Australian Human Rights Commission

Mr FP v Commonwealth of Australia (Department of Home Affairs)

[2026] AusHRC 195

September 2026

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The Hon Michelle Rowland
Attorney-General
Parliament House
Canberra ACT 2600

Dear Attorney-General

Pursuant to s 11(1)(f) of the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act), I enclose a report of my inquiry into a complaint made by Mr FP against the Department of Home Affairs (the Department).

Mr FP is a Kenyan national who came to Australia on a Skilled Independent (subclass 189) visa in 2015. His visa was mandatorily cancelled in May 2020 under s 501(3A) of the *Migration Act 1958* (Cth) following criminal convictions. He was detained in August 2020 and taken to Villawood Immigration Detention Centre, where he remained until the visa cancellation was set aside by then the Administrative Appeals Tribunal in April 2022.

Mr FP's complaint raises issues regarding safety in detention as he was subjected to multiple incidents of violence by other detainees because of his identity as a bisexual African male. He claims that both the Department and Serco failed to take reasonable steps to ensure his safety, including by providing him with single-room accommodation despite known risks to his wellbeing.

As a result of this inquiry, I have found that Mr FP's human rights were breached by the Department's failure to take sufficient steps to ensure the minimum standards of humane treatment for Mr FP and accommodate his needs as a detainee with known and complex health conditions. I have found the acts of the Commonwealth are inconsistent with, or contrary to, article 10(1) f the ICCPR.

On 21 April 2026, I provided a notice pursuant to s 29 of the AHRC Act setting out my findings and recommendations in this matter. I received the Department's response to my findings and recommendations by letter dated 6 July 2026. This can be found in part 10 of this report.

I enclose a copy of my report.

Yours sincerely,



Hugh de Kretser
President
Australian Human Rights Commission
October 2026

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1 Introduction to this inquiry

1. The Australian Human Rights Commission has conducted an inquiry into a complaint by Mr FP against the Commonwealth of Australia (Department of Home Affairs) (Department), alleging a breach of his human rights.

2. Mr FP's complaint raises issues regarding safety in detention and considers the application of articles 7 and 10(1) of the *International Covenant on Civil and Political Rights* (ICCPR).

3. This inquiry was undertaken pursuant to section 11(1)(f) of the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act).

4. This document comprises a report of findings in relation to this inquiry and recommendations to the Commonwealth.

5. As it is Mr FP's preference, I have made a direction under s 14(2) of the AHRC Act prohibiting the disclosure of his identity in relation to this inquiry.

2 Summary of findings and recommendations

6. As a result of this inquiry, I find that the following acts of the Commonwealth are inconsistent with, or contrary to, article 10(1) of the ICCPR which prohibits inhumane treatment of people who are detained:

    - the Department and Serco's failure to take sufficient steps to ensure the minimum standards of humane treatment for Mr FP and accommodate his needs as a detainee with known and complex mental health conditions.

7. I make the following recommendations:

    Recommendation 1

    The Department should ensure that requests or recommendations for single room occupancy are prioritised when there are concerns regarding safety, risk of violence (both actual or perceived) or risk to physical or mental health, particularly when there are medical needs and/or support for the request or recommendation.

    Recommendation 2

    The Department should immediately implement measures to protect people at risk of violence in immigration detention, including by exploring alternative detention arrangements such as community detention or

grants of bridging visas. This would allow victims of violence to be separated from the alleged perpetrators where this is not practicable in the detention facility. It would provide safer alternatives for those more vulnerable to violence due to any personal characteristics such as mental health or sexual orientation.

3 Background

8. Mr FP was born on 13 October 1979 in Kenya. He is not an Australian citizen.

9. On 13 February 2015, whilst offshore, Mr FP was granted a Skilled Independent (subclass 189) visa. On 14 May 2020, following criminal convictions, Mr FP's visa was mandatorily cancelled under s501(3A) of the Migration Act.

10. On 1 August 2020, Mr FP was detained under section 189(1) of the *Migration Act 1958* (Migration Act) as an unlawful non-citizen. He was transferred to Villawood Immigration Detention Centre (VIDC) on the same day. At the relevant times, VIDC was operated by Serco Asia Pacific Pty Ltd (Serco) under an agreement with the Department.

11. Mr FP's detention medical records show that he has been diagnosed with schizophrenia, major depression and anxiety and that he is a survivor of childhood sexual abuse.

12. On 7 April 2022, the Administrative Appeals Tribunal (AAT) set aside the Department's decision to cancel Mr FP's visa under section 501(3A) of the Migration Act, and he was released from immigration detention on the same day.

13. Mr FP alleges that, between May 2021 and November 2021, the Department and Serco failed to provide a safe place of detention and, as a result, he was subjected to multiple incidents of violence from other detainees at VIDC. He claims that the Department and Serco failed to provide him with a single room to ensure his safety and that accordingly he decided to sleep in the bathroom area.

14. Mr FP expressed his complaint in the following terms:

> I am a bisexual/gay African male living in constant fear at the centre and have faced over 10 targeted attacks including multiple stabbings and assaults involving weapons by other detainees. I have grown extremely frail and weak over the past year and have lost at least 50 kilograms of body weight without trying. I miss most meals and am very weak on most

days.

15. The Department has provided details of incidents that were recorded during the relevant period, including a chronology and supporting incident reports. A summary of the Department's chronology is as follows:

Date	**Incident Number**	**Description**
28 May 2021	1-I20JZB2	Mr FP alleges that at approximately 19:50, multiple detainees in Latrobe compound assaulted him, including slapping and punching him multiple times, and putting him on the ground. At 20:20, the Acting Detainee Services Manager (A/DSM) interviewed the detainees involved in the presence of an Emergency Response Team (ERT) officer. Both detainees immediately apologised which Mr FP refused to accept. The A/DSM did not observe any visible injuries. Serco officers asked Mr FP if he required medical assistance which he declined. This incident led to a police investigation. Members of the Australian Federal Police (AFP) attended Villawood Immigration Detention Centre (VIDC) to speak with those involved but the matter was terminated due to Mr FP withdrawing the complaint, and due to a lack of evidence.
4 June 2021	1-I2ECP65 and 1-I2ENQO8	On 4 June 2021 at 00:03, Mr FP approached a Serco officer and claimed that he was assaulted while he was sleeping in his room. Mr FP stated that he also saw another detainee holding what appeared to be an improvised weapon. A Detainee Service Officer (DSO) observed the detainee discard a dental pick with a sharpened end. The item was seized. Mr FP was already on Enhanced Monitoring at this time. A police referral was made on his behalf. He also submitted a complaint to

		Serco, requesting that the detainees involved should be removed from Latrobe Compound. On 29 June 2021, Mr FP met with the A/DSM to discuss the issue. Mr FP informed the A/DSM that since the detainees had been removed from the compound, he felt better. On 17 June 2021, the Australian Border Force (ABF) notified Mr FP that the AFP had decided not to investigate further.
6 June 2021	1-I2ITJ8I and 1-I2ITJ6B	On 6 June 2021 at 01:10 Mr FP approached the Latrobe officer's station and alleged that a detainee threated him with a weapon forcing him into his room where he was again threatened with the weapon. ERT officers questioned and searched the detainee involved, with nothing located. The detainee was held in the property holding room until approval was granted for him to be accommodated in another compound. ABF made a police referral on Mr FP's behalf. On 17 June 2021, ABF notified Mr FP that the AFP had decided not to investigate further.
6 July 2021	1-I4HC1ZR	On 6 July 2021 at 13:34, a Serco DSO witnessed Mr FP running towards the Village Green away from an unknown detainee, who returned to Latrobe before the DSO could ask what had occurred. Serco ERT officers asked Mr FP to identify the detainee, which he did not. Mr FP did not sustain any visible injuries and declined medical assistance. Mr FP did not request a police referral in relation to this incident.
18 July 2021	1-I57ROXQ	At 16:23 a Code Black (officer requires assistance) was called via Radio by a DSO. Serco ERT officers and the Facilities Operations Manager (FOM) responded to the incident and directed three detainees to leave

		Latrobe Compound. Mr FP and one detainee were escorted to the property area and the third detainee was escorted to the clinic due to sustaining a small laceration. The FOM interviewed those involved. The other detainees declined a police referral. Mr FP submitted a complaint to Serco the next day, attaching copies of threatening messages received from another detainee. On 25th July 2021 he discussed the issue with the Facilities Operations Manager and advised that he wished to withdraw the complaint as the issue was resolved. ABF made a police referral on Mr FP's behalf. The AFP decided not to investigate further. ABF notified Mr FP of the outcome.
9 August 2021	1-I60GZNL	Mr FP and another detainee were involved in verbal altercation in Latrobe compound at approximately 20:00 hrs. Serco ERT initiated a Code Black. An ERT officer and the A/DSM attended the scene at 20:02. Mr FP alleged that the other detainee threatened to stab him. The other detainee was subjected to a pat and wand search, and an Intel Led room search. No weapons were located. Mr FP refused medical attention. He accepted a police investigation and ABF made a referral on his behalf. On 20 August 2021, the AFP notified ABF that they determined not to investigate further, given that the incident was a low priority incident involving only a verbal exchange. ABF notified Mr FP of the outcome.
19 August 2021	1-I7CQB03	Mr FP alleged that an unknown detainee threatened to assault him physically in Latrobe compound common area. The ERT officers and the A/DSM attended the compound and spoke to Mr FP, who did not remember the exact time or name of the

		detainee. Mr FP stated that he felt unsafe in this unit. Mr FP refused to change rooms when offered. The DSO advised Mr FP to notify an officer if he saw the detainee who threatened him. Mr FP was placed on 60 Minute Enhanced Monitoring. Mr FP declined a police referral.
3 October 2021	1-IA3NJX7	Mr FP alleged that he was verbally threatened by a detainee. He attended Latrobe compound officer's station and stated to a DSO that a detainee not known to him came to his room and threatened him. Serco officers spoke to detainees about the alleged threat, which they denied. Mr FP was placed on 60 Minute Enhanced Monitoring. Mr FP requested for the matter to be referred to the police, and a referral was made on his behalf. The AFP reviewed the reports and, on 19 October 2024, notified ABF that they determined not to investigate further due to a lack of details, witnesses and evidence. ABF notified Mr FP of the outcome.
4 November 2021	1-IC8B97F, 1-IC7NR6O and 1-IC824IB	At 10:54 hrs, a DSO sighted a verbal altercation between a detainee and Mr FP. The detainee then assaulted Mr FP's left arm. A DSO observed blood on Mr FP's arm and ankle and photos have been provided of the injury. The DSO reportedly observed the other detainee with a screwdriver in his hand. The DSO attempted to de-escalate and advised the other detainee to remove himself from the scene. A DSO attended the common area and located the screwdriver hidden behind a washing machine. The DSO secured the weapon in an evidence bag and submitted it to the Detainee Service Manager. The code black was then stood down. Mr FP was escorted to be medically reviewed and

		assessed by IHMS. He was placed on 60 Minute Enhanced Monitoring for his protection. The other detainees involved were taken to a Property Holding Unit for a cool off period. The matter was referred to the AFP, who determined not to investigate further.
7 November 2021	1-ICH65PE, 1-ICEAT8M and 1-ICEAT4F	Mr FP alleged that another detainee stole items from his room. It appears he did not make a complaint or request a police referral in relation to this incident.
29 November 2021	1-IDU92R9	At 01:55 Mr FP and another detainee were involved in a physical altercation outside of Latrobe Compound Officers Station where both detainees appeared to use a weapon. A DSO initiated a Code Black. Upon reviewing CCTV, it could be seen that the other detainee picked up a pool ball. The detainee stated that he did so to protect himself against Mr FP who also had a weapon. Serco received anonymous information from detainees that Mr FP was seen attempting to hide an item. Serco commenced a search and located a metal item 25cm in length. The item was removed with the assistance of the ERT. Mr FP was questioned and denied any knowledge of the item. Mr FP made a referral for police investigation in relation to the incident, and the matter was referred to the AFP on his behalf. On 13 December 2021, ABF notified him that the AFP decided not to investigate further.

16. Mr FP made numerous complaints to Serco about these alleged assaults and repeatedly expressed fears for his safety. Clinical records from IHMS from June to December 2021 also show that Mr FP repeatedly described violent assaults from other detainees and expressed fears for his safety.

17. On 7 April 2021, an Individual Management Plan Review Committee Meeting (IMPRC) was held at Villawood, including representatives from

ABF, Status Resolution, NSW Removals, Serco and IHMS. During the meeting, the Serco Residential Manager (SRM) noted that Mr FP had submitted many requests and complaints, including a request for a private room for an important personal interview.

18. On 26 April 2021, Serco Welfare provided a Mental Health referral to IHMS noting that Mr FP had threatened to sleep in the bathroom due to his fears for his safety. The Department has stated that, as a result, Serco believed that he would benefit from ongoing assistance from the mental health team.

19. On 28 April 2021, Mr FP was raised for discussion at another IMPRC meeting. ABF inquired with the Serco Residential Manager as to whether Mr FP had been offered an alternative room due to sleeping issues. The Serco Residential Manager advised that they had offered several room changes due to Mr FP's complaints, but that he had declined, stating "you can't rush me, I'll move when I want to". It does not appear that the rooms offered were private rooms. Serco Operations confirmed that Mr FP was not sleeping in the bathroom at that stage.

20. On 5 May 2021, at another IMPRC meeting, Welfare advised that Mr FP had changed rooms within the Latrobe compound because his previous roommate was messy, and that Serco had been 'continually providing support in room options'.

21. On 21 July 2021, Mr FP was once again mentioned in an IMPRC meeting. During the meeting, a representative from ABF raised concerns about Mr FP, noting that he had submitted two complaints to ABF threatening to kill himself. ABF noted that he had been placed on enhanced monitoring. The SRM advised that Mr FP and those he claims had threatened him were 'fine to remain in the Hume A compound' as Mr FP was currently on 60 minutes enhanced monitoring. IHMS noted that Mr FP occasionally raised safety concerns.

22. 'Detainee History' records completed by Serco were provided by the Department, with the date redacted. These record a log of Mr FP's observed behaviour. On multiple occasions, it was recorded that he had moved his mattress into the bathroom area of room 6 high care, and that he was sleeping and eating his meals there. The records note that Mr FP was given free access to his room and common areas, but that he refused. Following my preliminary view, the Department provided updated copies of these records which reveal they relate to a later period, between 24 January 2022 and 1 February 2022.

23. On 6 October 2021, an IHMS psychiatrist noted in their clinical records Mr FP's requests for a single room based on reports of childhood sexual

abuse and abuse from other detainees based on his bisexual orientation. On 12 October 2021, an IHMS psychologist noted in their clinical records that Mr FP had described sharing a room with someone and 'needing his space due to reporting that he was sexually abused in early childhood and reports experiencing trust issues and finds it difficult sharing a room with others'.

24. On 23 November 2021, Mr FP made a formal complaint, stating:

> I have been denied a private room despite multiple requests and even medical approval for a private room … I am now forced to sleep inside a bathroom and on the bathroom floor at night. I am almost becoming suicidal and have lost a lot of weight … .

25. On 24 November 2021, an IHMS psychiatrist noted that they supported Mr FP's request for a single room. The clinical records detail Mr FP's schizophrenia, major depression, anxiety, and history of child sexual abuse.

26. On 25 November 2021, Mr FP locked himself in the bathroom whilst on Keepsafe, an observation and monitoring program for detainees at risk of self-harm. He refused verbal direction to leave the door ajar. He was in the bathroom for approximately 10 minutes with his pillow and blanket. He then opened the door and went to his room with no further issues.

27. On 29 November 2021, an IHMS psychologist wrote a letter to Serco setting out his serious concerns about Mr FP's safety and wellbeing, based on Mr FP's reports of violent attacks. The letter included the following:

> I note that in the previous psychiatric review the doctor made the following recommendation;
>
> - I support [FP's] plea for a single room given the complexity of his issues; recent assault, worsening mental illness including psychosis, previous self harm and FFR and sexuality.
>
> - I will escalate room issue to MHTL and HSM.
>
> This suggests to me that this is a long standing issue which has met the threshold of concern for the psychiatrist to make a previous request in support of [FP's] plea for a single room.
>
> [FP] informs me (and it is documented in previous notes) that he will return to sleeping on the locked bathroom floor to ensure his safety if he is not able to be provided with a single room.
>
> …

> **I believe that given his complexity of mental health issues and reported concerns regarding his wellbeing and safety that his request for a single room be actioned as soon as possible.**

28. On 4 December 2021, Mr FP lodged a detainee complaint form, stating that he had been assaulted and that he had been 'requesting for a key locked one out room for over 1 year in vain despite at least 5 written medical approvals.'

29. On 6 December 2021, IHMS sent an email to ABF to notify them that an IHMS psychiatrist had made the following recommendation for Mr FP:

> He raised with me the issue of a single room. He states he has raised this with Serco and they informed him he needed support from the health service before they would consider. I support his request on the basis that he has had complex mental health issues, he has recently been assaulted and his bisexual orientation making him vulnerable.

30. Email correspondence from the Department shows that Mr FP was placed on a waitlist for a single room at the end of 2021, but was not offered one at the time due to capacity issues.

31. IHMS records from 8 December 2021 record that Mr FP was, at that stage, still sleeping in a locked bathroom due to safety concerns. Multiple Serco detainee history logs, with their date redacted, show that Mr FP intermittently locked himself in the bathroom and refused to come out to his room or the common area. The records show that he was often observed lying on his mattress in the bathroom area, and that Serco continued to monitor him. Serco incident reports show that there were incidents where the unplanned use of force was required to remove Mr FP from the bathroom area. It is clear from the complaints lodged by Mr FP that he found these instances of force to be distressing and traumatic.

32. In the Department's response to the preliminary view, the Department states that it is unaware of either Mr FP being in the bathroom prior to the incident on 6 December 2021 or any evidence supporting Mr FP's claims he slept in the bathroom prior to 6 December 2021. The incident referred to on 6 December 2021 is described in the Department's response as follows:

> At approximately 0310hrs on 6 December 2021, a Facilities and Detainee Service Provider (FDSP) officer was reviewing the complaints and requests check for Latrobe compound and identified a complaint submitted from Mr FP. Mr FP's complaint alleged another detainee had threatened him.
>
> The FDSP officer attempted to speak to Mr FP at his accommodation

about his complaint, when he was discovered to have barricaded himself in the bathroom.

The FDSP attempted to negotiate with Mr FP for him to leave the bathroom, however, he remained uncooperative. As such, FDSP used force to enter the bathroom and subsequently remove Mr FP.

33. The Department's response notes further that the records which show Mr FP was often observed lying on his mattress in the bathroom area are unrelated to the 6 December 2021 incident. The Department provided updated copies of the 'Detainee History' records referred to in paragraph [22] above, being enhanced monitoring logs, with the dates no longer redacted. The Department's response explains that these records relate to a later period between 24 January 2022 to 1 February 2022, in which Mr FP slept in the bathroom area within his single occupancy allocated room while accommodated in High Care Accommodation at Hume B.

34. In February 2022, Mr FP appears to have been moved to another shared room. On 8 February 2022, a Serco officer approached Mr FP to offer him a single room in the Hotham compound. According to the officer, Mr FP did not want to speak to him. The next day, a Serco officer once again approached Mr FP to offer him a single room in the Hotham compound. Mr FP declined, expressing that he wanted to stay in Latrobe compound. The officer explained that there were no single rooms in Latrobe compound due to capacity issues.

35. On 26 March 2022, IHMS submitted a Stakeholder Information Sheet (SIS) stating that Mr FP had been locked out of his room by Serco officers and was being forced to sleep in the bathroom.

36. On 27 March 2022, IHMS submitted another SIS stating that during a clinic visit for a post assault review, Mr FP reported sleeping on the bathroom floor for the last two days because he was afraid of other detainees who had allegedly assaulted him.

37. On 30 March 2022, Mr FP was again mentioned in an IMPRC meeting. IHMS noted that he had made further complaints that Serco officers had locked his room door and that he was forced to sleep in the bathroom. ABF noted that he had relocated himself to a makeshift room. Serco noted that he had access to his allocated room, but that he had refused to use it and had been sleeping in the shower. Serco also noted that he had been assigned a new room and was in the process of moving his belongings there. It is unclear from this whether the new room was shared with a roommate or not, although it appears unlikely given Mr FP's ongoing requests for a single room.

38. Following this, Mr FP sent further requests for a single room to Serco,

with a copy of the psychologist's letter attached.

39. In his complaint, Mr FP alleges that:

> I had been sleeping on a wet bathroom floor and locking the door. This was the only reasonably safe place I could find with the La Trobe compound to get some sleep. The SERCO officers within the La Trobe compound were all aware that I was sleeping on a wet bathroom floor. I have over the past days distributed copies of the letter from my Psychologist to the SERCO officers and Managers.

40. On 30 March 2022, Mr FP was again raised for discussion in an IMPRC meeting. ABF noted that he had relocated himself to a room in unit 3 where he wouldn't be sharing with anyone else, and that he had 'pulled wires out of his makeshift bedroom'. IHMS noted Mr FP's claims that he was forced to sleep in a bathroom. Serco advised that Mr FP had been allocated a room but that he refused to use it and that he had been sleeping in the shower. It is not clear from these notes whether the allocated room referred to was a single or shared room.

41. According to the Department's response to my preliminary view, Mr FP was the sole occupant of Room 2.2.1 within Latrobe compound when on 18 March 2022, an FDSP officer found extensive damage to his room. Mr FP was told that due to the damage caused, he was unable to remain in that room, and due to capacity constraints, there were no other single rooms available within Latrobe. Mr FP was apparently told on 19 March 2022 by FDSP that his room would remain locked until it was fixed due to safety concerns. He was offered shared accommodation, which he refused. On 25 March 2022, an FDSP officer found damage to a communal bathroom shower where Mr FP had allegedly set up a bedroom. Mr FP was moved to a shared accommodation room on 26 March 2022, which he refused to use, and he instead slept in the communal bathroom area. On 27 March 2022, Mr FP was offered single accommodation in Room 3.4.3 of Latrobe compound, which he moved into.

42. On 7 April 2022, the AAT set aside the decision to cancel Mr FP's visa under section 501(3A) of the Migration Act. Mr FP was released from immigration detention on the same day.

4 Procedural history of this inquiry

43. On 3 March 2025, I issued a preliminary view on this matter and gave the Department the opportunity to respond to my preliminary findings.

44. On 7 August 2025, the Department responded to my preliminary view.

5 Legal Framework

5.1 Functions of the Commission

45. Section 11(1)(f) of the AHRC Act provides that the Commission has the function to inquire into any act or practice that may be inconsistent with, or contrary to, any human right.

46. Section 20(1)(b) of the AHRC Act requires the Commission to perform this function when a complaint is made to it in writing alleging that an act is inconsistent with, or contrary to, any human right.

47. Section 8(6) of the AHRC Act requires that the functions of the Commission under s 11(1)(f) be performed by the President.

5.2 Scope of 'act' or 'practice'

48. The terms 'act' and 'practice' are defined in section 3(1) of the AHRC Act to include an act done or a practice engaged in by or on behalf of the Commonwealth or an authority of the Commonwealth or under an enactment.

49. Section 3(3) provides that the reference to, or to the doing of, an act includes a reference to a refusal or failure to do an act.

50. The functions of the Commission identified in section 11(1)(f) of the AHRC Act are only engaged where the act complained of is not one required by law to be taken, that is, where the relevant act or practice is within the discretion of the Commonwealth.[1]

5.3 What is a human right?

51. The phrase 'human rights' is defined by section 3(1) of the AHRC Act to include the rights and freedoms recognised in the ICCPR.

6 Act or practice of the Commonwealth

52. Mr FP's complaint includes allegations of conduct carried out by Serco officers. Serco was acting under a contract with the Department. Accordingly, any act or practice of Serco is taken to be an act or practice of the Commonwealth.

53. I consider the following acts or practices of the Commonwealth as relevant to this inquiry:

    a) The Department and Serco's failure to provide a single room for Mr FP in the period between May 2021 and February 2022.

7 Law on treatment of detainees

7.1 Human rights in detention

54. Persons subject to immigration detention are entitled to the human rights protected by the ICCPR, including special protections as persons deprived of their liberty by the State.

55. Article 7 of the ICCPR provides:

> No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

56. Article 10(1) of the ICCPR provides:

> All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

57. States have a responsibility to ensure that the rights guaranteed in articles 7 and 10 of the ICCPR are accorded to detainees in privately run detention facilities.

58. Article 10(1) imposes a positive obligation on States to ensure that detainees are treated with humanity and respect for their inherent dignity.[2] This is in recognition of the fact that detained persons are particularly vulnerable because they are wholly reliant on a relevant authority to provide for their basic needs.[3] In this case, the relevant authority is the Commonwealth of Australia through the Department and the service providers who act on its behalf.

59. Professor Manfred Nowak has commented on the threshold for establishing a breach of article 10(1), when compared to the related prohibition against 'cruel, inhuman or degrading treatment' in article 7 of the ICCPR, as follows:

> In contrast to article 7, article 10 relates only to the treatment of persons who have been deprived of their liberty. Whereas article 7 primarily is directed at specific, usually violent attacks on personal integrity, article 10 relates more to the general state of a detention facility or some other

> closed institution and to the specific conditions of detention. As a result, article 10 primarily imposes on States parties a positive obligation to ensure human dignity. Regardless of economic difficulties, the State must establish a minimum standard for humane conditions of detention (requirement of humane treatment). In other words, it must provide detainees and prisoners with a minimum of services to satisfy their basic needs and human rights (food, clothing, medical care, sanitary facilities, education, work, recreation, communication, light, opportunity to move about, privacy, etc). … Finally it is again stressed that the requirement of humane treatment pursuant to article 10 goes beyond the mere prohibition of inhuman treatment under article 7 with regard to the extent of the necessary 'respect for the inherent dignity of the human person'.[4]

60. These conclusions are also evident in the jurisprudence of the United Nations Human Rights Committee, which discusses the positive obligation on relevant authorities to treat detainees with humanity and respect for their dignity.[5]

61. The content of article 10(1) has been developed through a number of United Nations instruments that articulate minimum international standards in relation to people deprived of their liberty,[6] including:

    a) the *Nelson Mandela Rules*,[7] and

    b) *the Body of Principles for the Protection of all Persons under Any Form of Detention* (Body of Principles).[8]

62. In 2015, the Mandela Rules were adopted by the United Nations General Assembly. At least some of the principles have been determined to be minimum standards regarding the conditions of detention that must be observed regardless of a State Party's level of development. Rule 121 requires that civil prisoners 'shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order'.

63. From the above, the following conclusions may be drawn:

    - article 10(1) of the ICCPR imposes a positive obligation on State parties to take action to ensure that detained persons are treated with humanity and dignity

    - the threshold for establishing a breach of article 10(1) of the ICCPR is lower than the threshold for establishing 'cruel, inhuman or degrading treatment' within the meaning of article 7 of the ICCPR, which is a negative obligation to refrain from such treatment

- article 10(1) of the ICCPR may be breached if a detainee's rights, protected by one of the other articles of the ICCPR, are breached – unless that breach is necessitated by the deprivation of liberty
- minimum standards of humane treatment must be observed in detention conditions, including immigration detention.

7.2 Duty of care

64. The Department and its service providers are required to take reasonable care to prevent all detainees from suffering reasonably foreseeable harm. The Department risks being found liable for negligence if it breaches its duty of care and a detainee suffers harm as a direct result.[9] The Department and service providers also have specific duties under the *Work Health and Safety Act 2011*, including to ensure, as far as reasonably practicable, the health and safety of detainees, workers and visitors at an Immigration Detention Facility.[10]

65. The Department must consider the effect of decisions impacting the health and safety of those under its control. This duty of care was explained in the context of detainees who self-harm in a 2013 report by the Commonwealth Ombudsman.[11] The report highlights that:

> Because the department has a high level of control over particularly vulnerable people, its duty of care to detainees is therefore a high one. It is not enough for the department to avoid acting in ways that directly cause harm to detainees. It also has a positive duty to take action to prevent harm from occurring.[12]

66. The Commonwealth Ombudsman acknowledged that the duty of care cannot override the duty to detain under the Migration Act, even where that detention is likely to cause harm, but noted that the duty requires the Department to take reasonable, positive steps to ensure that detainees' physical and mental health needs are met. In particular, detention placement decisions must take into account each individual detainee's needs and risks, and the impact that different detention environments are likely to have on vulnerable individuals.[13]

8 Findings

67. I find that the Department and Serco failed to take the necessary steps to ensure the minimum standards of humane treatment for Mr FP, a detainee with known and complex mental health conditions including schizophrenia. The Department and Serco were aware, from April 2021

onwards, that Mr FP feared for his safety, was frequently involved in incidents involving allegations of threats or violence from other detainees. In response to his fears, Mr FP was intermittently sleeping in the bathroom, at least in part due to the ability to be in a room alone with a locked door.

68. The Department in its response to my preliminary view detailed above, says that it was only aware of Mr FP sleeping in the bathroom from 6 December 2021 as it has no evidence of Mr FP sleeping in the bathroom prior to this date. This is despite Mr FP claiming he had slept in the bathroom in earlier months. It also appears that Mr FP would sometimes choose to sleep in the bathroom within a single occupancy room (in the period between 24 January 2022 and 1 February 2022 when Mr FP was in High Accommodation Care). Furthermore, when Mr FP was the sole occupant of a room, the room was found with extensive damage so that it was no longer safe to use.

69. The Department provided its response as additional context and noted that 'Mr FP was involved in multiple behavioural incidents, including alleged assaults and non-compliant conduct, which presented complex management challenges. In some cases, Mr FP was reported to have played an instigating or contributory role in these incidents. This additional information reinforces Mr FP's complex needs.

70. Mr FP makes a number of allegations of violence and threats of violence from other detainees. One of the incidents, on 4 November 2021, was witnessed by a DSO and there is clear photo evidence of the injuries Mr FP sustained during the assault. It is clear that, as a result of these incidents, he felt unsafe and requested a single room. As can be seen from the information provided by the Department, where possible, each incident was investigated or addressed internally or referred for police investigation. Detainees who had perpetrated violence were at times moved to other compounds, and in response to other incidents, Mr FP was placed on enhanced monitoring to ensure his safety. There is no evidence to suggest that the alleged perpetrators were repeat offenders or that Mr FP was the target of violence from a particular individual or group.

71. There is not sufficient evidence before me to form a view about what occurred in each of the incidents involving alleged violence or threats. However, there is evidence that Mr FP repeatedly requested a single room for his safety, and that this request was supported by medical practitioners.

72. The Department and Serco have a positive obligation to ensure human dignity for the detainees within the immigration detention network. They

must establish a minimum standard for humane conditions of detention and must take active steps to prevent detainees from suffering harm including mental harm. The Department and Serco did not fulfil these obligations when they failed to adequately accommodate Mr FP's complex needs.

73. I acknowledge that there are capacity issues within the detention facilities, and that it may not have been immediately possible to offer Mr FP a single room. It appears however, that Mr FP was not offered a single room until February 2022.

74. The Department and Serco were aware that Mr FP had complex mental health needs, had made complaints of assault by other detainees, and felt vulnerable due to his sexuality. Further, the Department received multiple recommendations from IHMS medical practitioners that Mr FP should be in a private room, and it was frequently raised as an issue for concern at IMPRC meetings.

75. No evidence has been provided to the Commission to show that the Department considered other options for less restrictive forms of detention, including an Alternative Place of Detention (APOD) or referral to the Minister for consideration of an alternative to held detention.

76. Mr FP felt vulnerable and at risk in immigration detention. It appears to have taken around 10 months from Mr FP's initial requests for the Department and Serco to offer him accommodation in a single room. Despite the capacity issues at the detention facility, it is my view that this is unacceptable. I am not satisfied that the Department or Serco took sufficient steps to accommodate the needs of a distressed, vulnerable and mentally unwell man. It is concerning that at times Mr FP felt the need to sleep in a bathroom, in conditions which are undignified and unsanitary.

77. I find that the Department and Serco's failures breached Mr FP's right to be treated with humanity and with respect for his inherent dignity, in contravention of article 10(1) of the ICCPR.

78. I am not satisfied that the Department and Serco's failures meet the threshold to be considered a breach of article 7 of the ICCPR.

9 Recommendations

79. Where, after conducting an inquiry, the Commission finds that an act or practice engaged in by a respondent is inconsistent with or contrary to any human right, the Commission is required to serve notice on the

respondent setting out its findings and reasons for those findings.[14] The Commission may include in the notice any recommendations for preventing a repetition of the act or a continuation of the practice.[15] The Commission may also recommend other action to remedy or reduce the loss or damage suffered by a person.[16]

9.1 Room placement decisions

80. It was known by the Department and Serco that Mr FP was diagnosed with schizophrenia, major depression and anxiety, that he was a survivor of childhood sexual abuse, and that he identified as a bisexual/gay man. He repeatedly expressed fears for his safety and was involved in at least 10 incidents with other detainees involving violence or threats of violence against him.

81. Mr FP expressed from April 2021 a desire for a private room and that he was considering sleeping in the bathroom due to his fears for his safety. It was known by at least October 2021 that Mr FP's requests for a single room related to the sexual abuse he experienced as a child and his fears of abuse from other detainees due to his sexual orientation.

82. I understand from the Department that Mr FP was placed on enhanced monitoring to ensure his safety numerous times during his detention. However, enhanced monitoring is not a long term or preventative solution.

83. I acknowledge that there are multiple factors that inform room placement in immigration detention, including room availability. However, where there are safety concerns, including risk to physical and mental health, such concerns should be prioritised. In this instance, Mr FP's fears for his safety and his complex mental health needs warranted prioritisation of his request for a private room.

84. Australia must ensure that people detained in immigration detainees have their safety and security needs protected in order to fulfil the obligations imposed on it by article 10(1) of the ICCPR to treat detainees with humanity and respect for the inherent dignity of the human person.[17]

Recommendation 1

The Department should ensure that requests or recommendations for single room occupancy are prioritised when there are concerns regarding safety, risk of violence (both actual or perceived) or risk to physical or mental health, particularly when there are medical needs and/or support for the request or recommendation.

9.2 Alternative detention arrangements

85. Mr FP had complex needs that according to the Department presented complex management challenges. I understand from the Department's response to my preliminary view that after Mr FP was allocated a single room, he had to be moved following extensive damage to the room. The implication is that Mr FP caused the damage to his room, which Mr FP denies. The IMPRC minutes following this incident notes that Mr FP's placement at Latrobe compound remains appropriate. Given the duty of care owed by the Department and its service providers to detainees, the Department should consider other options for less restrictive forms of detention when there are concerns that a person cannot be provided with a safe place of detention within the existing facility.

Recommendation 2

The Department should immediately implement measures to protect people at risk of violence in immigration detention, including by exploring alternative detention arrangements such as community detention or grants of bridging visas. This would allow victims of violence to be separated from the alleged perpetrators where this is not practicable in the detention facility. It would provide safer alternatives for those more vulnerable to violence due to any personal characteristics such as mental health or sexual orientation.

10 Department's response to the Commission's findings and recommendations

86. On 21 April 2026, I provided the Department with a notice of my findings and recommendations.

87. On 6 July 2026, the Department provided the following response to my findings and recommendations:

Recommendation 1 – Agree

The Department should ensure that requests or recommendations for single room occupancy are prioritised when there are concerns regarding safety, risk of violence (both actual or perceived) or risk to physical or mental health, particularly when there are medical needs and/or support for the request or recommendation.

The Department **agrees** to Recommendation 1, noting that current practices meet the intent of this recommendation.

The Department recognises the importance of giving careful and timely consideration to requests for single occupancy accommodation where concerns are raised about safety, the risk of violence, or risks to a person's physical or mental health, particularly where those concerns are supported by identified medical needs or professional advice.

In considering such requests, the Facility and Detainee Services Provider (FDSP), in consultation with the Detention Health Service Provider (DHSP) and other relevant stakeholders, assesses the individual's safety and wellbeing needs. This assessment is informed by available clinical advice, risk information, detainee risk assessments and accommodation availability.

Decisions are made on a case-by-case basis, with the safety and wellbeing of the individual detainee given priority, alongside the need to maintain the safety and wellbeing of others within the facility.

The Department acknowledges that, in Mr FP's case, the outcomes did not always reflect the approach described above. We accept that this experience highlights the need for continued attention to how accommodation requests are assessed, documented and implemented in practice, particularly where individual circumstances are complex or change over time.

The Department also acknowledges the practical challenges that can arise where a detainee does not agree to, or does not take up, a particular accommodation arrangement. In those circumstances, the Department and its service providers seek to encourage and facilitate safe and appropriate placements, including by providing access to rooms, bedding and welfare support, while continuing to manage risks as they arise.

Recommendation 2 – Agree

The Department should immediately implement measures to protect people at risk of violence in immigration detention, including by exploring alternative detention arrangements such as community detention or grants of bridging visas. This would allow victims of violence to be separated from the alleged perpetrators where this is not practicable in the detention facility. It would provide safer alternatives for those more vulnerable to violence due to any personal characteristics such as mental health or sexual orientation.

The Department **agrees** to Recommendation 2, noting that a number of current practices meet the intent of this recommendation.

The Department accepts the intent of this recommendation, in that is emphasises the need for timely and appropriate measures to protect people in immigration detention who are at risk of violence, including

those who are more vulnerable due to personal circumstances such as mental health needs or sexual orientation.

The Department notes decisions about alternative detention arrangements, including community detention or the grant of a bridging visa, must be considered on a case-by-case basis having regard to the individual's circumstances, community safety, risk to others, and relevant legislative requirements. In some circumstances, determinations on alternate places of detention remain a non-delegable decision of the Minister.

Decisions relating to detainee management and placement within detention facilities are already informed by comprehensive individual risk assessments, including consideration of risks posed by or to other detainees, staff, service providers, and the safety and good order of the facility. Facility stakeholders participate in multidisciplinary case conferences, provide welfare observations, and implement interim risk controls, such as increased observation, separation strategies, and internal placement adjustments, to protect individuals at risk. This ensures continuity of care and prompt action where risks are identified.

The Department also considers a person's circumstances when assessing the most appropriate placement while status resolution processes are being undertaken. This is done by completing reviews to ensure cases are progressing towards a status resolution outcome. The Mandatory Control Point (MCP) 17, provides a holistic overview of a detainee's circumstances and immigration pathway and is a nationally consistent decision support tool to consider the most appropriate placement while status resolution is progressed. Status Resolution Officers (SROs) must review all detainees' cases monthly, to ensure cases are progressing towards a status resolution outcome. In this context, placement refers to:

- Community (grant of a visa, such as a bridging visa)
- Residence determination (community detention)
- Held immigration detention
- Specialised held immigration detention, with bespoke arrangements for complex or extreme risk individuals (also known as Tier 4)

Recommendations for specialised detention placements may be made through the MCP 17 process. Where a recommendation for an alternate placement option is made by an SRO, these are considered in consultation with the DHSP and FDSP.

88. I report accordingly to the Attorney-General.



Hugh de Kretser
President
Australian Human Rights Commission

October 2026

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1 See *Secretary, Department of Defence v HREOC, Burgess & Ors* (1997) 78 FCR 208, where Branson J found that the Commission could not, in conducting its inquiry, disregard the legal obligations of the secretary in exercising a statutory power. Note in particular 212–3 and 214–5.

2 Human Rights Committee, General Comment No 21: Article 10 (Humane treatment of persons deprived of their liberty), UN Doc HRI/GEN/1/Rev.1 at 33 (10 April 1992) [3].

3 Human Rights Committee, *General Comment No 21: Article 10 (Humane treatment of persons deprived of their liberty)*, UN Doc HRI/GEN/1/Rev.1 at 33 (10 April 1992) [3].

4 Manfred Nowak, *UN Covenant on Civil and Political Rights CCPR Commentary* (N.P. Engel, 2nd ed, 2005) 250.

5 Human Rights Committee, *Walker and Richards v Jamaica*, Communication No. 639/1995, UN Doc CCPR/C/60/D/639/1995 (28 July 1997); Human Rights Committee, *Kennedy v Trinidad and Tobago*, Communication No 845/1998, UN Doc CCPR/C/74/D/845/1998 (26 March 2002); Human Rights Committee, *R.S. v Trinidad and Tobago,* Communication No 684/1996, UN Doc CCPR/C/74/D/684/1996 (2 April 2002).

6 Human Rights Committee, *General Comment No 21: Article 10 (Humane treatment of persons deprived of their liberty)*, UN Doc HRI/GEN/1/ Rev.1 at 33 (10 April 1992) [5].

7 UN General Assembly, *Standard Minimum Rules for the Treatment of Prisoners*, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, United Nations Publication, UN Doc. A/CONF/611 (30 August 1955), as amended by 'the Nelson Mandela Rules', UN Doc A/RES/70/175 (17 December 2015).

8 The Body of Principles was adopted by the UN General Assembly in *Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment*, GA Res 43/173, UN GAOR, 6th Comm, 43rd sess, 76th plen mtg, Agenda Item 138, UN Doc A/43/49 (9 December 1988) Annex.

9 Department of Immigration and Border Protection, *Detention Services Manual- Detainee Placement- Closer Supervision and engagement of high-risk detainees (High Care Accommodation)* (October 2018)

10 *ibid*

11 Commonwealth Ombudsman, *Suicide and Self-harm in the Immigration Detention Network* (May 2013), available at

https://www.ombudsman.gov.au/__data/assets/pdf_file/0034/286576/December-2013-Suicide-and-self-harm-in-the-Immigration-Detention-Network.pdf, accessed 5 January 2024.

[12] Commonwealth Ombudsman, above n 11, p 27 [4.6].

[13] Commonwealth Ombudsman, above n 11, p 31 [4.29]–[4.30].

[14] AHRC Act, s 29(2)(a).

[15] AHRC Act, s 29(2)(b).

[16] AHRC Act, s 29(2)(c).

[17] Human Rights and Equal Opportunity Commission, *CD v Commonwealth (Department of Immigration and Multicultural Affairs*), [2006] AusHRC 36 (1 August 2006).