

# 2011

## Immigration detention at Villawood



Summary of observations  
from visit to immigration  
detention facilities at  
Villawood



**Australian  
Human Rights  
Commission**

*everyone, everywhere, everyday*

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# Part A:

## Introductory sections

### 1. Introduction

The Australian Human Rights Commission visited the immigration detention facilities at Villawood from 21 to 25 February 2011. This statement contains a summary of the key observations and concerns arising from the Commission's visit. It focuses on conditions as they were at that time.

The Commission acknowledges the assistance provided by the Department of Immigration and Citizenship (DIAC) in facilitating the Commission's visit, and the cooperation received from DIAC officers and detention service provider staff during the visit. This statement was provided to DIAC in advance of its publication in order to provide DIAC with an opportunity to prepare a response. DIAC's response is available on the Commission's [website](#).<sup>1</sup>

### 2. Background

For more than a decade, the Commission has called for reforms to Australia's system of mandatory and indefinite immigration detention – both in light of the impacts it has on people's mental health and wellbeing, and because it leads to breaches of Australia's international human rights obligations. During this time, the Commission has investigated numerous complaints from people in immigration detention and conducted two national inquiries into the mandatory detention system.<sup>2</sup>

Because of its ongoing concerns, the Commission undertakes monitoring activities which include conducting visits to immigration detention facilities.<sup>3</sup> The overarching aim is to ensure that conditions of detention meet internationally accepted human rights standards. Further information about the Commission's immigration detention visits and visit reports can be found on the Commission's [website](#).<sup>4</sup>

### 3. Immigration detention: the national context

The Commission's longstanding concerns about Australia's immigration detention system have escalated over the past year, with ongoing troubling incidents across the detention network. These have included six deaths in detention (five of which appear to have been the result of suicide), suicide attempts, serious self-harm incidents including lip-sewing, riots, protests, fires, break-outs and the use of force against people in detention on Christmas Island by the Australian Federal Police. These incidents have occurred in the context of a detention network that is under serious strain due to a number of factors, but most importantly because thousands of people are being held in detention facilities for long periods of time.

As of 11 March 2011 there were 6819 people, including 1030 children, in immigration detention in Australia – 4304 on the mainland and 2515 on Christmas Island. More than half of those people had been detained for longer than six months, and more than 750 people had been detained for longer than a year.<sup>5</sup>

The Commission has repeatedly raised concerns about the detrimental impacts that prolonged and indefinite detention has on people's mental health, and has repeatedly recommended reforms to bring the immigration detention system into line with Australia's international obligations.<sup>6</sup>

In the Commission's view, there is an urgent need for the Australian Government to end the current system of mandatory and indefinite detention, and to make greater use of community-based alternatives that are cheaper, more effective and more humane than holding people in immigration detention facilities for prolonged periods.

The Commission continues to urge the Australian Government to implement reforms it announced in 2008 under which immigration detention is to be used as a last resort and for the shortest practicable period, people are to be detained in the least restrictive environment appropriate to their individual circumstances, and there is a presumption that people will be permitted to reside in the community unless they pose an unacceptable risk.<sup>7</sup>

## 4. Overview: immigration detention at Villawood

Villawood is located approximately 25 kilometres west of Sydney in New South Wales. People are held in two immigration detention facilities there – Villawood Immigration Detention Centre (IDC) and Sydney Immigration Residential Housing (IRH). During the Commission’s visit, there were 413 people detained in these facilities.<sup>8</sup> The facilities are operated by Serco Australia, the detention service provider contracted by the Australian Government.

The Commission has raised concerns about immigration detention at Villawood for more than a decade.<sup>9</sup> In its [2008 Immigration detention report](#), the Commission raised serious concerns and made recommendations about issues including the ageing and inappropriate infrastructure at Villawood IDC; the prison-like nature of Stage 1 (the highest security section, now called Blaxland compound); the lack of adequate access to open grassy space, exercise facilities and reading materials; the limited availability of external excursions; the use of restraints; the use of separation areas; the lack of onsite interpreters; and the lack of onsite health and mental health staff at Sydney IRH.<sup>10</sup> While some of those issues have been, or are in the process of being, addressed, others are yet to be acted upon.

The Commission’s concerns about the detention facilities at Villawood have increased over the past year as the number of people detained in the facilities has increased and Villawood IDC has been the site of three apparent suicides and a number of protests, hunger strikes and serious self-harm incidents. These concerns prompted the Commission to conduct a comprehensive visit and inspection in February 2011. Key concerns arising from the Commission’s visit are set out in Part B of this report.

Approximately two months after the Commission’s visit, tensions erupted at Villawood IDC when a small rooftop protest escalated into a much larger protest during which fires caused significant damage to parts of the centre. Those events will be considered as part of an independent review established by the Minister for Immigration and Citizenship.<sup>11</sup>

The Commission does not condone acts of violence or property destruction in immigration detention facilities. It is important to recognise, however, the context which preceded those events at Villawood IDC. Many people had been held in detention for a year or more, with no end in sight and without the ability to challenge their ongoing detention in a court. Many were acutely frustrated about lengthy processing of refugee claims, serious delays with security assessments, and a lack of regular updates on progress with cases.

This is not a new occurrence in Australia – this country has witnessed in the past the serious impacts of detaining people for long and indefinite periods of time. Those impacts include deterioration in people’s mental health and protests in detention facilities.

A brief overview of the immigration detention facilities at Villawood is provided below. Additional photos are available on the Commission’s [website](#).<sup>12</sup>

### 4.1 Villawood IDC



Villawood IDC is a high security immigration detention centre used to detain adults. The operational capacity is approximately 450 people.<sup>13</sup> At the time of the Commission’s visit, there were 386 people detained at Villawood IDC – 358 men and 28 women.<sup>14</sup> The centre accommodates some of Australia’s longest term immigration detainees, with some people in detention for a number of years.<sup>15</sup>

Villawood IDC is used to detain a broad mix of people including asylum seekers who arrived in Australia by plane or by boat, as well as ‘compliance cases’ – predominantly people who have overstayed their visa or had their visa cancelled. At the time of the Commission’s visit, of the 386 people detained at Villawood IDC, approximately half were asylum seekers and half were compliance cases.<sup>16</sup> There were people with citizenship from more than 40 different countries, the largest groups being from the People’s Republic of China, Sri Lanka, Iraq, Afghanistan, Iran, Fiji and Vietnam.<sup>17</sup> There were also 36 people who claimed to be stateless or whose citizenship was undetermined.<sup>18</sup>

Villawood IDC contains three main compounds: Blaxland (formerly Stage 1) is the highest security compound and is used for a mix of detainees; Hughes (formerly Stage 2) is generally used for compliance cases and asylum seekers who have arrived by plane; and Fowler (formerly Stage 3) is generally used for asylum seekers who have arrived by boat. In addition, Banksia compound (contained within Hughes) is a small compound for women only. Photos of each compound are available on the Commission’s [website](#).<sup>19</sup>

#### 4.2 Sydney IRH



Sydney IRH is a low security immigration detention facility, predominantly used to detain families with children, unaccompanied minors and individuals with particular vulnerabilities. The operational capacity is 24 people.<sup>20</sup>

At the time of the Commission’s visit, there were 27 people detained at Sydney IRH – eleven men, eight women, three girls and five boys.<sup>21</sup> This included an unaccompanied teenage boy, a baby born in Australia while his parents were immigration detainees, and three pregnant women whose pregnancies were considered to be high risk. Almost half were people with Sri Lankan citizenship, and the remainder were people with citizenship from Iraq, Iran, Afghanistan, Vietnam, Pakistan and Somalia.<sup>22</sup> Most were asylum seekers, some who had arrived in Australia by boat and others by plane.<sup>23</sup>

Unlike many of Australia’s immigration detention facilities, Sydney IRH was purpose-built. The facility contains four duplex houses, each of which has three bedrooms, two bathrooms, shared kitchen, living and dining areas and a garage area that can be used for visits. The houses face a common area which contains grassy space and a small garden, children’s playground equipment, a basketball half-court and a small undercover recreation area. Photos of the facility are available on the Commission’s [website](#).<sup>24</sup>

The environment and conditions at Sydney IRH are highly preferable to those at Villawood IDC. However, Sydney IRH is still a closed detention facility. People remain in immigration detention and are not free to come and go. They are only permitted to leave the facility on escorted excursions.

## Part B:

# Key concerns arising from the Commission's visit to immigration detention facilities at Villawood

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The Commission welcomes efforts by DIAC and Serco managers and staff at Villawood IDC and Sydney IRH to strive to provide appropriate conditions and services for people in detention. During its visit, the Commission observed that, in general, staff appeared to be working hard to ensure the appropriate operation of the detention facilities, while being subject to numerous constraints related to government policy, infrastructure limitations and limited resources.

However, the Commission has serious concerns about the immigration detention facilities at Villawood, and the wellbeing of the people detained in them. The key concerns arising from the Commission's visit are outlined below.

### 5. Mandatory detention

*"We have not committed a crime. Someone needs to tell us why we are being kept here."*

(Woman in detention at Sydney IRH)

*"It is inhuman for the Australian government to detain so many people without them knowing their future. We are not criminals."*

(Man in detention in Hughes compound, Villawood IDC)

*"We had an idea that Australia respects human rights, but we haven't seen that here."*

(Man in detention in Fowler compound, Villawood IDC)

Australia continues to have one of the strictest immigration detention systems in the world – it is mandatory, it is not time limited, and people are not able to challenge the need for their detention in a court. The Commission has for many years called for an end to this system because it leads to breaches of Australia's human rights obligations, including obligations to refrain from subjecting anyone to arbitrary detention.<sup>25</sup>

As is the case with virtually every detention visit the Commission conducts, the overarching concern during the Villawood visit was the human impact of the mandatory detention system. During its visit, the Commission spoke with people in detention who expressed extreme frustration and a lack of comprehension about why it was considered necessary to lock them up for the duration of their immigration processing.

Under the Australian Government's New Directions in Detention policy, immigration detention is meant to be used as a last resort and for the shortest practicable period, people are meant to be detained in the least restrictive environment appropriate to their individual circumstances, and there is meant to be a presumption that people will be permitted to reside in the community unless they pose an unacceptable risk.<sup>26</sup>

Unfortunately, these principles have not been enshrined in legislation. Further, the Commission seriously questions the extent to which they are being implemented in practice, given the high number of people detained at Villawood IDC and other detention facilities around Australia and the long periods many of them have been in detention. The Commission is particularly concerned that these principles are not being implemented in the case of asylum seekers who arrive by boat and people whose visas are cancelled under section 501 of the *Migration Act 1958* (Cth) (Migration Act).

The Commission acknowledges that use of immigration detention *may* be legitimate for a strictly limited period of time. However, the need to detain should be assessed on a case-by-case basis

taking into consideration individual circumstances. A person should only be held in an immigration detention facility if they are individually assessed as posing an unacceptable risk to the Australian community and that risk cannot be met in a less restrictive way. Otherwise, they should be permitted to reside in community-based alternatives while their immigration status is resolved – if necessary, with appropriate conditions imposed to mitigate any identified risks.

## 6. Prolonged and indefinite detention

*“Some people have been locked up for three or four years. They don’t know what their future is. Australia is a country that is human and cherishes human rights. How in this country can we be detaining people for such a long time?”*

(Man in detention in Hughes compound, Villawood IDC)

*“We need to be able to answer our children about when they can leave detention.”*

(Woman in detention at Sydney IRH with her husband and children)

*“Fifteen months is too long to stay here. We are human beings, we are not animals.”*

(Man in detention in Fowler compound, Villawood IDC)

*“People here don’t have time. We are desperate here and our families are in desperate situations.”*

(Man in detention in Hughes compound, Villawood IDC)

The Commission is seriously troubled by the high number of people being held in immigration detention for prolonged periods of time. As noted above, as of 11 March 2011 more than half of the 6819 people in detention had been detained for longer than six months, and more than 750 people had been detained for longer than a year.<sup>27</sup>

At the time of the Commission’s visit to Villawood IDC, sixty per cent of the 386 people detained there had been in detention for longer than six months, and more than forty five per cent had been in detention for longer than twelve months. Twenty six people had been in detention for more than two years – this included eight people for more than three years, one person for more than four years and one person for more than five years.<sup>28</sup> These long periods of detention are extremely concerning, and risk breaching Australia’s human rights obligations.

The Commission is particularly concerned about the prolonged detention of asylum seekers and refugees, as well as people whose visas have been cancelled under section 501 of the Migration Act, as discussed in sections 8 and 9 below. The prolonged detention of unaccompanied minors and families with children is also of particular concern, as discussed in section 12 below. At the time of the Commission’s visit to Sydney IRH, more than two thirds of the 27 people in detention there, including seven children, had been detained for longer than six months; more than one third, including three children, had been detained for longer than twelve months.<sup>29</sup>

A range of factors are contributing to people being held in immigration detention facilities, including those at Villawood, for prolonged periods. These include the failure to implement key aspects of the Australian Government’s *New Directions*, delays with notification of refugee status assessment decisions, lengthy timeframes for security assessments conducted by the Australian Security Intelligence Organisation (ASIO), and the limited use of community-based alternatives to holding people in detention facilities. Those issues are discussed further below.

The critical overarching factor is that Australia’s mandatory detention system permits indefinite detention. There is no set time limit on the period a person may be held in detention, and people are not able to challenge the need for their detention in a court. During its visit to Villawood, the Commission spoke with people who expressed disbelief and a sense of injustice that in a country like Australia, they could be detained indefinitely without the ability to challenge their detention before a judge.

Under Australia’s international human rights obligations, anyone deprived of their liberty should be able to challenge their detention in a court.<sup>30</sup> The court must have the power to order the person’s release if their detention is not lawful. The lawfulness of their detention is not limited to compliance with Australia’s domestic law – it extends to whether their detention is compatible with the requirements of article 9(1) of the *International Covenant on Civil and Political Rights* (ICCPR), which protects the right to liberty and prohibits arbitrary detention.<sup>31</sup> Currently, in breach

of its international obligations, Australia does not provide access to such review. While people in immigration detention may be able to seek judicial review of the domestic legality of their detention, Australian courts have no authority to order that a person be released from detention on the grounds that the person's continued detention is arbitrary, in breach of article 9(1) of the ICCPR.

Under the *New Directions*, the Australian Government has acknowledged that 'detention that is indefinite or otherwise arbitrary is not acceptable'.<sup>32</sup> In the absence of judicial review of detention, the *New Directions* committed to the length and conditions of detention being subject to 'regular review'. Once in detention, a person's situation should be reviewed by a senior DIAC officer every three months to ensure that their continued detention is justified. In addition, each person should have their detention reviewed by the Commonwealth Ombudsman every six months.

The Commission has welcomed these review mechanisms in the past, but has expressed concern that they are not sufficient to prevent indefinite or arbitrary detention, in particular because the DIAC reviews are not conducted by an independent body and the Ombudsman is not able to enforce his recommendations.<sup>33</sup> In recent reports the Commission has expressed concerns about the limited transparency surrounding the review processes and outcomes.<sup>34</sup>

The Commission encourages the Australian Government to allocate adequate resources to allow for the three and six month reviews to be conducted on time for each person in immigration detention. It also encourages the Australian Government to increase transparency surrounding the detention review processes and outcomes.<sup>35</sup>

## 7. Limited use of community-based alternatives

*"They could monitor us in the community if they needed to, this happens in other countries."  
(Man in detention at Sydney IRH with his wife and children)*

As noted above, under the *New Directions* immigration detention is to be used as a last resort, people are to be detained in the least restrictive environment appropriate to their circumstances, and there is a presumption that people will be permitted to reside in the community unless they pose an unacceptable risk.<sup>36</sup>

There is an urgent need for the Australian Government to implement these principles and to make greater use of community-based alternatives to holding people in immigration detention facilities for prolonged and indefinite periods. This should include alternatives to detention such as bridging visas, and alternative forms of detention such as Community Detention.

In the Commission's view, if a person must be taken into immigration detention, in most cases the appropriate form of detention will be Community Detention. This allows an immigration detainee to reside at a specified address in the community, if necessary with conditions such as reporting requirements and travel restrictions.

The Commission has previously raised concerns about the under-utilisation of Community Detention nationally.<sup>37</sup> During its Villawood visit, the Commission was seriously concerned about the limited use of Community Detention as an alternative to detaining people in the facilities there. The Commission was informed that only three people from Villawood IDC or Sydney IRH were moved into Community Detention during the 2010 calendar year, and that as of early March 2011, only one family had been moved from Sydney IRH into Community Detention during 2011.<sup>38</sup>

The Commission met a significant number of people who remained in detention at Villawood, despite appearing to meet one or more of the priority criteria for Community Detention under the Residence Determination Guidelines.<sup>39</sup> This included people with significant physical health issues, people who appeared to have significant mental health concerns (including having made serious self-harm attempts), families with children, and long-term detainees who said they had received Commonwealth Ombudsman reviews noting their eligibility for Community Detention.

As discussed in section 12 below, the Commission has welcomed the commitment by the Minister for Immigration to move a significant number of vulnerable families and unaccompanied minors into Community Detention. DIAC has informed the Commission that as of 27 April 2011, the Minister had approved 721 people (including 368 children) for Community Detention.<sup>40</sup> The Commission continues to urge the Minister and DIAC to make full use of Community Detention for others in immigration detention, particularly those who meet the priority criteria under the

Residence Determination Guidelines.<sup>41</sup> The Commission is especially troubled by the limited use of Community Detention as an alternative to facility-based detention for people with mental health concerns or backgrounds of torture or trauma.

## 8. Asylum seekers and refugees

*“Since we were born we haven’t known peace. We came here so our children will have peace.”*  
(Woman in detention at Sydney IRH with her husband and children)

*“Who is responsible for us being here like prisoners? Why are we here? We are asylum seekers.”*  
(Man in detention in Fowler compound at Villawood IDC)

*“The main issue is being in detention for so long, especially after being accepted as refugees.”*  
(Man in detention in Fowler compound at Villawood IDC)

### 8.1 Failure to implement the New Directions approach

As discussed in section 6 above, the Commission is concerned about the prolonged detention of asylum seekers and refugees at Villawood.

Under the *New Directions*, detention of unauthorised arrivals is for the purpose of conducting ‘health, identity and security checks’. Once those checks have been successfully completed, ‘continued detention while immigration status is resolved is unwarranted’. Thereafter, the presumption is that an individual will be permitted to reside in the community unless he or she poses an unacceptable risk.<sup>42</sup>

The Commission has long been concerned that this is not being implemented in practice for asylum seekers, particularly those who arrive by boat. Rather, most of them are held in detention facilities for the duration of processing of their refugee claims. The Commission has more recently become concerned that the Australian Government appears to have abandoned this key aspect of the *New Directions*. The current position appears to be that asylum seekers who have arrived by boat will remain in immigration detention throughout processing of their refugee claims, including during judicial review should they pursue that avenue.<sup>43</sup> The Commission is concerned that this contradicts the intention of the *New Directions*. It wrongly conflates the period of a person’s detention with resolution of their immigration status, instead of detaining a person based on the risk they pose to the Australian community.

In the Commission’s view, a critical factor undermining implementation of this key aspect of the *New Directions* has been the policy requirement that asylum seekers who arrive by boat receive ASIO security assessments before they are released from immigration detention facilities.

In the Commission’s view, the ‘security check’ under the *New Directions* should not be interpreted as requiring a full ASIO security assessment for each person before they are released from an immigration detention facility. In the Commission’s understanding, that is not a requirement under the Migration Act, the *Migration Regulations 1994* (Cth) or the *Australian Security Intelligence Organisation Act 1979* (Cth) (ASIO Act).

Rather, the ‘security check’ should consist of a summary assessment of whether there is reason to believe that an individual would pose an unacceptable risk to the Australian community if they were given authority to live in the community. That assessment should be made when the individual is taken into immigration detention, or as soon as possible thereafter. A person should only be held in an immigration detention facility if they are individually assessed as posing an unacceptable risk to the Australian community and that risk cannot be met in a less restrictive way. Otherwise, they should be permitted to reside in community-based alternatives while their immigration status is resolved. An ASIO security assessment, if deemed necessary, could be conducted while the person was residing in the community.

In the Commission’s view, this would reflect the intention of the *New Directions* – that asylum seekers would be detained for a brief period while initial checks were undertaken, then permitted to reside in the community while their refugee claims were assessed.

## 8.2 Delays with ASIO security assessments

*“Why am I still waiting? They did checks and took my fingerprints when I first arrived.”*

(Man in Hughes compound at Villawood IDC who had been in detention for 11 months. He had been recognised as a refugee and was awaiting a security clearance.)

*“We don’t believe that they are actually doing the checks.”*

(Man in Fowler compound at Villawood IDC who had been waiting for a security clearance for nine months since being recognised as a refugee.)

*“They are playing with my mind. I can’t think any more.”*

(Man in Fowler compound at Villawood IDC who had been in detention for 13 months. He had been waiting for a security clearance for eight months since being recognised as a refugee and was anxious due to the lack of information provided about the process.)

The issue discussed above has become a matter of serious concern in part because lengthy timeframes for ASIO security assessments are contributing to the prolonged and indefinite detention of hundreds of people across the immigration detention network. It is particularly disturbing that those affected include people who have been assessed as refugees.

As of February 2011, there were approximately 900 people in immigration detention in Australia who had been recognised as refugees but who remained in detention awaiting ASIO security assessments.<sup>44</sup> On 17 March 2011, the Australian Government informed people in detention that, for most cases, security assessments of people who at that time had been recognised as refugees would be completed by the end of April 2011.<sup>45</sup> The Commission has welcomed this commitment and hopes to see it fully implemented.

At the time of the Commission’s visit to Villawood, there were 37 people there who continued to be held in detention after being recognised as refugees, awaiting their ASIO security assessments, for a period of up to 12 months.<sup>46</sup> Some people expressed extreme frustration with the delay in their security assessment, and with the lack of information provided to them by DIAC Case Managers or by other Australian Government officials about the security assessment process, expected timeframes, progress with their assessment and reasons for the delay. The Commission has heard similar frustrations from people detained in other locations.<sup>47</sup>

Because of the lack of provision of information, some people at Villawood who had already experienced significant delays said they were not confident that ASIO had even commenced their security assessment, and they feared the prospect of protracted further detention. The omission of a decision date in the DIAC-issued letters of notification of refugee status assessment decisions meant that people did not know when that decision was made or when they had been referred to ASIO for security assessment. In the Commission’s view, both the date of decision and the date of referral to ASIO should be clearly stated in such letters.

The Commission is concerned about the lack of transparency surrounding the ASIO security assessment process for asylum seekers in immigration detention. People undergoing a security assessment are provided with very little information about how and when the security assessment will be conducted. In the Commission’s view, people subject to ASIO security assessments should be provided with information about when referrals are made to ASIO, the processes involved in conducting security assessments, and the expected timeframes.<sup>48</sup>

### 8.3 Refugee status assessment process

*"There have been so many policy changes while we have been here. It is very confusing."*

(Man in detention in Fowler compound at Villawood IDC)

*"We bear all this – we just want someone to look at our case."*

(Man in detention in Fowler compound at Villawood IDC)

*"We need justice to process our applications."*

(Man in detention in Fowler compound at Villawood IDC)

During the Commission's visit to Villawood, many asylum seekers expressed acute frustration about lengthy timeframes involved with assessing their refugee claims, their associated prolonged detention, and the lack of regular updates on progress with their cases. In particular, people complained of frequent cancellation and rescheduling of independent merits review interviews, with some people claiming to have waited up to ten months for their interview.

The Commission heard concerns about perceived inconsistencies in the quality of decision-making, with some asylum seekers claiming that some decision-makers were 'better' than others and that their prospects for being accepted as a refugee were dependent on which decision-maker was assigned to assess their case.

The Commission also encountered confusion amongst asylum seekers about the refugee status assessment process, as well as frustration about perceived continual changes to the process. This has most likely been exacerbated by the fact that many of those who demonstrated confusion have been in detention and going through the assessment process for a year or more. During that time they have witnessed the processing suspension imposed in April 2010 on asylum seekers from Sri Lanka and Afghanistan, the High Court of Australia decision in *M61/2010E and M69 v Commonwealth of Australia*, and the subsequent announcement of the new Protection Obligations Determination process.<sup>49</sup>

During its visit the Commission encountered particular confusion amongst asylum seekers about the impact of the High Court decision and their ability to seek judicial review of negative decisions about their refugee status. The Commission has been informed that DIAC has provided information to asylum seekers in detention about these issues.

The Commission is concerned that asylum seekers who have arrived by boat are informed that if they seek judicial review, they will remain in immigration detention for the duration of that process. This may deter some people from pursuing judicial review – an important and legitimate pathway – because they feel unable to cope with the prospect of indefinite ongoing detention while they await the outcome. As discussed in section 8.1 above, the Commission is also concerned that this contradicts the intention of the *New Directions*.

During its visit, the Commission was troubled by the ongoing impact of delays in notifying asylum seekers in detention about decisions regarding their refugee status. The Commission has raised concerns about this over the past six months, after receiving reports that a significant number of asylum seekers in detention were not notified of such decisions until weeks or months after the decisions were made.<sup>50</sup> Such delays may have the effect of prolonging people's detention and could lead to breaches of Australia's obligations not to subject anyone to arbitrary detention.<sup>51</sup>

The Commission was advised by DIAC that asylum seekers in detention at Villawood had been affected by delays of between 22 and 27 days in notification of negative decisions. The Commission was also informed that there were people in detention at Villawood who had been affected by notification delays while accommodated in other detention facilities. The Commission is aware of several troubling cases, including a delay of four and a half months in notification of a negative refugee status assessment decision that was subsequently overturned at independent merits review.

DIAC has informed the Commission that new controls were introduced in December 2010, including interim policy guidelines which set maximum timeframes for notification of decisions. DIAC has also informed the Commission that the new notification timeframes (five days, or seven days in exceptional circumstances) are now being met at Villawood.

#### 8.4 Indefinite detention of persons with adverse security assessments

*“Our lives are at a zero point. We have not been told why we have been rejected. We have not been told what will happen to us. We cannot fight against ASIO.”*

(Man in detention at Villawood who received an adverse security assessment)

*“The only thing that we can do is to go on hunger strike or kill ourselves. We are powerless.”*

(Man in detention at Villawood who received an adverse security assessment)

At the time of the Commission’s visit there were six people in immigration detention at Villawood who had received adverse security assessments from ASIO, including a man who had been separated from his wife and child and a couple with three young children. The Commission met with some of the individuals who had received adverse assessments, who were clearly distressed about their prolonged detention and the prospect that it may continue indefinitely. Some were also frustrated about the lack of information provided on how their situation would be resolved.

The Commission is seriously troubled by the prospect that these individuals (and a number of individuals in other immigration detention facilities who have also received adverse assessments) will be held in detention for an indefinite period of time. Some of them have already been in detention for more than a year. The Commission has previously raised concerns about this issue, and urged the Australian Government to ensure that durable solutions are provided for these individuals, and they are removed from immigration detention facilities as soon as possible.<sup>52</sup>

The Commission is concerned that there does not appear to be a clear framework for considering placement options for such people while their immigration status is resolved. Villawood IDC in particular is an extremely restrictive environment in which to hold people who could be facing a very long period in detention. In the Commission’s view, alternative placement options should be considered for individuals who have received adverse assessments, including less restrictive places of detention and Community Detention with imposition of conditions necessary to mitigate any identified risks.

The Commission is also concerned about the lack of transparency surrounding adverse security assessments issued by ASIO. Under the ASIO Act, a person who receives an adverse assessment is normally provided with a statement that sets out information ASIO has relied on in making the decision. However, this requirement does not apply to the vast majority of asylum seekers in immigration detention.<sup>53</sup> Generally, they are not entitled to be provided with information about the basis on which an adverse assessment is made, meaning they are not provided with the information necessary to contest the adverse assessment. This is particularly troubling given the potential consequences for asylum seekers in detention who receive adverse assessments, which could include indefinite detention, separation from family members who may be released from detention into the community, and removal from Australia.

Finally, the Commission is concerned about the limited access asylum seekers in detention have to merits review and judicial review of adverse assessments.

While the Administrative Appeals Tribunal (AAT) has the power to review adverse assessments, access to AAT review is denied to people who are not Australian citizens or holders of either a valid permanent visa or a special purpose visa.<sup>54</sup> In the Commission’s view, this is contrary to basic principles of due process and natural justice. The Commission supports the recommendations made by the Inspector-General of Intelligence and Security that access to AAT review should be extended to refugee applicants.<sup>55</sup>

There is very little practical opportunity for substantive judicial review of adverse assessments. While the High Court of Australia has held that ASIO decisions are subject to judicial review,<sup>56</sup> the ability of ASIO to withhold from an applicant and the court the information upon which it has relied means that challenging that information is virtually impossible. The practical difficulties in obtaining the necessary evidence and the restricted scope of procedural fairness in the context of ASIO security assessments as interpreted by Australian courts make judicial review an ineffective appeal avenue.

The Commission has recommended that the Australian Government explore options for strengthening substantive judicial review of adverse assessments, including options to ensure the provision of greater information to applicants or another appropriate person. This might include, for example, the appointment of a Special Advocate. In essence, this would be a security-cleared person

who is able to view both an original and a redacted summary of a security assessment to ensure that, as far as is possible, unclassified material and reasons are disclosed, and classified material is reviewed for probity.<sup>57</sup>

## 8.5 Potential for ‘voluntary removal’

*“I have been in detention now for sixteen months and I am so worried about my family. People go back home. Some people just give up. It is not safe there. But it is not safe here either.”*  
(Man in detention in Fowler compound at Villawood IDC)

*“They told us you have two options - you can go back to your country, or you can wait for your security clearance. It is not fair to tell us this.”*  
(Man in detention in Fowler compound at Villawood IDC)

*“We have left our families behind in very difficult situations and we are thinking about them all the time.”*  
(Man in detention in Fowler compound at Villawood IDC)

The Commission is troubled about a number of key factors that, in combination, are placing extreme pressures on asylum seekers and refugees in detention facilities, including at Villawood. These include the psychological impacts of being detained for long periods with no certainty about when they will be released or what will happen to them when they are; confusion about the refugee status assessment process and frustration about delays with processing; frustration and uncertainty about ASIO security assessment processes and delays; and the fact that they are informed that if they seek judicial review of their negative refugee assessment, they will remain in immigration detention for the duration of that process.

The Commission is concerned that these pressures are leading to mental deterioration potentially resulting in self-harm among asylum seekers in detention. Further, the Commission is troubled by the prospect that, in combination with the availability of reintegration assistance, these pressures could potentially lead to asylum seekers or recognised refugees seeking ‘voluntary removal’ to their country of origin even though they may continue to face persecution or risks to their safety upon return.

The Commission is particularly concerned that a ‘voluntary removal’ pathway may be suggested as a viable option for recognised refugees who are feeling unable to cope with the prospect of indefinite ongoing detention while they await their ASIO security assessment. During its Villawood visit, the Commission was informed that refugees awaiting finalisation of their ASIO security assessments have been told by DIAC Case Managers that they have two options: to return to their country of origin or to remain in detention while they await their security assessment.

The Commission notes that Case Managers are tasked with seeking to ensure the timely, fair and lawful resolution of people’s immigration status through interventions to achieve an appropriate immigration outcome. As such, efforts should be targeted towards ensuring the expeditious completion of security assessments, and exploration of options for people to reside in community-based alternatives or to be placed in the least restrictive detention environment in the interim.

## 9. People whose visas have been cancelled under section 501

*“This is worse than prison. There we had more open space, I had a job, we had more education classes.”*  
(Man in detention in Blaxland compound at Villawood IDC, whose visa had been cancelled under section 501)

As noted in section 6 above, the Commission is particularly concerned about the prolonged detention at Villawood IDC of people whose visas have been cancelled under section 501 of the Migration Act (section 501 detainees). Many of these people have lived in Australia for years or even decades, and have strong ties to the Australian community including family members, friends and jobs. Some have Australian partners or spouses, and some have children who are Australian citizens or were born in Australia.

Usually a person's visa is cancelled under section 501 because they have been convicted of a criminal offence. If a prison sentence was imposed, their visa is normally cancelled when they are at the end of serving their sentence. They are then transferred from prison to immigration detention. Some of them spend years in immigration detention while they challenge the decision to cancel their visa, while travel documents are arranged, while diplomatic assurances are sought from the country they will be returned to about their safety on return, or while a claim for a protection visa is assessed.

The majority of section 501 detainees are held at Villawood IDC. At the time of the Commission's visit, there were 48 people in detention at Villawood because their visas had been cancelled. Eight of those people had been detained for longer than two years; three of those eight people had been detained for longer than three years.<sup>58</sup> These lengthy periods of detention are extremely concerning.

Under the *New Directions*, mandatory detention applies to 'unlawful non-citizens who present unacceptable risks to the community'; detention in an IDC is 'only to be used as a last resort and for the shortest practicable time'; and detention should be in the 'least restrictive form appropriate to an individual's circumstances'.<sup>59</sup> The Commission is concerned that these principles are not being applied on an individual basis for people whose visas have been cancelled under section 501. Rather, they are subject to mandatory detention, are virtually always held in high-security IDCs, and are often detained for prolonged periods of time.

While many section 501 detainees have been convicted of a criminal offence, once they are transferred to immigration detention they have completed their prison sentence, if one was imposed. The expectation is that they have been punished and rehabilitated by the correctional system. Thereafter, these individuals should not be automatically categorised as posing an unacceptable risk to the Australian community. Rather, the extent to which they might pose any continuing risk should be determined on a case-by-case basis through an assessment of their individual history and circumstances.

This concern has also been raised by the Joint Standing Committee on Migration, which has stated that 'risk assessments for section 501 detainees should focus on evidence, such as a person's recent pattern of behaviour, rather than suspicion or discrimination based on a prior criminal record'.<sup>60</sup>

People whose visas have been cancelled under section 501 should only be held in an immigration detention facility if they have been individually assessed as posing an unacceptable risk to the Australian community and that risk cannot be met in a less restrictive way. Alternative placement options should be considered for such people, including less restrictive places of detention than IDCs such as Villawood, and Community Detention with imposition of conditions necessary to mitigate any identified risks. Consideration of appropriate alternatives should begin as soon as DIAC becomes aware that an individual is likely to have their visa cancelled and be taken into immigration detention.

For a number of years, the Commission has also raised broader concerns about a range of human rights issues engaged by the section 501 visa cancellation power. These concerns are outlined in a background paper, [Immigration detention and visa cancellation under section 501 of the Migration Act](#).<sup>61</sup> While some improvements were made with the introduction of a new Ministerial Direction in 2009, the Commission remains concerned about the potential for the exercise of the section 501 power to lead to breaches of Australia's human rights obligations.<sup>62</sup> This is a particular concern in relation to long-term residents with family members and other strong ties in the Australian community. The Commission has recommended that section 501 be reviewed with the aim of excluding long-term permanent residents from the operation of the provision.<sup>63</sup>

## 10. Physical conditions of detention

Under international human rights standards, authorities should seek to minimise differences between life in detention and life at liberty in the design and delivery of detention services and facilities.<sup>64</sup> People are held in immigration detention under the Migration Act because they do not have a valid visa.<sup>65</sup> They are not detained because they are under police arrest or because they have been charged with or convicted of a criminal offence. The treatment of people in immigration detention should therefore be as favourable as possible, and in no way less favourable than that of untried or convicted prisoners.<sup>66</sup>

The Commission's key observations and concerns about physical conditions of detention at Villawood IDC and Sydney IRH are outlined below.

## 10.1 Villawood IDC

*“Please just tell them to solve our cases as soon as possible. This detention is just like a jail.”*

(Man in detention in Fowler compound, Villawood IDC)

*“I like walking around. In this area there is no room to do that.”*

(Man detained in Blaxland compound, Villawood IDC)

*“Every moment of this place is very painful. I won’t be able to forget this place.”*

(Man in detention in Fowler compound, Villawood IDC)



.....  
Blaxland compound,  
Villawood IDC  
Additional photos  
of Villawood IDC  
are available on the  
Commission’s [website](#)

### (a) Major redevelopment

The Commission has raised concerns about the physical conditions at Villawood IDC for many years.<sup>67</sup> In its [2008 Immigration detention report](#), the Commission raised serious concerns about issues including the ageing and inappropriate infrastructure, the prison-like nature of Stage 1 (now Blaxland compound), the lack of access to open grassy space, and the use of separation areas. The Commission recommended that a comprehensive redevelopment be undertaken, and that this include the demolition of Stage 1 as a matter of urgency.<sup>68</sup>

The Commission therefore welcomed the announcement by the Australian Government in May 2009 that funding would be allocated for a major redevelopment, and welcomes efforts made since that time in the planning and design phase.

Pending the major redevelopment, some smaller interim works have been undertaken at Villawood IDC, including the installation of a new visitors’ building and additional interview rooms for Hughes and Fowler compounds, refurbishment of the Murray Unit, and refurbishment of the visitors’ area and outdoor courtyards in Blaxland compound. The Commission welcomes these interim works. However, the Commission has a number of ongoing concerns about the infrastructure at Villawood IDC (as discussed below), and remains of the view that the redevelopment should be undertaken as soon as possible.

The Commission made a number of recommendations about the redevelopment in its submission to the inquiry by the Parliamentary Standing Committee on Public Works in 2009. The Commission reiterates those recommendations, including that the redevelopment should: include the demolition of Stage 1 (now Blaxland compound); ensure that people are detained in the least restrictive form of detention possible; and address the infrastructure concerns raised by the Commission in its 2008 Immigration detention report.<sup>69</sup>

The Commission is troubled by the plan that people detained in Blaxland compound will be the last to be relocated during the redevelopment. In the Commission’s view the priority should be ceasing use of Blaxland compound as soon as possible. It is one of the most restrictive areas in all of

Australia's immigration detention facilities. It is not appropriate to continue use of this compound for another four years while the entire redevelopment is undertaken.

*(b) Ongoing infrastructure concerns*

As noted above, the Commission has a number of ongoing concerns about the infrastructure at Villawood IDC. The centre was not purpose-built, the infrastructure is ageing and dilapidated, and in the Commission's view much of it is inappropriate for the purpose for which it is being used. This places considerable strain on detainees, staff and managers.

The Commission's overarching concerns relate to the intrusive physical security measures at Villawood IDC, which create an environment that feels harsh and punitive. The centre is surrounded by high wire fences, some of which are alarmed or electrified; the internal compounds are separated by further high wire or thick metal fences; many areas are under camera surveillance; and there are static security guards stationed around perimeter fences.

The Commission's most serious concerns relate to the physical conditions in Blaxland compound, the highest security section. As noted above, the Commission has recommended that this compound be demolished. The Commission welcomes the interim works completed over the past few years, in particular the refurbishment of the visitors' area and the outdoor courtyards. However, Blaxland compound remains one of the most restrictive and prison-like areas in the detention network. There are intrusive security measures including prison-like perimeter fences, razor wire and camera surveillance; there is very limited access to open outdoor areas; most detainees share crowded dormitory bedrooms with virtually no privacy; and a complex mix of detainees is held together in a very confined space.

The conditions for people in Blaxland compound appear to have been made even more restrictive in response to a number of escapes. During its visit, the Commission was particularly concerned that detainees were not permitted to access some of the larger outdoor courtyards, which were kept locked. According to DIAC and Serco, this was because of unsecure fencing and concerns about the possibility of escapes, and access to the courtyards would be permitted once work had been completed on the fences. This was expected to take three to four months. It is of significant concern that people are being detained in such a restrictive environment, with very limited access to open outdoor areas, because of inadequate infrastructure. The Commission has urged DIAC to rectify this matter as quickly as possible.

The Commission also has concerns about the adequacy of the accommodation and facilities in Fowler and Hughes compounds, particularly given the number of people they are being used to accommodate. For example, during the Commission's visit people detained in Fowler compound were sharing small bedrooms with two or three other people. They had very little space or privacy, and no lockable space to store their personal belongings. While this situation might be acceptable for very brief periods, many of these people had already been in detention for more than a year. The Commission encourages DIAC to refrain from increasing the number of people detained at Villawood IDC in order to ensure that further pressure is not placed on people in detention and already strained facilities.

Further, in the Commission's view, the recreational and educational facilities at Villawood IDC are inadequate, and the outdoor recreation areas are in need of additional shade and grass. These issues should be addressed as part of the redevelopment. Each compound should have adequate indoor areas for recreational and educational activities, a freely accessible library area stocked with reading materials in languages spoken by people in detention, adequate outdoor recreation spaces including grassy and shaded areas, and a gym area that provides adequate safety and privacy for detainees. The facilities in Blaxland compound in particular currently fail in most of these areas. There is virtually no library, no dedicated space for educational activities, and limited access to outdoor recreational areas.

*(c) Use of separation areas*

In its [2008 Immigration detention report](#), the Commission raised serious concerns about the use of separation areas at Villawood IDC including the Management Support Unit (now the Murray Unit) and the observation rooms in Stage 1 (now Blaxland compound).<sup>70</sup>

The Commission welcomes the fact that the old observation rooms in Blaxland compound are no longer in use, and have been replaced with a new annexe. However, Blaxland annexe is an extremely restrictive environment. There is little indoor space, very limited outdoor space (and all of it caged),

little natural sunlight, no space for walking or exercising, and no exercise equipment. There is almost no privacy for detainees, with constant CCTV surveillance.

It is troubling that there is no clear written policy governing the placement of people in Blaxland annexe, given the additional restrictions placed on a person's liberty. In the Commission's view there should be a written policy setting out the decision-making process and criteria for placing a person in the annexe, along with requirements for each person's placement to be reviewed on a regular basis and for information to be provided to the person about the outcome of that review and the reasons for the decision.

The Commission is concerned about the use of Blaxland annexe for the mixed purposes of managing people who have been involved in violent or aggressive behaviour at the same time as monitoring people who have been placed on observation because they are at risk of suicide or self-harm. This potentially poses risks to the psychological wellbeing and physical safety of the latter group. These groups should be managed differently and in physically separate locations.

The Commission is also concerned that people in other compounds may be placed in Blaxland annexe for observation if they are considered to be at risk of suicide or self-harm. Because of the restrictive nature of the annexe, this may deter people from revealing the extent of their psychological distress for fear of being moved. The consultant psychiatrist on the Commission's team was of the view that this was occurring in the case of a number of individuals. The Commission has raised concerns about this issue in past reports.<sup>71</sup> In response to the Commission's 2008 report, DIAC stated that once the Management Support Unit (now the Murray Unit) was refurbished, people from other compounds would no longer need to be transferred to Stage 1 (now Blaxland compound) for observation.<sup>72</sup> This has not yet been implemented, despite the completion of the refurbishment in mid-2010.

The Murray Unit is a small fenced-in compound used to separate individuals from the general detainee population. The Commission welcomes the refurbishment of the Murray Unit, but has some ongoing concerns about the infrastructure, environment and facilities. These include that there is a very limited amount of open outdoor space; that there is no space or equipment for people to be able to exercise; and that there are no landline phones or internet facilities.

The Commission's most significant concerns relate to the downstairs section of the Murray Unit, which is extremely punitive. The bedrooms are essentially prison cells. People in these rooms are monitored on CCTV, so they have no privacy. People should not be accommodated in these rooms for any longer than is absolutely necessary. Further, people should not be locked in these rooms except for the containment of physical aggression and for the safety of those around them, and any such detention should be restricted to emergency management for the shortest possible time. For people placed in these rooms for management of psychological or psychiatric disorders, it should only be until they can be psychiatrically assessed and a psychiatric management plan can be implemented, including admission to hospital where appropriate.

As noted above, the Commission is concerned about people on suicide or self-harm observation being placed in Blaxland annexe. If adequate support cannot be provided to an individual in their own compound, and it is considered necessary by mental health staff to separate that individual for a short period of time for their own safety or wellbeing, in the Commission's view it would be more appropriate to consider placing that person in the upstairs section of the Murray Unit for a short period. This area is less restrictive and has more open space than Blaxland annexe.

## 10.2 Sydney IRH

*"We can tolerate this, but we need a deadline."*

(Man in detention at Sydney IRH, talking about the uncertainty of indefinite detention)

*"We just want stable conditions for our children to have healthy mental wellbeing."*

(Woman in detention at Sydney IRH)

*"My head feels like it's going to explode."*

(Woman in detention at Sydney IRH)

As noted in section 4.2 above, the environment and conditions at Sydney IRH are highly preferable to those at Villawood IDC. The Commission has noted this in past reports, and recommended that DIAC fully utilise the IRH as an alternative to detaining people at the IDC.<sup>73</sup>

Sydney IRH provides a less punitive physical environment than Villawood IDC, with security measures that are not as intrusive. There are no high wire fences, razor wire, or small walled-in courtyards. Rather, the facility is surrounded by residential style fencing and external areas are monitored by cameras and an alarm system. The IRH is a much newer facility and, unlike Villawood IDC, it was purpose-built. Accommodation is in duplex houses which provide people with a greater level of privacy and autonomy. Often they have their own bedroom, and they are able to cook their own meals. These factors combine to create an environment that is more comfortable and less tense than in Villawood IDC.

However, Sydney IRH is still a closed detention facility. People remain in immigration detention and are not free to come and go. They are only permitted to leave the facility on escorted excursions. Despite the preferable physical conditions, people at the IRH may still suffer significant psychological impacts as a result of the deprivation of their liberty. The Commission met with a number of individuals and families during its visit who spoke about these impacts. One of the Commission's most significant concerns about conditions for people detained at Sydney IRH relates to the lack of onsite mental health services, as discussed in section 11.2(c) below.

As noted in section 6 above, the Commission continues to be particularly concerned about the prolonged detention of unaccompanied minors and families with children. At the time of the Commission's visit to Sydney IRH, more than two thirds of the 27 people in detention there, including seven children, had been detained for longer than six months; more than one third, including three children, had been detained for longer than twelve months.<sup>74</sup> The Commission spoke with parents who talked about the difficulties of trying to maintain a 'normal family life' in a detention environment for such long periods. Further concerns about the detention of children at Sydney IRH are outlined in section 12 below.

While the Commission generally welcomes the standard of the facilities at Sydney IRH, there is a need for dedicated interview rooms and greater space for recreational and educational activities. Currently, interviews are conducted in a non-soundproof room that is also used as the recreation room and as an office for the activities coordinator. The Commission has been informed that an extension to the Sydney IRH has been approved which will include two interview rooms and enhanced recreational facilities.<sup>75</sup>

## 11. Physical and mental health

Under international human rights standards, all people have a right to the highest attainable standard of physical and mental health.<sup>76</sup> Each person in detention is entitled to medical care and treatment provided in a culturally appropriate manner and to a standard which is commensurate with that provided in the general community. This should include preventive and remedial medical care and treatment including dental, ophthalmological and mental health care.<sup>77</sup>

At the time of its visit, the Commission had significant concerns about the provision of physical and mental health services for people in immigration detention at Villawood, particularly in the case of mental health. These concerns were informed by a consultant psychiatrist who was part of the team conducting the Commission's visit.

Concerns about provision of physical and mental health services have been one of the most troubling aspects of many of the Commission's detention visits over the past two years. The Commission has repeatedly recommended that an independent body should be charged with monitoring the provision of physical and mental health services in immigration detention, and adequate resources should be allocated to that body to fulfil this function.<sup>78</sup> While the Detention Health Advisory Group currently plays an important advisory role, it is not sufficiently resourced to monitor physical and mental health service provision in detention facilities on a regular and ongoing basis.

### 11.1 Physical health

#### (a) Villawood IDC

During its visit to Villawood IDC, the Commission met with staff members of the detention health services provider, International Health and Medical Services (IHMS). IHMS provides onsite physical and mental health services to people in detention at Villawood IDC under a contract with DIAC. The IHMS physical health staff at Villawood IDC includes a Regional Manager and nurses who hold clinics six days a week. General Practitioners run clinics onsite five days a week. In addition, a dentist is onsite once a week, physiotherapy services are provided once a week and optometry services are provided once a month.

At the time of the Commission's visit, the IHMS team worked out of a clinic situated in a large demountable building at Villawood IDC, outside the fences of the accommodation compounds. The clinic was badly damaged by fires during the riots that took place at Villawood IDC in late April 2011, two months after the Commission's visit. Following the riots, a temporary clinic was established in interview rooms adjacent to the visitors' area.

The IHMS health staff with whom the Commission met appeared hardworking and committed to providing a high level of service to people in detention at Villawood IDC. However, the Commission has a number of concerns about physical health service provision at Villawood IDC.

The Commission's most significant concern relates to the staffing level of the IHMS health service, which appears to be inadequate given the number of people in detention. This has a variety of impacts on the quality and timeliness of physical health services. For example, health inductions for newly arrived detainees are not always conducted within the required timeframes. The Commission is also concerned that there is no IHMS presence at Villawood IDC overnight, meaning that Serco officers must rely on telephoning an IHMS triage helpline or calling an ambulance.

The Commission has recommended that DIAC consider increasing the staffing level of the IHMS physical health service at Villawood IDC. In addition, DIAC should require at least a minimal IHMS presence at Villawood IDC twenty four hours per day, seven days per week. There must also be capacity for IHMS staff to access and visit detainees within the compounds including the separation areas to provide assertive outreach health care.

A further concern at Villawood IDC relates to the high level of prescription and use of psychotropic medications, including antipsychotics and antidepressants, for their sedative effect. This is discussed further in section 11.2(b) below. Medication is dispensed by IHMS nurses at five o'clock in the afternoon, and it must be taken at that time. This is problematic for people taking medication that has a sedative effect, as they may fall asleep and miss the opportunity to eat dinner, which is only served during particular hours. Increased IHMS staffing and a 24 hour presence at Villawood IDC would enable such medication to be dispensed at a more appropriate time of day.

*(b) Sydney IRH*

Sydney IRH differs significantly to Villawood IDC when it comes to the delivery of physical and mental health services. IHMS is not contracted to provide physical or mental health services at Sydney IRH, and there are no IHMS staff based onsite. Rather, the IRH operates on a community-based model. People detained at the IRH can make a request to a Serco officer, who will make an appointment at a specified health clinic in the community and arrange for the person to be escorted to the appointment.

The Commission supports this model to the extent that it means that people can access health services in the community rather than in the detention environment. However, in practice it raises a number of significant concerns, which are exacerbated by the fact that Sydney IRH is being used to accommodate vulnerable people, including pregnant women and families with children, who are spending long periods in detention.

The Commission is concerned that there are no onsite physical or mental health staff or services at Sydney IRH. This is a particular concern in terms of mental health, as discussed in section 11.2(c) below.

## 11.2 Mental health

*"It is unbearable. We feel like we are going mad."*

(Woman in detention at Sydney IRH)

*"Mentally we are suffering. Prolonged detention is very harmful to human health – we are nearly all collapsed psychologically."*

(Man in detention in Hughes compound, Villawood IDC)

*"My hope has all gone now. I'm young but I'm feeling that my life is destroyed. And my thinking is destroyed. There were things that I used to be able to do that I can no longer do."*

(Man in detention in Fowler compound, Villawood IDC)

*"The mental torture kills you from the inside."*

(Man in detention in Hughes compound, Villawood IDC)

*"And the people who get out after a long time, they are so depressed. They cannot learn or help themselves. It is hard for them. If they give us English classes when we are here, we will forget everything when we get out. The people who have left here are mad now, they are not healthy people."*

(Man in detention in Fowler compound, Villawood IDC)

### (a) Impacts of prolonged and indefinite detention on mental health

The Commission has long held serious concerns about the detrimental impacts on people's mental health and wellbeing when they are held in immigration detention facilities for prolonged and indefinite periods of time. The Commission has repeatedly raised these concerns with DIAC and successive Ministers for Immigration, and in public reports regarding conditions in immigration detention facilities.<sup>79</sup>

The Commission's concerns have escalated over the past year as thousands of people are being detained for prolonged periods, and clear evidence has become available of the poor mental health of many people in detention. This includes high rates of self-harm and five apparent suicides in immigration detention facilities – three of which occurred at Villawood IDC.

During its visit, the Commission was seriously concerned about the noticeable impacts of holding people in detention for prolonged and indefinite periods. Many people spoke of feelings of frustration, distress and demoralisation after being detained for a long period of time, and many spoke of the uncertainty and anxiety caused by being detained for an indefinite period of time. People also spoke about the psychological impacts of their prolonged detention, including high levels of sleeplessness, feelings of hopelessness and powerlessness, thoughts of self-harm or suicide, and feeling too depressed, anxious or distracted to take part in recreational or educational activities. The Commission was troubled by the palpable sense of frustration and incomprehension expressed by many people. This appeared to have contributed to marked levels of anxiety, despair and depression, leading to high use of sedative, hypnotic, antidepressant and antipsychotic medications and serious self-harm incidents.

As discussed in section 7 above, during its visit to Villawood the Commission was troubled by the limited use of Community Detention as an alternative to facility-based detention for people with mental health concerns or backgrounds of torture or trauma. The Commission met with people who remained in detention at Villawood despite appearing to meet one or more of the priority criteria for Community Detention.<sup>80</sup> This included individuals who appeared to have significant mental health concerns (including having made serious self-harm attempts), and individuals who claimed to have been exposed to traumatic events in their home countries.

The Commission continues to urge the Minister and DIAC to make full use of Community Detention, particularly for people who meet the priority criteria under the Residence Determination Guidelines. This includes people with significant mental health concerns and people who may have experienced torture or trauma.<sup>81</sup>

### (b) Mental health services at Villawood IDC

During its visit to Villawood IDC, the Commission met with IHMS mental health staff, who provide onsite mental health services under a contract with DIAC. The IHMS mental health staff at Villawood

IDC included a team leader, a mental health nurse, two psychologists and two counsellors. In addition, there were visits by a psychiatrist around four times each month.

The IHMS mental health staff with whom the Commission met appeared hardworking and committed to providing a high level of service to people detained at Villawood IDC. However, the Commission has a number of significant concerns about mental health service provision at Villawood IDC.

The Commission's primary concern relates to clinical governance of the mental health service. At the time of the Commission's visit, clinical responsibility fell on the mental health team leader, a psychologist. This is not appropriate, particularly given the high number of people being detained at Villawood IDC for prolonged periods, the mental health impacts of prolonged detention, and the complex nature of the caseload. Mental health services should be overseen by a consultant psychiatrist who can provide clinical supervision of staff and accept clinical responsibility for the provision of clinical care. This is a concern that has arisen in connection with visits to other detention facilities, in particular those in Darwin and on Christmas Island. DIAC should address this matter in a consistent way across the detention network.

The Commission's additional concerns about mental health service provision at Villawood IDC include the following:

- The staffing level of the IHMS mental health service appears to be inadequate to address the needs of the high number of people in detention at Villawood IDC and the complex nature of the caseload. This is a particular concern in light of the introduction of the Psychological Support Program for the Prevention of Self Harm in Immigration Detention (PSP), which has increased the number of referrals to the mental health team.<sup>82</sup> The Commission has recommended that DIAC consider increasing the staffing level of the IHMS mental health service at Villawood IDC. This should also be addressed across the detention network to ensure that IHMS staffing in each detention facility is adequate to meet the mental health needs of the detainee population and to fully implement the PSP. Improvement in staffing levels could also usefully incorporate an extended hours mental health service.
- The scope of mental health services provided at Villawood IDC is limited. In particular, the current IHMS contract (unlike the previous one) does not extend to active outreach in the accommodation compounds. This should be rectified. The lack of outreach means that IHMS staff are unable to gain an accurate appreciation of the psychological environment within the centre; may be unable to identify individuals at risk of psychiatric disorder and/or self-harm at an early stage; and cannot regularly monitor the mental state of individuals who have been referred to them and who are receiving treatment. This is a particular concern in terms of people detained in the separation areas where active involvement of mental health staff in the monitoring and treatment of people at risk of self-harm and suicide is essential. The Commission has been informed that IHMS plans to provide mental health staff to walk the areas of the centre. The Commission welcomes this initiative and encourages its inclusion in the IHMS contract.
- As noted in section 11.1(a) above, the Commission is concerned about the high level of prescription and use of psychotropic medications, including antipsychotics and antidepressants, for their sedative effect in order to manage the high levels of sleeplessness among people in detention. During its visit, the Commission was informed that there were 50 to 60 people at Villawood IDC on antidepressant medication and an additional number on antipsychotic medication. This would appear to be a poor pharmacological solution to an environmental problem contributed to by the lack of opportunity for physical activity and the other factors described above that contribute to anxiety, distress, demoralisation and depressive symptoms.

(c) *Mental health at Sydney IRH*

As discussed in section 11.1(b) above, the Commission is concerned that there are no onsite physical or mental health staff or services at Sydney IRH. This is a particular concern in terms of mental health.

People detained at the IRH are expected to self-manage their mental health status and to seek an appointment in the community if they feel the need. They can do this by making a request to a Serco officer, who will make an appointment and arrange for the person to be escorted to it. The Commission welcomes the fact that people can attend appointments in the community, rather than

in the detention environment. However, there are likely to be situations in which people in need of mental health care do not seek it for a range of reasons including stigma, a lack of mental health awareness and a diminished capacity to self-manage. This is a particular concern at Sydney IRH because it is used for the detention of vulnerable individuals and families, many of whom have been detained for long periods and some of whom have backgrounds of torture or trauma.

The Commission raised concerns about this issue in its [2008 Immigration detention report](#), and recommended that people detained at Sydney IRH be given the option of accessing health and mental health staff and services onsite.<sup>83</sup> In response, DIAC stated that from November 2008, onsite psychology and counselling services became available at the IRH.<sup>84</sup> At the time of the Commission's 2011 visit, this was not the case. Following that visit, the Commission has recommended that DIAC require that IHMS provide at least a minimal onsite presence at Sydney IRH.

The Commission is also concerned that currently day to day monitoring of the mental health and wellbeing of people detained at Sydney IRH essentially rests with Serco officers, who are not appropriately qualified or adequately trained to fulfil this role. Additional mental health training, including PSP training, should be provided for these officers.

### 11.3 Self-harm and suicide

*"No one came to kill themselves. They came here to live. Because of the situation they are pushed to suicide."*

*"We are suffering emotionally terribly in detention. In six months three people have killed themselves in here. It is becoming a normal thing."*

*"I have seen a lot of bad things in this place."*

*"Everyone is in a similar mental state - thinking about dying."*

(Men in detention in Fowler compound, Villawood IDC)

#### (a) Self-harm

The Commission has raised concerns about self-harm among people in immigration detention in a number of recent reports, and has also directly raised concerns with DIAC and the Minister for Immigration.<sup>85</sup> The Commission has become increasingly alarmed over the past few months about the high rates of self-harm across the detention network, including at Villawood. During its visit, the Commission heard about a number of self-harm incidents, including voluntary starvation and ingestion of detergent and chemicals. At Villawood IDC the Commission met with people who had visible scars from self-harming, and with one person who had recently been hospitalised following serious self-harm.

DIAC provided the Commission with records indicating that over a six month period there were 18 reported incidents of actual or attempted self-harm at Villawood IDC.<sup>86</sup> This included people who cut themselves, people who struck their head, and a man who attempted to hang himself the day after another man apparently committed suicide at Villawood IDC.<sup>87</sup>

The prevention of self-harm in detention and psychological support for people at risk of self-harm are addressed by the PSP policy.<sup>88</sup> The Commission is concerned that the PSP policy has not been adequately implemented across the detention network. In particular, the Commission has been concerned during a number of detention visits, including to Villawood, to learn that many staff have not received PSP training. In the Commission's view, there is a need for a national framework for the delivery of PSP training on a rolling basis to ensure that all relevant Serco, DIAC and IHMS staff are provided with initial and refresher training.

Further, as discussed in section 11.2(b) above, the Commission is concerned that IHMS staffing levels at Villawood IDC appear to be inadequate to allow for full implementation of the PSP policy, and is of the view that there is a need for IHMS mental health staff to conduct active outreach in the accommodation compounds at Villawood IDC. This would enhance their ability to identify individuals at risk of psychiatric disorder and/or self-harm, regularly monitor the mental state and promote adherence to treatment of individuals who are being managed by them.

The Commission has been informed that, given recent events in immigration detention, DIAC intends to undertake a review of the PSP policy and its implementation. This report makes a number

of observations about the implementation of the PSP policy and DIAC's other two mental health policies, which address mental health screening and identification and support of people who are survivors of torture or trauma.<sup>89</sup> While these policies are in force, they should be fully and effectively implemented across the detention network. However, given the poor mental state of many people in detention, the Commission supports the planned PSP review. The Commission has recommended that it be broadened to include review of the other two mental health policies and their implementation. The Commission has urged DIAC to commence this review as soon as possible.

(b) *Suicides and critical incident response*

The Commission is deeply troubled by the deaths of six men in Australia's immigration detention facilities over the past nine months, five of which appear to have been the result of suicide. This includes the apparent suicides of three men at Villawood IDC in the space of three months.<sup>90</sup> There have also been a number of reported suicide attempts at different detention facilities, including an attempted hanging at Villawood IDC the day after one of the apparent suicides there.<sup>91</sup>

The deaths at Villawood IDC will be examined by the NSW coroner. The Commission will monitor those proceedings. Given the pending coronial inquiries, the Commission did not investigate the precise circumstances surrounding those deaths during its visit to Villawood. However, the Commission did hold discussions with staff and people in detention about the response to the deaths, ongoing factors that continue to pose risks of suicide attempts, and the adequacy of measures taken to mitigate those risks. The Commission's key concerns are as follows:

- It appears that there were deficiencies in the response to the first death at Villawood IDC, which occurred in September 2010. In particular, there was a delay in providing adequate counselling and psychological support to people in detention at Villawood in the aftermath. The Commission has been informed that since that time steps have been taken to improve responsiveness, and that such delays did not occur after the subsequent deaths at Villawood IDC.
- The Commission holds grave concerns about the ongoing risk of suicide and self-harm at Villawood IDC. During the Commission's visit, the view of the consultant psychiatrist on the Commission's team was that the conditions for suicidality in Fowler compound were very high. There appeared to be very high levels of distress and frustration, feelings of powerlessness and a pervasive sense of helplessness among people in that compound. In Blaxland and Hughes compounds, there appeared to be intense levels of frustration and anger, conditions which carried an associated risk of impulsive suicide attempts.
- The Commission is also concerned about the risk of further suicides in other detention facilities. There have been two apparent suicides and a number of reported suicide attempts since the deaths at Villawood IDC. The Commission has urged DIAC to consult with organisations that specialise in suicide prevention, as well as with mental health professionals including members of the Detention Health Advisory Group, about measures that should be taken to mitigate the risk of further suicides across the detention network.
- As discussed in section 11.2(b) above, the Commission is concerned about the failure of the IHMS contract to provide for active outreach in the accommodation compounds at Villawood IDC. This means that IHMS staff are unable to gain an accurate appreciation of the psychological environment within the centre; may be unable to identify individuals at risk of psychiatric disorder and/or self-harm at an early stage; and cannot regularly monitor the mental state nor promote adherence to treatment of individuals who are under their care. This issue should be addressed in a consistent way across the detention network.
- Given that two of the three deaths at Villawood IDC appear to have resulted from men hanging themselves, the Commission is concerned about the safety of the infrastructure at the centre. While the Commission welcomes the conduct of a safety audit of Hughes compound in the week prior to the Commission's visit, it is concerning that this was not done until five months after the first death. Furthermore, it is troubling that there has not been a more comprehensive approach to safety across the rest of the centre. The Commission was informed that IHMS has identified hanging point concerns in Blaxland annexe and the Murray Unit that have not been addressed. The Commission acknowledges that it is difficult to 'suicide proof' an environment. However, DIAC

should ensure that a safety audit is conducted across Villawood IDC and all other detention facilities, and that all appropriate measures are taken to improve the physical environment to minimise the risk of suicide and self-harm.

- The Commission is troubled that, despite the apparent suicides of three men at Villawood IDC over recent months, there is no formal plan or policy in place to respond to threats of self-harm or suicide at nearby Sydney IRH. The Commission was advised by DIAC that such an incident at the IRH would be responded to on a case-by-case basis. In the Commission's view this is not adequate. There should be a clear written policy in place at each detention facility, including Sydney IRH, setting out procedures for responding to threats of self-harm or suicide. All relevant staff should be provided with training on the policy and procedures.
- The Commission is concerned that there does not appear to be a nationally consistent written policy or procedure for conducting a critical incident review after an event such as a death or near miss attempt in detention. The Commission urges DIAC to formalise, in conjunction with Serco, a critical incident review policy and procedure to apply across the detention network.

## 12. Children in detention

*"We want our kids to be happy. We want them to have a peaceful life."*

(Man in detention at Sydney IRH with his wife and children)

*"This has scarred her."*

(Woman in detention at Sydney IRH, speaking about the impacts on her daughter of being held in immigration detention for more than a year)

*"No parent would want their children to have that environment."*

(Woman in detention at Sydney IRH, speaking about the impacts on her children of living in a detention environment)

As of 11 March 2011, there were 1030 children in immigration detention in Australia.<sup>92</sup>

The Commission has repeatedly raised concerns about the mandatory detention of children, the high number of children in immigration detention facilities, and the long periods of time many children are spending in detention.<sup>93</sup> These concerns were reinforced by the Commission's visit to Sydney IRH.

At the time of the Commission's visit, there were 27 people detained at Sydney IRH including eight children – three girls and five boys. The children ranged in age from four months to 16 years, and included an unaccompanied teenage boy and a baby born in Australia while his parents were immigration detainees.<sup>94</sup>

During its visit the Commission had particular concerns about the following issues relating to the detention of children:

- Child asylum seekers continue to be subjected to mandatory detention. This breaches Australia's obligations under the *Convention on the Rights of the Child* (CRC), which require that a child should only be detained as a measure of last resort and for the shortest appropriate period of time.<sup>95</sup> It is also inconsistent with section 4AA of the Migration Act, under which a minor should only be detained as a measure of last resort.<sup>96</sup>
- While children are not held in Australia's high-security IDCs, many children are held in other immigration detention facilities, including Sydney IRH.<sup>97</sup> As discussed in section 10.2 above, the physical environment at Sydney IRH is highly preferable to Villawood IDC. However, the IRH is still a closed detention facility from which children and their families are not free to come and go. Children might be escorted to an external school during the day or they might take part in supervised excursions, but during the remainder of their time they are restricted to the detention facility. In line with its obligations to only detain children as a last resort, the Australian Government should consider less restrictive alternatives before deciding to detain a child in an immigration detention facility, including Sydney IRH. The detention of children in such facilities should only take place in exceptional cases.<sup>98</sup>

- Many children are spending long periods of time in immigration detention facilities. At the time of the Commission's visit to Sydney IRH, all of the eight children there had been in detention for longer than three months. Seven had been in detention for longer than six months, and three had been in detention for more than a year.<sup>99</sup> The Commission has for many years raised serious concerns about the impacts of prolonged detention on children. In the report of its National Inquiry into Children in Immigration Detention, the Commission found that children in detention for long periods were at high risk of serious mental harm.<sup>100</sup>
- The immigration detention of children is still not subject to judicial oversight, despite Australia being obliged under the CRC to provide for child detainees to challenge their detention before a court or another independent authority.<sup>101</sup> The Commission has raised concerns about this for many years, and continues to recommend legislative changes to ensure that if a child is detained, it is for the shortest appropriate period of time and subject to independent and judicial review mechanisms.<sup>102</sup>
- As discussed in section 8.4 above, the Commission is concerned about the indefinite detention of people who have received adverse security assessments from ASIO. At the time of the Commission's visit there were six people in immigration detention at Villawood in this situation, including a man who had been separated from his wife and child and a couple with three young children. The Commission has urged the Australian Government to ensure that durable solutions are provided for such individuals, and for them to be removed from immigration detention facilities as soon as possible.
- There continues to be an inherent conflict of interest in having the Minister or his DIAC delegate act as legal guardian of unaccompanied minors in immigration detention. The Commission has repeatedly recommended that an independent guardian should be appointed for all unaccompanied minors in immigration detention.<sup>103</sup> DIAC has acknowledged the 'perceived conflict of interest', and has informed the Commission that policy work is being progressed to improve the guardianship regime.<sup>104</sup>
- In the absence of an independent guardian, there is no localised written policy at Sydney IRH setting out who the delegated legal guardian is for unaccompanied minors detained there, and when that guardian should be consulted. This concern has also arisen during other detention visits. The Commission urges DIAC to address this issue in a consistent way across the detention network. DIAC officers and staff members of detention service providers in each detention location should be provided with a clear written policy setting out which DIAC officer has been delegated the Minister's powers of legal guardianship of unaccompanied minors in that location, and how and when that guardian should be consulted.
- There is no written policy regarding the care and supervision of unaccompanied minors detained at Sydney IRH. There appears to be an ad hoc approach in terms of who will be responsible for their supervision – in some cases a Life Without Barriers carer is apparently provided, but in others a Serco officer monitors them. At the time of the Commission's visit, there was one unaccompanied minor detained at the IRH. He was required to be under constant line of sight monitoring by a Serco officer. It was not clear where this requirement stemmed from, and it seemed to be an intrusive approach. In the Commission's view, it would be highly preferable to engage qualified carers to supervise and provide basic care and assistance to unaccompanied minors.
- There were no independent observers to attend interviews involving unaccompanied minors detained at Sydney IRH, and staff appeared to be unaware that this is a requirement in other detention locations. This is concerning given that, in the absence of having an independent legal guardian, independent observers are tasked with monitoring the welfare of unaccompanied minors during interviews. DIAC should ensure that the policy of requiring an independent observer to be present in interviews involving unaccompanied minors is complied with in all locations where unaccompanied minors are held in immigration detention.
- There is no Memorandum of Understanding between DIAC and the NSW Department of Community Services regarding the welfare and protection of children in immigration detention at Sydney IRH or elsewhere in NSW. DIAC should pursue the adoption of an MOU in order to ensure that clear guidelines are in place regarding responsibilities and procedures.

- At the time of the Commission's visit, staff working at Sydney IRH had not been provided with a localised written policy setting out the procedure to follow in the case of concerns arising about the welfare or protection of a child detained in the IRH. All relevant DIAC officers and staff members of detention service providers should be provided with a localised policy setting out the requirements, procedures and contact details for making child welfare and protection notifications. This concern has been raised by the Commission in connection with a number of other detention visits.<sup>105</sup> DIAC should address this matter across the detention network as a matter of priority.
- The Commission welcomes the fact that school aged children detained at Sydney IRH are permitted to attend external schools. However, the Commission encourages DIAC to explore opportunities for children who are not yet old enough to attend school to be able to attend a playgroup, crèche or kindergarten external to the detention environment. The Commission has been advised that such arrangements can be made for four year old children. Appropriate opportunities should be extended to younger children wherever possible, as their opportunities for creative play and learning inside the IRH are limited.

The Commission is concerned that families with children and unaccompanied minors are detained at Sydney IRH rather than being placed in community-based alternatives. As discussed in section 7 above, at the time of its visit to Villawood, the Commission was seriously concerned about the limited use of Community Detention as an alternative to detaining people in the facilities there.

The Commission has welcomed the commitment by the Minister for Immigration to move a significant number of vulnerable families and unaccompanied minors into Community Detention. The Commission fully supports the use of community-based alternatives to holding people in detention facilities for prolonged and indefinite periods – particularly in the case of families with children, unaccompanied minors and other vulnerable individuals.

This process of moving vulnerable families and unaccompanied minors into Community Detention commenced in October 2010, and as of 27 April 2011, the Minister had approved 721 people (including 368 children) for Community Detention.<sup>106</sup> The Commission continues to urge the Minister and DIAC to expand these efforts and to implement them as quickly as possible.

While this initiative will see a significant number of children moved into Community Detention, some children will remain in immigration detention facilities. The Commission therefore continues to recommend legislative changes to ensure that children will only be detained in the first place if it truly is a measure of last resort, and that if they are detained, it is for the shortest appropriate period of time and subject to independent and judicial review mechanisms.

### 13. External excursions

*"We are going crazy without excursions."*

(Man in detention in Fowler compound, Villawood IDC)

*"If you let us go out once a week we will be very relaxed."*

(Man in detention in Hughes compound, Villawood IDC)

At the time of its visit, the Commission had serious concerns about the lack of opportunities for people in immigration detention at Villawood IDC to leave the detention environment on external excursions. There were no recreational excursions being conducted for any of the people detained at Villawood IDC, which had been the case for around a year.

The Commission has long expressed the view that people in immigration detention should be provided with regular opportunities to leave the detention environment through participation in external excursions. This can be vital in assisting them to cope with the deprivation of their liberty, particularly when they are detained for long and indefinite periods of time, and is likely to attenuate the development of self-harming and suicidal behaviours.

During its visit to Villawood IDC, the Commission heard from many people in detention that access to excursions would be beneficial to their mental health and wellbeing. Some people were able to access excursions at their previous place of immigration detention, and have felt the stark contrast after being transferred to Villawood IDC.

During its visit, the Commission was informed that DIAC and Serco intend to start offering some recreational excursions for some people detained at Villawood IDC. The Commission welcomes this, but is concerned about the proposed guidelines, which restrict eligibility to people who have been in detention for six months or more. While there may be a need to prioritise people who have been in detention for longer periods of time, in the Commission's view this requirement is too restrictive. Adequate resources should be dedicated to allow participation in external excursions by all people in detention.

The Commission is also concerned that the current contractual arrangements for service provision at IDCs including Villawood set up a system that provides no financial incentives for Serco to conduct external excursions, while providing financial disincentives by applying penalties if individuals escape. In the Commission's view, there should be consistent standards for access to external excursions across the detention network. Standards for the conduct of a minimum number of external excursions should be specified in the Serco contracts applicable to all detention facilities, and financial penalties should be applied if those standards are not met.

The Commission has been informed that DIAC is undertaking a review of programs and activities for people in immigration detention across all sites, and that this review will include consideration of external excursions.<sup>107</sup> The Commission urges DIAC to consider the above issues as part of that review.

In contrast to Villawood IDC, the Commission welcomes the conduct of regular external excursions from Sydney IRH. Most people detained at the IRH are able to take part in three supervised external excursions per week, to places such as the library, shopping centres, and sporting and recreational facilities.

#### 14. Use of force and restraints

The Commission is aware that allegations were made by a number of people formerly detained at Villawood about use of force and restraints during the process of transferring them back to Christmas Island after they attended funerals in Sydney in February. The Commission is troubled by these allegations, which include that people were threatened with a 'cattle prod-like baton', that some people were handcuffed and that one man was carried out by guards. During its visit, the Commission was advised by Serco that restraints were not used on any individuals at Villawood during this incident, and that Serco officers do not have 'cattle prod-like batons'. The Commission is aware that the Commonwealth Ombudsman has viewed some video footage of the incident and has indicated that that footage did not show evidence of the use of any type of weapon.<sup>108</sup> However, the Commission is also aware that the Ombudsman's enquiries are ongoing, and that there have since been claims that the entire incident was not captured on video.

During its visit to Villawood IDC, the Commission heard some complaints about the use of restraints during external escorts. For example, one man spoke of being distressed about being handcuffed on the way to a medical appointment in the community. Another man claimed he had missed an appearance at a tribunal because he chose not to attend when told he would have to be handcuffed.

While the Commission acknowledges that there may be situations when it is necessary to use restraints, this should be a limited practice used in exceptional cases only. Planned use of restraints should only occur after a thorough risk assessment has been conducted for the individual in question and for the particular escort in question. If it is deemed necessary to use restraints, they should be used for no longer than is necessary and only to the extent reasonably necessary for the purpose, they should be covered while the individual is in public view, and they should be removed for appearances in courts and tribunals.<sup>109</sup>

The Commission is also concerned that the Serco policy on use of force and restraints fails to specify clear procedures for officers to follow when restraints need to be removed in time-sensitive situations that may arise - for example, an emergency health issue or a request to use toilet facilities.<sup>110</sup> This was a concern raised by the Commission during its 2008 Villawood inspection, following a complaint about an incident in which an officer allegedly refused to remove a person's restraints when he requested to use the toilet.

The Commission reiterates its past recommendation that policies regarding use of restraints should include clear procedures for restraints to be removed in time-sensitive situations, and that officers should be trained on these procedures.<sup>111</sup> Training for officers should emphasise the use of techniques which ensure that, when it is absolutely necessary to restrain a person, that person is restrained in a dignified way and with minimum use of force.<sup>112</sup>

## 15. Other concerns

A number of other concerns arose from the Commission's visit to the immigration detention facilities at Villawood. These include the following:

- Asylum seekers who have arrived by boat are not permitted to have mobile phones in detention facilities including at Villawood, despite other people in detention being permitted to have mobile phones. This policy can restrict access to communication with family members and support networks, limit the extent to which asylum seekers can hold private telephone conversations with legal representatives or migration agents, and cause tensions between different groups in detention. It also unnecessarily adds to the difficulties associated with people in the community attempting to contact asylum seekers in detention. In the Commission's view, there has not been a reasonable justification provided for this policy and it should be reconsidered.
- The Commission heard complaints about inadequate access to internet facilities and landline telephones at Villawood IDC. For example, at the time there were only nine phones and eight internet terminals to be shared by 161 people in Fowler compound; and six phones and ten internet terminals to be shared by 154 people in Hughes compound. Again, this is concerning because it limits people's ability to maintain contact with family members, support networks, legal representatives and migration agents. Since the Commission's visit, access to internet facilities and landline telephones has significantly decreased in both Fowler and Hughes compounds, as these facilities were damaged during riots that occurred in late April. The Commission urges DIAC to ensure that adequate access to communication facilities for all people detained at Villawood IDC is provided as quickly as possible.
- The Commission was concerned to hear that Serco was previously not meeting its contractual requirements in relation to the provision of recreational and educational activities at Villawood IDC. The Commission has been assured that Serco is now complying with its contract in this area. While acknowledging efforts by Serco staff to provide a schedule of activities at Villawood IDC, the Commission heard a number of complaints about the limited availability of activities and the inadequacy of what is provided in terms of meeting the needs of the number of people in detention. Other people who had been detained for long periods spoke of feeling too depressed or distracted to take part in activities. In the words of one man: *"How can we participate when we are psychologically tired?"*<sup>113</sup>
- People detained at Villawood IDC are not provided with any opportunities to attend religious services in the community. This is in sharp contrast to Sydney IRH, where most people are able to take part in supervised excursions to attend religious services in the community should they wish to do so. DIAC should ensure that similar opportunities are provided for people detained at Villawood IDC.

# Part C:

## Recommendations

### **Recommendation 1:**

The Australian Government should end the current system of mandatory and indefinite immigration detention.

The Australian Government should implement reforms it announced in 2008 under which immigration detention is to be used as a last resort and for the shortest practicable period, people are to be detained in the least restrictive environment appropriate to their individual circumstances, and there is a presumption that people will be permitted to reside in the community unless they pose an unacceptable risk.

The need to detain should be assessed on a case-by-case basis taking into consideration individual circumstances. A person should only be held in an immigration detention facility if they are individually assessed as posing an unacceptable risk to the Australian community and that risk cannot be met in a less restrictive way. Otherwise, they should be permitted to reside in community-based alternatives while their immigration status is resolved.

### **Recommendation 2:**

The Australian Government should comply with its international human rights obligations by providing for a decision to detain a person, or a decision to continue a person's detention, to be subject to prompt review by a court. To comply with article 9(4) of the ICCPR, the court must have the power to order the person's release if their detention is not lawful. The lawfulness of their detention is not limited to domestic legality – it includes whether the detention is compatible with the requirements of article 9(1) of the ICCPR, which affirms the right to liberty and prohibits arbitrary detention.

### **Recommendation 3:**

DIAC and the Minister for Immigration should make greater use of community-based alternatives to holding people in immigration detention facilities for prolonged and indefinite periods. This should include alternatives to detention such as bridging visas, and alternative forms of detention such as Community Detention.

DIAC and the Minister for Immigration should make full use of Community Detention, particularly for people who meet the priority criteria under the Residence Determination Guidelines. This includes children and accompanying family members, people who may have experienced torture or trauma, people with significant physical or mental health concerns and people whose cases will take a considerable period to substantively resolve.

### **Recommendation 4:**

Until recommendations 1 and 2 are implemented, the Australian Government should avoid the prolonged detention of asylum seekers by complying with its *New Directions in Detention* policy under which detention of asylum seekers is for the purpose of conducting health, identity and security checks. The security check should not be interpreted as requiring a full ASIO security assessment for each individual before they are released from an immigration detention facility. Rather, the security check should consist of a summary assessment of whether an individual would pose an unacceptable risk to the Australian community. That assessment should be made when the individual is taken into immigration detention, or as soon as possible thereafter.

**Recommendation 5:**

The Australian Government should ensure that durable solutions are provided for individuals who have received adverse security assessments from ASIO, and that they are removed from immigration detention facilities as soon as possible.

**Recommendation 6:**

People whose visas have been cancelled under section 501 of the Migration Act should not automatically be categorised as posing an unacceptable risk to the Australian community. They should only be held in an immigration detention facility if they have been individually assessed as posing an unacceptable risk and that risk cannot be met in a less restrictive way. Consideration of appropriate alternatives should begin as soon as DIAC becomes aware that an individual is likely to have their visa cancelled and be taken into immigration detention.

**Recommendation 7:**

The redevelopment of Villawood IDC should be undertaken as soon as possible. It should include the demolition of Blaxland compound, ensure that people are detained in the least restrictive form of detention possible, and address the infrastructure concerns raised by the Commission in its *2008 Immigration detention report*.

**Recommendation 8:**

DIAC should develop a written policy setting out the decision-making process, criteria and rationale for placing a person in the annexe in Blaxland compound at Villawood IDC. The policy should include requirements for each person's placement to be reviewed on a regular basis and for information to be provided to the person about the outcome of that review and the reasons for the decision. The policy should mandate an individual management plan that specifies the purpose of the placement and the strategies staff will use to contain the risk. The annexe should not be used for managing people who have been involved in violent or aggressive behaviour at the same time as it is being used to monitor people who have been placed on observation because they are at risk of suicide or self-harm.

**Recommendation 9:**

An independent body should be charged with monitoring the provision of physical and mental health services in immigration detention, and adequate resources should be allocated to that body to fulfil this function.

**Recommendation 10:**

In relation to the provision of physical and mental health services, DIAC should:

- Consider increasing the staffing level of the IHMS physical health service and the IHMS mental health service at Villawood IDC.
- Require at least a minimal IHMS presence at Villawood IDC twenty four hours per day, seven days per week.
- Overhaul the clinical governance framework for the delivery of mental health services to detainees within Villawood IDC and across the detention network. This would involve a consultant psychiatrist overseeing mental health service delivery, providing clinical supervision of staff and accepting clinical responsibility for the provision of clinical care.
- Amend the IHMS contract to incorporate active outreach work in the accommodation compounds at Villawood IDC, and address this issue in a consistent way across the detention network.
- Require that IHMS provide at least a minimal onsite presence at Sydney IRH.

**Recommendation 11:**

In relation to self-harm and suicide, DIAC should:

- Consult with organisations that specialise in suicide prevention, as well as mental health professionals including members of the Detention Health Advisory Group, for advice about measures that should be taken to mitigate the risk of further suicides across the detention network.
- Ensure that a safety audit is conducted across Villawood IDC and all other detention facilities, and that all appropriate measures are taken to minimise the risk of suicide and self-harm.
- Ensure that there is a clear written policy in place at each detention facility, including Sydney IRH, setting out procedures for responding to threats of self-harm or suicide, and ensure that all relevant staff are provided with training on the policy and procedures.

**Recommendation 12:**

The Australian Government should implement the outstanding recommendations of the report of the National Inquiry into Children in Immigration Detention, *A last resort?*. These include that Australia's immigration detention laws should be amended, as a matter of urgency, to comply with the *Convention on the Rights of the Child*. In particular, the new laws should incorporate the following minimum features:

- There should be a presumption against the detention of children for immigration purposes.
- A court or independent tribunal should assess whether there is a need to detain children for immigration purposes within 72 hours of any initial detention (for example, for the purposes of health, identity or security checks).
- There should be prompt and periodic review by a court of the legality of continuing detention of children for immigration purposes.
- All courts and independent tribunals should be guided by the following principles:
  - detention of children must be a measure of last resort and for the shortest appropriate period of time
  - the best interests of children must be a primary consideration
  - the preservation of family unity
  - special protection and assistance for unaccompanied children.

**Recommendation 13:**

The Australian Government should, as a matter of priority, implement the recommendations made by the Commission in *A last resort?* that:

- Australia's laws should be amended so that the Minister for Immigration is no longer the legal guardian of unaccompanied minors in immigration detention.
- An independent guardian should be appointed for unaccompanied minors in immigration detention.

**Recommendation 14:**

In the absence of an independent guardian, DIAC officers and staff members of detention service providers in each immigration detention location should be provided with a clear written policy setting out which DIAC officer has been delegated the Minister's powers of legal guardianship of unaccompanied minors in that location, and how and when that guardian should be consulted.

**Recommendation 15:**

DIAC should pursue the adoption of a Memorandum of Understanding with the NSW Department of Community Services in order to ensure clear guidelines are in place regarding responsibilities and procedures relating to the welfare and protection of children in immigration detention at Sydney IRH or other locations in NSW.

**Recommendation 16:**

DIAC should ensure that all relevant DIAC officers and staff members of detention service providers are provided with a localised policy setting out the requirements, procedures and contact details for making child welfare and protection notifications in relation to concerns that arise in respect of children in immigration detention in the location in which they work.

**Recommendation 17:**

DIAC should ensure that all people in immigration detention at Villawood have access to:

- adequate outdoor recreation spaces including grassy and shaded areas
- adequate indoor areas for educational and recreational activities
- a range of recreational and educational activities conducted on a regular and frequent basis
- a freely accessible library area stocked with reading materials in languages spoken by people in detention
- adequate access to communication facilities including internet facilities and telephones
- opportunities to attend religious services in the community, should they wish to do so.

**Recommendation 18:**

DIAC should ensure that people in immigration detention at Villawood IDC are provided with regular opportunities to leave the detention environment on external excursions.

DIAC should implement consistent standards for external excursions across the detention network. Standards for the conduct of a minimum number of external excursions should be specified in the Serco contracts applicable to all detention facilities, and financial penalties should be applied if those standards are not met.

# Endnotes

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- 1 See [www.humanrights.gov.au/human\\_rights/immigration/idc2011\\_villawood\\_response.html](http://www.humanrights.gov.au/human_rights/immigration/idc2011_villawood_response.html).
- 2 The Commission's reports of complaints about alleged human rights breaches in immigration detention are available at [www.humanrights.gov.au/legal/humanrightsreports/index.html](http://www.humanrights.gov.au/legal/humanrightsreports/index.html). The Commission's national inquiry reports are *A last resort? National Inquiry into Children in Immigration Detention* (2004) (A last resort), at [www.humanrights.gov.au/human\\_rights/children\\_detention\\_report/index.html](http://www.humanrights.gov.au/human_rights/children_detention_report/index.html), and *Those who've come across the seas: Detention of unauthorised arrivals* (1998) (Those who've come across the seas), at [www.humanrights.gov.au/human\\_rights/immigration/seas.html](http://www.humanrights.gov.au/human_rights/immigration/seas.html) (viewed 14 April 2011).
- 3 Further information about the Commission's activities relating to immigration detention is available at [www.humanrights.gov.au/human\\_rights/immigration/detention\\_rights.html#9](http://www.humanrights.gov.au/human_rights/immigration/detention_rights.html#9).
- 4 See [www.humanrights.gov.au/human\\_rights/immigration/detention\\_rights.html#9\\_3](http://www.humanrights.gov.au/human_rights/immigration/detention_rights.html#9_3).
- 5 DIAC, *Immigration Detention Statistics Summary* (11 March 2011). At [www.immi.gov.au/managing-australias-borders/detention/facilities/statistics/](http://www.immi.gov.au/managing-australias-borders/detention/facilities/statistics/) (viewed 26 April 2011).
- 6 See, for example, Those who've come across the seas, note 2; A last resort, note 2; Australian Human Rights Commission, *2008 Immigration detention report: Summary of observations following visits to Australia's immigration detention facilities* (2008 Immigration detention report), at [www.humanrights.gov.au/human\\_rights/immigration/idc2008.html](http://www.humanrights.gov.au/human_rights/immigration/idc2008.html) (viewed 16 April 2011); Australian Human Rights Commission, *2009 Immigration detention and offshore processing on Christmas Island* (2009 Christmas Island report), at [www.humanrights.gov.au/human\\_rights/immigration/idc2009\\_xmas\\_island.html](http://www.humanrights.gov.au/human_rights/immigration/idc2009_xmas_island.html) (viewed 16 April 2011); Australian Human Rights Commission, *2010 Immigration detention on Christmas Island* (2010 Christmas Island report), at [www.humanrights.gov.au/human\\_rights/immigration/idc2010\\_christmas\\_island.html](http://www.humanrights.gov.au/human_rights/immigration/idc2010_christmas_island.html) (viewed 16 April 2011); Australian Human Rights Commission, *2010 Immigration detention in Darwin* (2010 Darwin report), at [www.humanrights.gov.au/human\\_rights/immigration/idc2010\\_darwin.html](http://www.humanrights.gov.au/human_rights/immigration/idc2010_darwin.html) (viewed 16 April 2011); Australian Human Rights Commission, *2011 Immigration detention in Leonora* (2011 Leonora report), at [www.humanrights.gov.au/human\\_rights/immigration/idc2011\\_leonora.html](http://www.humanrights.gov.au/human_rights/immigration/idc2011_leonora.html) (viewed 16 April 2011).
- 7 See C Evans, *New Directions in Detention - Restoring Integrity to Australia's Immigration System* (Speech delivered at the Centre for International and Public Law Seminar, Australian National University, Canberra, 29 July 2008) (New Directions), at [www.minister.immi.gov.au/media/speeches/2008/ce080729.htm](http://www.minister.immi.gov.au/media/speeches/2008/ce080729.htm) (viewed 15 April 2011).
- 8 Figures provided by DIAC, current as of 23 February 2011.
- 9 See, for example, Human Rights and Equal Opportunity Commission, *Immigration Detention: Human Rights Commissioner's 1998-99 Review* (1999), at [www.humanrights.gov.au/pdf/human\\_rights/asylum\\_seekers/idc\\_review.pdf](http://www.humanrights.gov.au/pdf/human_rights/asylum_seekers/idc_review.pdf) (viewed 16 April 2011); Those who've come across the seas, note 2; Human Rights and Equal Opportunity Commission, *Summary of observations following the inspection of mainland immigration detention facilities 2006* (2007), at [www.humanrights.gov.au/pdf/human\\_rights/HREOC\\_IDC\\_20070119.pdf](http://www.humanrights.gov.au/pdf/human_rights/HREOC_IDC_20070119.pdf) (viewed 16 April 2011); Human Rights and Equal Opportunity Commission, *Summary of observations following the inspection of mainland immigration detention facilities 2007* (2007), at [www.humanrights.gov.au/pdf/human\\_rights/asylum\\_seekers/summary\\_idc\\_report07.pdf](http://www.humanrights.gov.au/pdf/human_rights/asylum_seekers/summary_idc_report07.pdf) (viewed 16 April 2011).
- 10 Australian Human Rights Commission, *2008 Immigration detention report: Summary of observations following visits to Australia's immigration detention facilities* (2009), sections 3, 10, 11.1, 12.1, 14.3, at [www.humanrights.gov.au/human\\_rights/immigration/idc2008.html](http://www.humanrights.gov.au/human_rights/immigration/idc2008.html) (viewed 16 April 2011).
- 11 On 18 March 2011, Minister for Immigration and Citizenship, Chris Bowen MP announced an independent review would be conducted by Ms Helen Williams AO and Dr Allan Hawke AO into incidents including riots that occurred at the Christmas Island Immigration Detention Centre in March 2011. On 21 April 2011, the Minister announced that the terms of reference of that review would be expanded to include the protests that took place at Villawood IDC on 20-21 April 2011.
- 12 See [www.humanrights.gov.au/human\\_rights/immigration/idc2011\\_villawood\\_photos.html](http://www.humanrights.gov.au/human_rights/immigration/idc2011_villawood_photos.html).
- 13 According to DIAC, as of 8 March 2011, the operational capacity of Villawood IDC was 451 people - 60 people in Blaxland compound, 196 people in Hughes compound, 24 people in Banksia compound and 171 people in Fowler compound.
- 14 Figures provided by DIAC, current as of 23 February 2011.
- 15 For details regarding people's length of detention at Villawood, see section 6 of this report.
- 16 DIAC provided the Commission with figures current as of 23 February 2011 which list the arrival type (or reason for immigration detention) of the 386 people in immigration detention at Villawood IDC as follows: 139 visa overstayers, 48 visa cancellations, 164 irregular maritime arrivals and 35 unauthorised air arrivals.
- 17 DIAC provided the Commission with figures current as of 23 February 2011, listing the citizenship of the 386 people in immigration detention at Villawood IDC. The largest groups were 98 people with citizenship from the People's Republic of China, 50 from Sri Lanka, 32 from Iraq, 28 from Afghanistan, 24 from Iran, 13 from Fiji and 11 from Vietnam. In addition, there were smaller numbers of people with citizenship listed as India, New Zealand, Malaysia, Pakistan, the Philippines, Bangladesh, Nigeria, Indonesia, Ireland, Republic of (South) Korea, Egypt, Israel, Tonga, Algeria, Armenia, Burma, Brazil, Cambodia, Cameroon, Eritrea, France, Ghana, Greece, North Korea, Laos, Mongolia, Nepal, the Netherlands, Norway, Papua New Guinea, Samoa, Senegal, Thailand, United Kingdom, United States of America and Fed Republic of Yugoslavia.
- 18 Figures provided by DIAC, current as of 23 February 2011.
- 19 See [www.humanrights.gov.au/human\\_rights/immigration/idc2011\\_villawood\\_photos.html](http://www.humanrights.gov.au/human_rights/immigration/idc2011_villawood_photos.html).

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- 20 Information provided by DIAC, current as of 8 March 2011.
- 21 Figures provided by DIAC, current as of 23 February 2011.
- 22 DIAC provided the Commission with figures current as of 23 February 2011, listing the citizenship of the 27 people in immigration detention at Sydney IRH as follows: 13 from Sri Lanka, 5 from Iraq, 2 from Iran, 2 from Afghanistan, 3 from Vietnam, 1 from Pakistan and 1 from Somalia.
- 23 DIAC provided the Commission with figures current as of 23 February 2011, listing the arrival type (or reason for immigration detention) of the 27 people in immigration detention at Sydney IRH as follows: 18 irregular maritime arrivals, 4 unauthorised air arrivals, 4 visa overstayers and 1 other (baby born to mother while she was an immigration detainee).
- 24 See [www.humanrights.gov.au/human\\_rights/immigration/ide2011\\_villawood\\_photos.html](http://www.humanrights.gov.au/human_rights/immigration/ide2011_villawood_photos.html).
- 25 See *International Covenant on Civil and Political Rights* (1966) (ICCPR), art 9(1), at [www2.ohchr.org/english/law/ccpr.htm](http://www2.ohchr.org/english/law/ccpr.htm) (viewed 17 April 2011); *Convention on the Rights of the Child* (1989) (CRC), art 37(b), at [www2.ohchr.org/english/law/crc.htm](http://www2.ohchr.org/english/law/crc.htm) (viewed 17 April 2011).
- 26 See New Directions, note 7.
- 27 DIAC, *Immigration Detention Statistics Summary* (11 March 2011), at [www.immi.gov.au/managing-australias-borders/detention/facilities/statistics/](http://www.immi.gov.au/managing-australias-borders/detention/facilities/statistics/) (viewed 26 April 2011).
- 28 DIAC provided the Commission with figures current as of 23 February 2011, listing the length of immigration detention for the 386 people in detention at Villawood IDC. These figures show that, of those 386 people, 127 had been in detention for 0–3 months, 28 had been in detention for 3–6 months, 16 had been in detention for 6–9 months, 39 had been in detention for 9–12 months, 127 had been in detention for 12–18 months, 23 had been in detention for 18–24 months, and 26 had been in detention for more than 24 months. Of the 26 people in immigration detention for more than 24 months, 16 had been in detention for 2–3 years, 8 had been in detention for 3–4 years, 1 had been in detention for 4–5 years, and 1 had been in detention for more than 5 years. It should be noted that while some people would have spent their entire period of immigration detention at Villawood IDC, many would have spent periods of time in other locations before being transferred to Villawood IDC.
- 29 DIAC provided the Commission with figures current as of 23 February 2011, listing the length of immigration detention for the 27 people in detention at Sydney IRH. These figures show that, of those 27 people, 6 had been in detention for 3–6 months, 5 had been in detention for 6–9 months, 6 had been in detention for 9–12 months, 5 had been in detention for 12–18 months and 5 had been in detention for 18–24 months. It should be noted that while some people may have spent their entire period of immigration detention at Sydney IRH, many would have spent periods of time in other locations before being transferred to Sydney IRH.
- 30 See ICCPR, note 25, art 9(4); CRC, note 25, art 37(d).
- 31 See, for example United Nations Human Rights Committee, *A v Australia*, Communication No. 560/1993, UN Doc CCPR/C/59/D/560/1993 (1997), para 9.5, at [www.unhcr.ch/tbs/doc.nsf/o/30c417539ddd944380256713005e80d3?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/o/30c417539ddd944380256713005e80d3?Opendocument) (viewed 18 April 2011).
- 32 New Directions, note 7.
- 33 See 2009 Christmas Island report, note 6, section 9.2.
- 34 See 2010 Christmas Island report, note 6, section 10; 2010 Darwin report, note 6, section 5.
- 35 See for example, Joint Standing Committee on Migration, *First report of the inquiry into immigration detention: Immigration detention in Australia, A new beginning* (2008), recommendations 10, 11, at [www.aph.gov.au/house/committee/mig/detention/report.htm](http://www.aph.gov.au/house/committee/mig/detention/report.htm) (viewed 18 April 2011).
- 36 See New Directions, note 7.
- 37 See, for example 2010 Christmas Island report, note 6, sections 11, 13.2; 2010 Darwin report, note 6, sections 7.8; 2011 Leonora report, note 6, sections 7.8.
- 38 Information provided by DIAC, 10 March 2011.
- 39 Minister for Immigration and Citizenship, *Minister's Residence Determination Power Under S. 197AB and S. 197AD of the Migration Act 1958: Guidelines* (2009).
- 40 DIAC, *Preliminary Response to AHRC visit to Villawood IDC* (5 May 2011).
- 41 Under the Residence Determination Guidelines, children and their accompanying family members, persons who may have experienced torture or trauma, persons with significant physical or mental health concerns, persons whose cases will take a considerable period to substantively resolve, and other cases with unique or exceptional characteristics are to be given priority consideration for Community Detention. See Residence Determination Guidelines, note 39, para 4.1.4.
- 42 See New Directions, note 7.
- 43 During its Villawood visit, the Commission was advised by DIAC that asylum seekers who have arrived by boat are informed that if they seek judicial review of their negative refugee status assessment, they will remain in immigration detention for the duration of that process. This position is also reflected in various DIAC materials. See, for example DIAC, *Questions and Answers – Impact of the High Court of Australia's decision on Refugee Status Assessment (RSA) clients* (2011), at [www.immi.gov.au/visas/humanitarian/onshore/protection-obligations-determination.htm](http://www.immi.gov.au/visas/humanitarian/onshore/protection-obligations-determination.htm) (viewed 20 April 2011); DIAC, *Changes to refugee status determination – Questions and answers* (2011), at [www.immi.gov.au/visas/humanitarian/onshore/protection-obligations-determination.htm](http://www.immi.gov.au/visas/humanitarian/onshore/protection-obligations-determination.htm) (viewed 20 April 2011).
- 44 Evidence to the Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 21 February 2011, 92 (Garry Fleming).
- 45 See DIAC, *Christmas Island: a notice to immigration detention clients from the Australian Government* (17 March 2011), at [www.newsroom.immi.gov.au/media\\_releases/914](http://www.newsroom.immi.gov.au/media_releases/914) (viewed 20 April 2011); DIAC, *Mainland detention centres: a notice to immigration detention clients from the Australian Government* (17 March 2011), at [www.newsroom.immi.gov.au/media\\_releases/913](http://www.newsroom.immi.gov.au/media_releases/913) (viewed 20 April 2011); DIAC, *Alternative places of detention: a notice to immigration detention clients from the Australian Government* (17 March 2011), at [www.newsroom.immi.gov.au/media\\_releases/912](http://www.newsroom.immi.gov.au/media_releases/912) (viewed 20 April 2011).

- 46 DIAC provided the Commission with information current as of 10 March 2011 showing that, at that time, there were 37 people in immigration detention at Villawood who had been found to meet the definition of a refugee as set out in article 1A of the Refugee Convention, yet who remained in detention awaiting ASIO security assessments. Of those 37 people, 36 were asylum seekers who had arrived by boat. The delay since being recognised as a refugee was as follows: 13 people had been waiting for 0–3 months; 5 people had been waiting for 4–6 months; 7 people had been waiting for 7–9 months; and 12 people had been waiting for 10–12 months.
- 47 See, for example 2010 Christmas Island report, note 6, section 9.
- 48 See further Australian Human Rights Commission, *Submission to the Independent Review of the Intelligence Community* (2011). At [www.humanrights.gov.au/legal/submissions/2011/20110431\\_intelligence.html](http://www.humanrights.gov.au/legal/submissions/2011/20110431_intelligence.html) (viewed 10 May 2011).
- 49 For further information about the processing suspension, see 2010 Christmas Island report, note 6, section 8. A summary of the High Court of Australia decision in *M61/2010E and M69 v Commonwealth of Australia* is available at <http://portsea.austlii.edu.au/au/other/HCASum/2010/40.html> (viewed 20 April 2011). Information about the new Protection Obligations Determination process is available on the DIAC website at [www.immi.gov.au/visas/humanitarian/onshore/protection-obligations-determination.htm](http://www.immi.gov.au/visas/humanitarian/onshore/protection-obligations-determination.htm) (viewed 20 April 2011).
- 50 See 2011 Leonora report, note 6, section 5; 2010 Darwin report, note 6, section 5.
- 51 See ICCPR, note 25, art 9(1); CRC, note 25, art 37(b).
- 52 See 2010 Christmas Island report, note 6, section 10.
- 53 Under section 36 of the *Australian Security Intelligence Organisation Act 1979* (Cth), this requirement does not apply to a person who is not an Australian citizen or permanent resident, or who is not the holder of a valid permanent visa or a special purpose visa.
- 54 While section 54 of the *Australian Security Intelligence Organisation Act 1979* (Cth) allows for an application to be made to the AAT, section 36 of the Act excludes people who are not Australian citizens, or the holders of a valid permanent visa or a special purpose visa from making such an application.
- 55 See Inspector-General of Intelligence and Security, *Annual Report 2006–2007* (2007), p 12, at [www.igis.gov.au/annual\\_report/06-07/index.cfm](http://www.igis.gov.au/annual_report/06-07/index.cfm) (viewed 20 April 2011); Inspector-General of Intelligence and Security, *Annual Report 1998–1999* (1999), paras 89–91, at [www.igis.gov.au/annual\\_report/98-99/asio.cfm](http://www.igis.gov.au/annual_report/98-99/asio.cfm) (viewed 20 April 2011).
- 56 *Church of Scientology Inc v Woodward* (1982) 154 CLR 25.
- 57 See further Australian Human Rights Commission, *Submission to the Independent Review of the Intelligence Community*, note 48.
- 58 Figures based on statistics provided by DIAC, current as of 23 February 2011.
- 59 See New Directions, note 7.
- 60 See Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning – First report of the inquiry into immigration detention in Australia* (December 2008), p 53, at [www.aph.gov.au/house/committee/mig/detention/report/fullreport.pdf](http://www.aph.gov.au/house/committee/mig/detention/report/fullreport.pdf) (viewed 22 April 2011).
- 61 Australian Human Rights Commission, *Background paper: Immigration detention and visa cancellation under section 501 of the Migration Act* (updated March 2010), at [www.humanrights.gov.au/human\\_rights/immigration/501\\_migration\\_2010.html](http://www.humanrights.gov.au/human_rights/immigration/501_migration_2010.html) (viewed 22 April 2011).
- 62 Ministerial Direction No. 41 (which revised the previous Ministerial Direction No. 21) was introduced in June 2009. See *Direction [no. 41] – Visa refusal and cancellation under s501, given under section 499 of the Migration Act 1958* (Cth) and signed on 3 June 2009, at [www.immi.gov.au/media/fact-sheets/79-ministerial-direction-41.pdf](http://www.immi.gov.au/media/fact-sheets/79-ministerial-direction-41.pdf) (viewed 22 April 2011).
- 63 See, for example, 2008 Immigration detention report, note 6, section 10.13.
- 64 See Human Rights and Equal Opportunity Commission, *Immigration Detention Guidelines* (2000), section 1.4(a), at [www.humanrights.gov.au/human\\_rights/immigration/idc\\_guidelines2000.html](http://www.humanrights.gov.au/human_rights/immigration/idc_guidelines2000.html) (viewed 22 April 2011).
- 65 See *Migration Act 1958* (Cth), ss 13, 14, 189.
- 66 See Immigration Detention Guidelines, note 64, section 1.1.
- 67 See note 9.
- 68 See 2008 Immigration detention report, note 6, sections 3, 10, 11.1.
- 69 See Australian Human Rights Commission, *Submission to the Parliamentary Standing Committee on Public Works Inquiry into the Proposed Redevelopment of the Villawood Immigration Detention Facility* (2009), at [www.humanrights.gov.au/legal/submissions/2009/20090918\\_villawood\\_immigration.html](http://www.humanrights.gov.au/legal/submissions/2009/20090918_villawood_immigration.html) (viewed 22 April 2011).
- 70 See 2008 Immigration detention report, note 6, sections 10.3, 11.1.
- 71 See, for example 2008 Immigration detention report, note 6, section 10.3(c).
- 72 See DIAC, *Response to the Australian Human Rights Commission’s 2008 Immigration Detention Report* (2009), p 12, at [www.humanrights.gov.au/human\\_rights/immigration/idc2008\\_DIAC.html](http://www.humanrights.gov.au/human_rights/immigration/idc2008_DIAC.html) (viewed 22 April 2011).
- 73 See 2008 Immigration detention report, note 6, section 12.1.
- 74 See note 29.
- 75 DIAC, *Preliminary Response to AHRC visit to Villawood IDC* (5 May 2011).
- 76 See *International Covenant on Economic, Social and Cultural Rights* (1966) (ICESCR), art 12, at [www2.ohchr.org/english/law/cescr.htm](http://www2.ohchr.org/english/law/cescr.htm) (viewed 22 April 2011); CRC, note 25, art 24.
- 77 See Immigration Detention Guidelines, note 64, section 13.
- 78 See 2010 Christmas Island report, note 6, section 19; 2010 Darwin report, note 6, section 8; 2011 Leonora report, note 6, section 8.
- 79 See, for example *A last resort*, note 2, chapter 9; 2008 Immigration detention report, note 6, sections 8, 10.3; 2009 Christmas Island report, note 6, section 12.5; 2010 Christmas Island report, note 6, section 19.2; 2010 Darwin report, note 6, section 8; 2011 Leonora report, note 6, section 8.
- 80 See Residence Determination Guidelines, note 39, para 4.1.4.
- 81 See note 41 for Residence Determination criteria.

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- 82 See DIAC, *Psychological Support Program for the Prevention of Self Harm in Immigration Detention* (April 2009).
- 83 See 2008 Immigration detention report, note 6, section 12.1.
- 84 See DIAC, *Response to the Australian Human Rights Commission's 2008 Immigration Detention Report*, note 72, p 37.
- 85 See, for example 2010 Darwin report, note 6, section 8.2; 2010 Christmas Island report, note 6, section 19.2.
- 86 DIAC provided the Commission with information about the number of recorded actual and attempted self-harm incidents at Villawood IDC between 3 October 2010 and 28 March 2011. This showed 18 recorded incidents, three of which were attempted self-harm and 15 of which were actual self-harm.
- 87 DIAC provided the Commission with information showing that on 17 November 2010, there was an attempted hanging in Fowler compound at Villawood IDC. On 16 November 2010, an Iraqi man detained at Villawood IDC died after apparently committing suicide.
- 88 DIAC, *Psychological Support Program for the Prevention of Self Harm in Immigration Detention* (April 2009).
- 89 DIAC, *Mental Health Screening for People in Immigration Detention* (April 2009); DIAC, *Identification and Support of People in Immigration Detention who are Survivors of Torture and Trauma* (April 2009).
- 90 The three deaths at Villawood IDC include the death of a 36 year old Fijian man on 20 September 2010, the death of an Iraqi man on 16 November 2010, and the death of a 29 year old British man on 8 December 2010. The three deaths in other immigration detention facilities included the death of a 30 year old man who was being detained at Curtin IDC on 22 August 2010, the death of a 20 year old Afghan man who was being detained at Scherger IDC on 16 March 2011, and the death of a 20 year old Afghan man who was being detained at Curtin IDC on 28 March 2011.
- 91 DIAC provided the Commission with information showing that on 17 November 2010, there was an attempted hanging in Fowler compound at Villawood IDC. On 16 November 2010, an Iraqi man detained at Villawood IDC died after apparently committing suicide.
- 92 DIAC, *Immigration Detention Statistics Summary* (11 March 2011), at [www.immi.gov.au/managing-australias-borders/detention/facilities/statistics/](http://www.immi.gov.au/managing-australias-borders/detention/facilities/statistics/) (viewed 26 April 2011).
- 93 See, for example 2008 Immigration detention report, note 6, section 14; 2009 Christmas Island report, note 6, section 11; 2010 Christmas Island report, note 6, Part C; 2010 Darwin report, note 6, section 7; 2011 Leonora report, note 6, section 7.
- 94 Figures provided by DIAC, current as of 23 February 2011. Of the eight children detained at Sydney IRH at that time, two were aged 0–2 years, one was aged 3–5 years, one was aged 6–10 years, and four were aged 11–16 years.
- 95 See CRC, note 25, art 37(b). See further A last resort, note 2.
- 96 *Migration Act 1958* (Cth), s 4AA.
- 97 Children may be held in immigration detention in a range of immigration detention facilities including Immigration Residential Housing, Immigration Transit Accommodation and 'alternative places of detention'. Further information about the various places of detention is available on the Commission's website at [www.humanrights.gov.au/human\\_rights/immigration/detention\\_rights.html#5](http://www.humanrights.gov.au/human_rights/immigration/detention_rights.html#5).
- 98 See further A last resort, note 2, sections 4.3.2, 6.6; UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum* (1997), guidelines 7.6, 7.7, at [www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ae6b3360](http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ae6b3360) (viewed 26 April 2011).
- 99 See note 29 for figures on length of detention at Sydney IRH.
- 100 See A last resort, note 2, executive summary, major finding 2.
- 101 CRC, note 25, art 37(d). See also ICCPR, note 25, art 9(4).
- 102 See A last resort, note 2, chapters 6, 17; 2009 Christmas Island report, note 6, section 11.5; 2010 Christmas Island report, note 6, section 12.
- 103 See, for example A last resort, note 2; 2008 Immigration detention report, note 6; 2009 Christmas Island report, note 6; 2010 Christmas Island report, note 6; 2010 Darwin report, note 6.
- 104 DIAC, *Preliminary Response to AHRC visit to Villawood IDC* (5 May 2011). See also DIAC, *Response to the 2010 Australian Human Rights Commission Report on Immigration Detention in Darwin* (2010), p 7, at [www.humanrights.gov.au/human\\_rights/immigration/idc2010\\_darwin\\_response.html](http://www.humanrights.gov.au/human_rights/immigration/idc2010_darwin_response.html) (viewed 26 April 2010).
- 105 See, for example 2010 Darwin report, note 6, section 7; 2011 Leonora report, note 6, section 7.
- 106 DIAC, *Preliminary Response to AHRC visit to Villawood IDC* (5 May 2011).
- 107 See DIAC, *Response to the Australian Human Rights Commission Statement on Immigration Detention in Leonora* (2011), p 12, at [www.humanrights.gov.au/human\\_rights/immigration/idc2011\\_leonora\\_response.html](http://www.humanrights.gov.au/human_rights/immigration/idc2011_leonora_response.html) (viewed 26 April 2011).
- 108 See *No weapons evident* (Media release issued by the Commonwealth Ombudsman, 17 March 2011). At [www.ombudsman.gov.au/media-releases/show/169](http://www.ombudsman.gov.au/media-releases/show/169) (viewed 26 April 2011).
- 109 See Immigration Detention Guidelines, note 64, sections 10.1, 18.10.
- 110 Serco, *Security Instruction UOF 001, Use of Force - General Policy* (October 2010).
- 111 See 2008 Immigration detention report, note 6, section 10.7.
- 112 See Immigration Detention Guidelines, note 64, section 18.5.
- 113 Interview with man detained in Fowler compound at Villawood IDC, 22 February 2011.