



8 December 2017

## **DIBP RESPONSE TO AHRC RECOMMENDATIONS VILLAWOOD IMMIGRATION DETENTION CENTRE**

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 (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) ratings clearly denote the type of risk that a person is deemed to pose (such as risk to others or risk of escape), with a view to ensuring that people who present a risk to the safety of others can be readily distinguished from those who do not.**

The current risk assessment and rating process takes 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. The Security Risk Assessment Tool (SRAT) clearly denotes the type of risk that a person is deemed to pose, defining behavioural risk indicators and escape indicators. A number of factors are considered to form an overall security assessment of each individual detainee.

### **Recommendation 2 (physical safety)**

**The Department of Immigration and Border Protection and facility staff should immediately implement measures to protect people at risk of violence at the VIDC, including through exploring alternative detention arrangements that would allow for victims of violence to be separated from the alleged perpetrators.**

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 operating models at centres are continually being reviewed. This includes the separation of detainees and certain cohorts from the general population, as well as controlled movements within an immigration facility.

### **Recommendation 3 (review of physical safety)**

**The Department of Immigration and Border Protection should establish an independent review of threatened and actual violence at the VIDC, with a view to identifying measures to prevent violence and protect those at risk of harm.**

The Department takes very seriously its duty of care of all staff and detainees within the immigration detention network and has a number of measures in place to prevent violence and protect those at risk of harm.

Detainees are 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, incentive based programs (in certain facilities) and more restrictive placements in limited circumstances. Additionally, any detainee involved in criminal offences are referred to law enforcement for investigation.

A 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.

**Recommendation 4 (relationships with staff)**

**The Department of Immigration and Border Protection should commission an independent review of relationships between staff and people detained at the VIDC, including alleged incidents of violence and mistreatment involving staff.**

The Department notes the AHRC's recommendation. However, the Department does not agree that an independent review is required, as current oversight measures are already in place.

The Department has a zero tolerance approach to inappropriate behaviour involving staff, detainees, stakeholders or visitors and expects service provider staff to act appropriately and with integrity in all their dealings with people in their care. Any allegations of inappropriate behaviour are reported to the Integrity and Professional Standards Branch of the Department, and to the relevant policing authorities for investigation. Where authorities believe that the allegations are substantiated, charges may be laid and the offenders prosecuted in accordance with the relevant law.

The Department has a robust feedback and complaint system in place across the immigration detention network, which enables detainees to lodge complaints about any aspect of their immigration detention. Complaints can be lodged directly with the Department or its service providers, as well as the Commonwealth Ombudsman and the Australian Human Rights Commission. Complaint processes and contacts are displayed in immigration detention facilities.

The Department has mandatory reporting by all Immigration and Border Protection (IBP) workers to report suspected serious misconduct, corrupt conduct or criminal activity that affects, or is likely to affect the operations, responsibilities or the reputation of the Department. This applies if workers are involved in the conduct or reasonably suspect an incident involving IBP workers. It is an integrity measure and will be investigated by Integrity and Professional Standards and may be referred to Australian Federal Police and the Australian Commission for Law Enforcement Integrity.

**Recommendation 5 (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 6 (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 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 7 (closure of Blaxland compound)**

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

The Department notes the AHRC's recommendation and is committed to the construction of a new compound at the Villawood IDC that will replace Blaxland.

The construction of a new high risk compound comprising 60 beds, is currently in the final stages of design. Construction is scheduled to commence in April 2018 and be completed by April 2019.

**Recommendation 8 (shared accommodation)**

**The Department of Immigration and Border Protection should minimise shared accommodation arrangements at the VIDC, particularly for people who are vulnerable or have been detained for prolonged periods.**

The Department notes the AHRC's recommendation and attempts, where possible, to minimise shared accommodation arrangements at the Villawood IDC. Specific accommodation for detainees deemed to be vulnerable or with high needs is provided at the Villawood IDC. Placement decisions within the Villawood IDC are considered through a consultative process with onsite stakeholders.

**Recommendation 9 (outdoor space)**

**Facility staff should implement strategies to provide access to outdoor space for people detained in higher-security compounds at the VIDC.**

All detainees at VIDC have access to outdoor areas and associated facilities. Detainees are able to access these areas during structured activities and outside of structured activity times. Detainees placed in the higher security areas at VIDC have access to outdoor spaces with courtyards located off the high security area.

**Recommendation 10 (educational opportunities)**

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

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.

Departmental Policy enables detainees in detention to participate in workshops and non-awards educational programs, and to further enhance this, the Facilities and Detention Services Provider (FDSP) will be implementing a number of educational programs from the ClickView curriculum ([www.clickview.com.au](http://www.clickview.com.au)) in the coming months.

**Recommendation 11 (excursions)**

**Facility staff should introduce regular excursions for people detained at the VIDC, 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 is 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.

**Recommendation 12 (points system)**

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

The administration of the individual allowance program enables discretionary points to be awarded by the FDSP Centre Manager, with ABF endorsement, to persons who are unable to participate in activities due to health issues, scheduled interviews, medical appointments etc.

**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.**

The Health Services and Policy Division (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 (complaints processes)**

**Facility staff should implement strategies to promote greater awareness of 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 16 (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 17 (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 18 (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 19 (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 20 (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.