort Procedures.

Recommendation 5 (transfers)

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 the safety and security of detainees and staff must be considered. Where possible, detainees will be provided adequate notice of their transfer, and the reasons for the transfer. Unless there is a critical operational requirement or unacceptable level of risk to safety and security, 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 (shared accommodation)

The Department of Immigration and Border Protection should minimise shared accommodation arrangements at the YHIDC.

Placement of detainees within the YHIDC is considered on an individual basis. Where there are vulnerabilities or other individual issues identified, arrangements are made to ensure that the detainee is placed appropriately and has the appropriate supports in place. Detainees assessed as requiring their own room are placed accordingly.

Where capacity allows, the Department seeks to ensure that detainees have access to their own room, however, there is no guarantee that this will be possible and single room access is prioritised for those identified as requiring their own room.

Recommendation 7 (shaded areas)

The Department of Immigration and Border Protection should consider installing additional shaded areas in the Green Heart of the YHIDC.

The Department will review existing shade and recreational infrastructure at YHIDC as part of the 2017-18 administered capital works program of priorities.

Recommendation 8 (educational opportunities)

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

The Department can confirm that all Programs & Activities (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 enables people in detention to participate in workshops and non-award educational programs, and to further enhance this, the FDSP will be implementing a number of educational programs from the ClickView curriculum (<https://www.clickview.com.au>) in the coming months.

Recommendation 9 (awareness of excursions)

Facility staff should implement strategies to promote greater awareness of opportunities for excursions and the circumstances in which restraints may be used on excursions.

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.

A revised SRAT was implemented in 2016. 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.

Recommendation 11 (religious observance)

Facility staff should implement strategies to increase opportunities for religious practice and worship.

YHIDC endeavours to provide ample opportunities for detainees to practice their religion. Serco have a dedicated Religious Liaison Officer (RLO) who engages with detainees to facilitate access to religious practice and worship. Detainees are engaged with during their induction and through regular review of their Individual Management Plan (IMP) to ensure appropriate access to religious practice and worship.

The services facilitated include a mix of onsite and offsite services, including:

Religious visitors are on site for two hours every afternoon (with the exception of public holidays):

- Uniting Church - Monday
- Jehovah Witness - Tuesday

- Christian Fellowship - Wednesday
- Catholic Church - Thursday
- Anglican Church – Friday.

Offsite excursions to churches, temples & mosques are scheduled as follows:

- Sundays:
 - Catholic Church - every Sunday
 - Uniting Church - 1st & 3rd Sunday
 - Anglican Church - 2nd & 4th/5th Sunday
 - Kingdom Hall - every Sunday
- Mondays: Sikh Temple - 3rd Monday in month
- Tuesdays: Buddhist Temple - 4th Tuesday in month
- Thursdays: Hindu Temple - 1st Thursday in month
- Fridays: Mosque - 2nd Friday in month.

Vietnamese religious groups visit on a Thursday morning from 10am to Midday on occasion. These visits are held in the visits area with the RLO in attendance.

An onsite activity room is also available each afternoon to detainees for the purposes of religious practice and worship. Detainees are able to engage with the RLO to facilitate bookings and access.

In addition, during recognised religious days of the year, the RLO assists the detainees to make arrangements to celebrate special days, such as Easter, Ramadan, Christmas etc.

Recommendation 12 (review of health care)

The Department of Immigration and Border Protection should establish an independent review of health care at the YHIDC, with a view to assessing the standard of care currently provided and proposing measures to address any identified deficiencies.

Health care services for detainees in immigration detention are comparable to those available to the Australian community, under the Australian public health system. The Department has a program to monitor key service delivery and performance of the contracted Health Services Provider, International Health and Medical Services (IHMS) across the network. The program is conducted by departmental staff onsite at Australian Immigration Detention Facilities and a Performance Audit Team within National Office. Key services monitored include:

- Reviewing the delivery of health care services on site, including adherence to stipulated timeframes;
- Confirming Health Care Records are in place and contain appropriate information;
- Analysing incident reporting against contractual requirements;
- Monitoring IHMS' management of detainee complaints and requests.

The Health Services and Policy Division (HSPD) provides expert clinical and high-level strategic advice and oversees health standards and health related matters across the portfolio, including detention health.

Recommendation 13 (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.

HSPD oversees health standards and health related matters across the portfolio, including detention health, immigration health, and workplace health and safety. HSPD has overall responsibility for providing expert clinical and high-level strategic advice to the Department's Executive.

HSPD draws 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. IHAP meetings are held quarterly and are chaired by the First Assistant Secretary, HSPD.

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.

Recommendation 14 (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 intends to implement a mobile phone policy that does not allow detainees in immigration detention to access mobile phones. The decision to remove mobile phones from immigration detention facilities was made in response to significant risks mobile phones posed to the immigration detention network. These risks would not be effectively managed were the Department to allow some detainees to access mobile phones and prevent other detainees from accessing them.

The current mobile phone policy prevents Illegal Maritime Arrivals detainees from accessing mobile phones and allows all other detainees to access mobile phones. This two-tiered policy has created issues relating to the safety and security of the immigration detention network, including reports of standover tactics where some detainees are pressured by other detainees to use their mobile phones. Continuing to implement a two-tiered policy would not effectively manage the risks mobile phones pose to the immigration detention network.

Recommendation 15 (internet access)

The Department of Immigration and Border Protection and facility staff should explore options for providing unrestricted access to computers and the internet, such as through installing additional computer terminals in accommodation compounds and common areas.

Internet access is readily available in some facilities, while other facilities make use of a booking system. Most access is routine but, in some circumstances, a detainee might need priority or out-of-hours internet access to progress their immigration case or to update family members on sensitive matters. Detainees subject to a court order restricting access to the internet are not to be granted unrestricted internet access.

Recommendation 16 (family unity)

The Department of Immigration and Border Protection should accommodate people in immigration detention 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. In making placement decisions, medical needs are given priority, and family and community links are carefully considered.

Recommendation 17 (complaints processes)

Facility staff should implement strategies to foster greater confidence in 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. Complaint, request and feedback forms are readily available within the accommodation and communal areas. Locked and clearly marked complaints, request and feedback boxes are located around the facility for detainees who do not wish to speak directly to a member of staff about their complaint, request or feedback. These boxes must be checked, cleared and the complaints processed every day including weekends and public holidays without exception and in a timely manner.

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 (indefinite mandatory detention)

The Australian Government should introduce legislation to replace the current system of mandatory immigration detention with a case-by-case assessment process that takes individual circumstances into consideration. Closed detention should only be used as a last resort in circumstances where:

- a) 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**
- b) the necessity for continued detention has been individually assessed by a court or tribunal, with further assessments to occur periodically up to a maximum time limit.**

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 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.

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.

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.

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 19 (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 Committee conducts formal monthly reviews of all detainees. The purpose of the Committee 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 or in community detention, remains appropriate to the person's situation and conducive to status resolution.
- 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.
- While 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 of the Act, for residence determination. These assessments take into account risk to the community and any mitigating factors or circumstances.

Recommendation 20 (alternatives to detention)

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

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 of the Act 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 21 (awareness of case management)

Facility staff should implement strategies to ensure that all people detained at the YHIDC have a clear understanding of who their case manager is and the process for contacting their case manager.

The Yongah Hill Immigration Detention Centre (YHIDC) Status Resolution Officers (SROs) provide and explain an information sheet entitled 'Working with your Status Resolution Officer' to detainees during their first interaction. The information sheet contains information regarding the role of an SRO, including details of support they provide to detainees and how detainees can communicate with them.

Recommendation 22 (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.**

In 2016, the Department completed an internal capability review regarding immigration detention arrangements. The review highlighted the need to ensure that there is an empowered officer to make decisions to resolve an individual's immigration status. Existing roles that have similar functions, such as case management and status resolution officers, are likely to be integrated into the 'empowered officer' role with the aim of minimising hand-off points and ensuring a more streamlined experience for the individual. The recommendations of the internal review are progressively being implemented, including the vocational requirements to capture the 'empowered officer' concept into the status resolution officer role.

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 addressed, 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 program delivery.

Status Resolution Officers promote self-agency by:

- talking early and often to the person
- speaking candidly about 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 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 23 (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.