



October 2018

## RESPONSE TO AUSTRALIAN HUMAN RIGHTS COMMISSION (AHRC) RECOMMENDATIONS

### BRISBANE IMMIGRATION TRANSIT ACCOMMODATION (BITA)

The Department of Home Affairs (the Department) appreciates the AHRC's role in overseeing detention practices and welcomes review of the immigration detention network that the AHRC's report provides.

#### **Recommendation 1**

**The Department of Home Affairs and facility staff should review policies and practices 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 in the context in which they are proposed to be used. Particular consideration should be given to reducing the use of mechanical restraints during medical consultations and during transit where the risk of escape is low.**

The Department acknowledges the AHRC's observations regarding the 'use of force' policy settings, noting that the Department has responded to this recommendation made in earlier inspection reports for Maribyrnong IDC (March 2017), Melbourne ITA (March 2017), Villawood IDC (April 2017), Yongah Hill IDC (May 2017), Adelaide Immigration Transit Accommodation (July 2017) and Perth IDC (August 2017).

The Department's position in relation to its use of force settings remains unchanged.

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 'use of force' policy settings were recently reviewed and updated, and while the Department acknowledges the AHRC's observations, its 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 2**

**The Department of Home Affairs should maintain a maximum occupancy rate of two people per bedroom in the Bedarra, Carlisle, Daintree and Eucalyptus compounds at the BITA.**

Due to the finite capacity across the national detention network, limiting placement to two people per bedroom is not operationally viable.

**Recommendation 3**

**The Department of Home Affairs should close the Fraser compound at the BITA.**

The previous Fraser compound has been demolished. The new Fraser compound reached practical completion on 2 May 2018 and became occupied from 25 May 2018.

**Recommendation 4**

**Until such time as Recommendation 3 is implemented, the Department of Home Affairs should:**

- a) **Maintain an occupancy rate of one person per bedroom in the Fraser compound, in light of concerns about limited privacy**
- b) **Permit free movement of people between the indoor and outdoor areas of the Fraser compound**
- c) **Remove the security grilles from the balcony of the Fraser compound**
- d) **Install shaded areas in the outdoor areas surrounding and adjacent to the Fraser compound.**

The previous Fraser compound has been demolished. The new Fraser compound reached practical completion on 2 May 2018 and became occupied from 25 May 2018.

**Recommendation 5**

**Facility staff should explore options for providing additional activities at the BITA on weekends.**

Noting that the provision of programs and activities (P&A) on weekends across the onshore immigration detention network is not supported by the Facilities and Detainee Service Provider (FDSP) Contract, the Department continues to work with the FDSP on availability of P&A.

**Recommendation 6**

**The Department of Home Affairs should consult with facility staff regarding the resources required to deliver adequate mental health services at the BITA.**

The Department undertakes to review the level of Mental Health services at the BITA.

### **Recommendation 7**

**The Australian Government should establish and resource an independent body to monitor the provision of physical and mental health services in immigration detention.**

Health care and medical services for detainees are comparable to those available in the Australian community under the Australian public health system. As such, all clinicians who provide health care and medical services to detainees must have an Australian registration and are subject to oversight by the Australian Health Practitioner Regulation Agency.

The Department facilitates regular access by independent external oversight bodies to immigration detention facilities to allow them to review the management of these facilities. These independent bodies include the Commonwealth Ombudsman, the Australian Human Rights Commission and the Australian Red Cross. These regular independent reviews have delivered a wealth of insight and strong recommendations that have served to inform and enhance the Department's operations and services.

### **Recommendation 8**

**In consultation with facility staff, the Department of Home Affairs should conduct a review of policies and procedures to ensure continuity of health care for people entering or leaving immigration detention, with a view to developing strategies to prevent gaps and delays in treatment.**

The Department's policy framework, the Policy and Procedure Control Framework (PPCF) mandates a consistent and integrated approach for the management of operational and organisational policies and procedures, providing a standardised approach to the development, review, rationalisation and publication.

As part of the PPCF's review process, all policies and procedures are reviewed annually to ensure that they continue to be accurate, appropriate and relevant to the Department.

As part of this, Health Policy regularly reviews health policies and procedures, consulting internally and externally to ensure information remains accurate and current, ensuring there are no policy gaps.

### **Recommendation 9**

**The Department of Home Affairs 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.**

Due to a recent decision of the Federal Court Case in the case of *SZSZM v Minister for Immigration & Ors*, the Department returned mobile phones and SIM cards to detainees for their personal use within immigration detention facilities. There is no longer a need to consider this recommendation at this time.

### **Recommendation 10**

**Facility staff should investigate concerns regarding the quality of internet access at the BITA, with a view to increasing speed and reliability.**

The Department acknowledges that areas of Australia can experience varied reliability with regard to internet services. In the case of the BITA, the department can confirm that the FDSP are meeting their contractual obligations.

### **Recommendation 11**

**The Department of Home Affairs should accommodate people in immigration detention as close as possible to family members and friends living in the Australian community.**

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

In considering the placement of an individual, the broader Immigration Detention Network (IDN) is also considered. There is finite capacity across the national network and there is often an operational need to transfer detainees to rebalance the network and ensure detention facility stability.

### **Recommendation 12**

**Where a person is transferred from a regional processing country to Australia for medical treatment, the Department of Home Affairs should:**

- a) **Permit their immediate family members or next of kin to accompany them to Australia.**
- b) **In cases where the person has already been transferred to Australia, immediately facilitate family reunification through transferring their immediate family members or next of kin to Australia.**

Under section 198B of the *Migration Act 1958* (the Act), a transitory person can be brought to Australia for a temporary purpose. Transitory persons must return to a regional processing country at the conclusion of their temporary stay in Australia. Family members will only be permitted to travel to Australia in exceptional circumstances.

Noting transitory persons must return to a regional processing country at the conclusion of their temporary stay in Australia, family reunion will only be permitted in exceptional circumstances.

### **Recommendation 13**

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

Due to the finite capacity across the national detention network, limiting placement at BITA for short periods of detention is currently not operationally viable.

### **Recommendation 14**

**The Australian Government should introduce legislation to ensure that closed immigration detention is only 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 Act, detention is not limited by a set timeframe but is dependent upon a number of factors, including identity determination, developments in country of origin and the complexity of processing due to individual circumstances relating to health, character or security matters.

- These assessments are completed as quickly 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.

### **Recommendation 15**

**The Minister and Department of Home Affairs should routinely consider all people in immigration detention (especially those with significant vulnerabilities) for release into alternative community-based arrangements.**

People in immigration detention have their cases regularly reviewed by departmental status resolution officers (SRO), who consider placement and immigration status resolution options, consistent with legislation and government policy.

Depending on the circumstances of the case, the SRO may have an option to grant a bridging visa, provided the detainee meets the legislated requirements for grant. Alternatively, the SRO 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.

### **Recommendation 16**

**The Minister and Department of Home Affairs should consider the following groups as a priority for release into alternative community-based arrangements:**

- a) Pregnant women**
- b) People subject to third country processing, with appropriate mental health assessments and treatment provided where needed.**

Decisions on placement in the IDN 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.

People in immigration detention have their cases regularly reviewed by departmental SROs who consider placement and immigration status resolution options consistent with legislation and government policy. The SRO will consider risks, vulnerabilities and barriers to status resolution to assess the most appropriate placement for an individual while status resolution processes are being undertaken. The alternative placements in this framework include:

- Community placement such as a Bridging Visa E
- Residence Determination (community detention)
- Immigration Transit Accommodation, for low to medium risk clients for short periods pending removal
- Held immigration detention for those who present a risk to the community and/or high risk clients, for short periods pending removal
- Specialised held detention, tailored arrangements for complex or extreme risk clients.

Depending on the circumstances of the case, the SRO may have an option to grant a bridging visa, provided the detainee meets the legislated requirements for grant. Alternatively, the SRO 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.

### **Recommendation 17**

**The Department of Home Affairs 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 SROs, 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 SRO role. More recently, the Department has implemented a number of changes in response to the Thom Review, including:

- updated training modules and delivery
- integrated job role profiles and development of professional development pathways
- a new mandatory control framework for detention decisions
- quality assurance processes for cancellation and detention processes.

The Status Resolution program aims to:

- 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
- 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
- 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.

#### **Recommendation 18**

**Recognising the limited role of Status Resolution Officers, the Department of Home Affairs should introduce capacity for Status Resolution Officers to provide people in detention with appropriate information and referrals to independent 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), which sets out information that is required to be given to a detainee under section 194 of the Act. The VIN advises that a detainee is eligible to apply for a visa within certain timeframes and their options for leaving Australia, and that a detainee may seek legal or migration advice.

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.