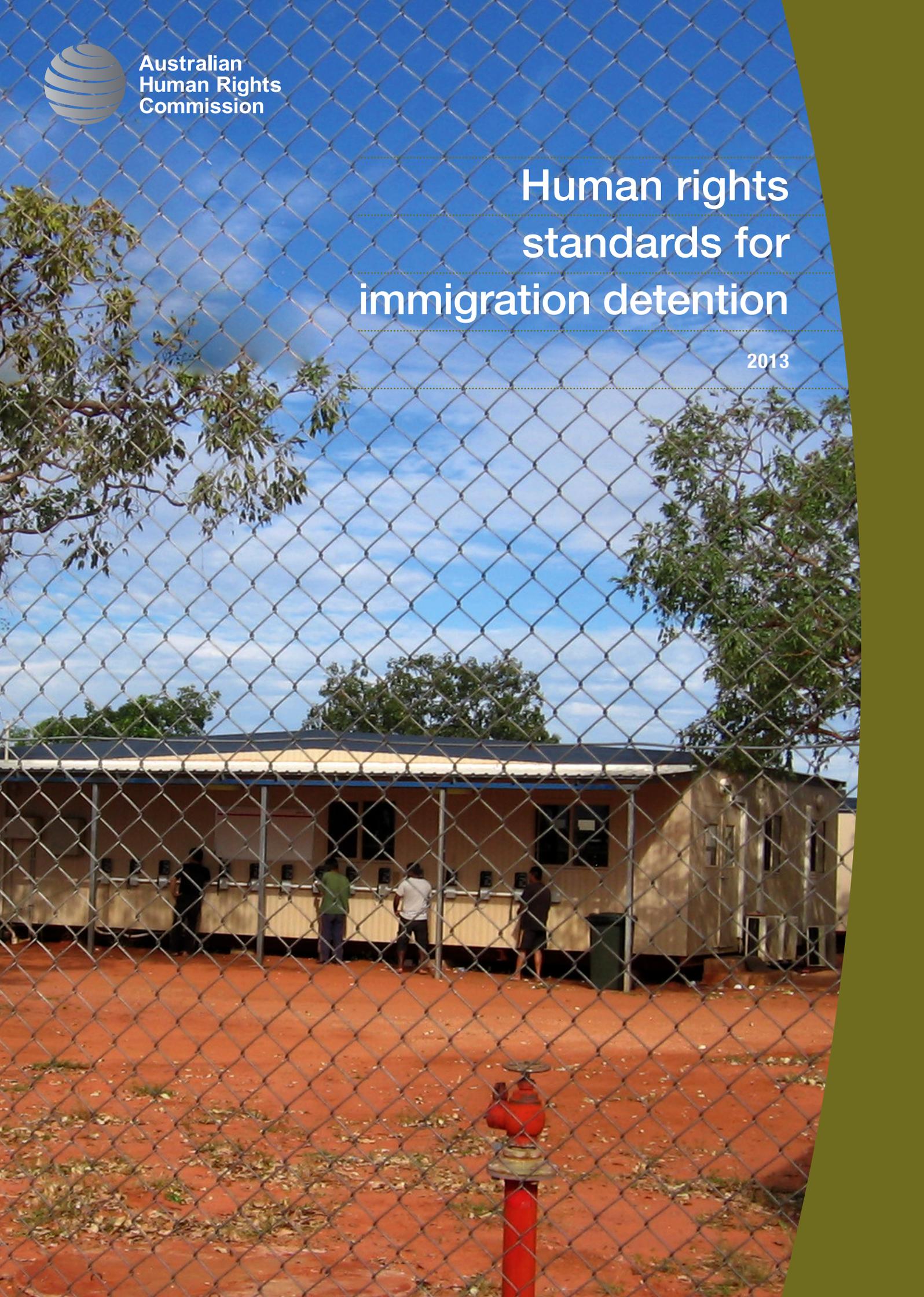




Australian
Human Rights
Commission

Human rights standards for immigration detention

2013



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1. Abbreviations and definitions

1.1 General terms

children	All references to 'children' are to people under the age of 18 years
detainees	In these Standards, people held in Australia's immigration detention facilities are called detainees, or sometimes immigration detainees
the Department	Department of Immigration and Citizenship
the Standards	Human rights standards for immigration detention

1.2 Treaties

CAT	<i>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</i>
CEDAW	<i>Convention on the Elimination of All Forms of Discrimination against Women</i>
CRC	<i>Convention on the Rights of the Child</i>
CRPD	<i>Convention on the Rights of Persons with Disabilities</i>
ICCPR	<i>International Covenant on Civil and Political Rights</i>
ICERD	<i>International Convention on the Elimination of All Forms of Racial Discrimination</i>
ICESCR	<i>International Covenant on Economic, Social and Cultural Rights</i>
OPCAT	<i>Optional Protocol to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment</i>
Refugee Convention	<i>Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees</i>
VCCR	<i>Vienna Convention on Consular Relations</i>

1.3 Key interpretive human rights instruments

Bangkok Rules	<i>United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders</i>
Basic Principles	<i>Basic Principles for the Treatment of Prisoners</i>
Beijing Declaration	<i>Beijing Declaration, Fourth World Conference on Women</i>
BOP	<i>Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment</i>
CC Law Enforcement	<i>Code of Conduct for Law Enforcement Officials</i>
CPT Standards	<i>European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment Standards CPT/Inf/E (2002) 1 – Rev. 2011.</i>
EPR	European Prison Rules

Principles of Medical Ethics	<i>Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</i>
SMR	<i>Standard Minimum Rules for the Treatment of Prisoners</i>
UNRPJDL	<i>United Nations Rules for the Protection of Juveniles Deprived of their Liberty</i>
UNHCR Guidelines	<i>Detention Guidelines (Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention) (UNHCR, 2012)</i>
Yogyakarta Principles	<i>Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity</i>

1.4 National laws

Australian Human Rights Commission Act	<i>Australian Human Rights Commission Act 1986 (Cth)</i>
IPP	<i>Information Privacy Principle</i>
Migration Act	<i>Migration Act 1958 (Cth)</i>
Ombudsman Act	<i>Ombudsman Act 1976 (Cth)</i>
Privacy Act	<i>Privacy Act 1988 (Cth)</i>
Work Health and Safety Act	<i>Work Health and Safety Act 2011 (Cth)</i>

2. Introduction

For more than a decade, the Commission has made periodic inspections of Australia's immigration detention facilities to assess whether conditions of detention meet internationally-accepted human rights standards.¹ The Commission has also received complaints and conducted inquiries into conditions in immigration detention facilities.²

This publication, *Human rights standards for immigration detention*, sets out benchmarks for the humane treatment of people held in immigration detention (referred to throughout the Standards as detainees). The Commission has prepared the Standards under section 11(1)(n) of the Australian Human Rights Commission Act, which enables the Commission to publish 'guidelines for the avoidance of acts or practices' which may be inconsistent with or contrary to any human right.³ The Commission anticipates that the Standards may be revised in coming years, to reflect any issues that emerge from their practical application.

The purpose of these Standards is to assist independent monitors, such as the Australian Human Rights Commission, to monitor and inspect Australia's immigration detention facilities.

The Standards should also assist in providing a framework for the monitoring and inspections that will be undertaken when Australia becomes party to the *Optional Protocol to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment* (OPCAT).

OPCAT, which Australia has signed, but not yet ratified, will require detention facilities within Australia, or otherwise within Australia's jurisdiction and control, to be visited periodically by the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) in order to monitor how Australia meets its obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Under the OPCAT, State Parties must also grant 'national preventive mechanisms' (NPM's), established within Australia, access to all places of detention and their installations and facilities.

The definition of a place of detention for the purposes of these Standards is the same as that contained in article 4(2) of OPCAT, which is applicable in the immigration context.

This definition is 'any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority'. As noted by the United Nations High Commissioner for Refugees, 'detention can take place in a range of locations, including at land and sea borders, in the 'international zones' at airports, on islands, on boats, as well as in closed refugee camps, in one's own home (house arrest) and even extraterritorially' (UNHCR Guidelines p 9 [7]).

Immigration detainees should enjoy the least restrictive environment possible, and the maxim that human rights are a floor, not a ceiling, should be at the forefront of decisions relating to conditions of detention for immigration detainees. The primary concern of immigration detention authorities should be one of care for the well-being of detainees.

2.1 Format and sources of the Standards

In each section of the Standards, there is a description of the human rights benchmarks, accompanied by a list of sources that inform the Standards.

The sources listed in the Standards include:

- **International human rights treaty obligations (treaties)** – relevant provisions of international human rights treaties to which Australia has agreed.
- **Key interpretive human rights instruments (interpretive instruments)** – key interpretive instruments in international human rights law, including UN treaty body comments, standards, guidelines, rules and principles. Although not legally binding, these key instruments provide the most persuasive interpretation of our international human rights treaty obligations towards immigration detainees. While some of these instruments expressly apply only to prisoners (such as the European Prison Rules) and are drawn on by analogy, most of them apply to all detainees. For example, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (BOP) applies to all detainees.
- **International case law** – relevant international case law which provides persuasive interpretation of our international human rights treaty obligations.
- **National law** – national legal obligations where relevant, including legislation and case law.

2.2 Facilities to which the Standards apply

Australia has several types of immigration detention facilities to which the Standards apply:

- **Immigration Detention Centres (IDC)** accommodate a range of unlawful non-citizens, including people who arrived by sea without a visa, people who have over-stayed their visa, people in breach of their visa conditions, and people who were refused entry at Australia's international airports.
- **Immigration Residential Housing (IRH)** provides a flexible detention arrangement to enable people in immigration detention to live in family-style accommodation.
- **Immigration Transit Accommodation (ITA)** is accommodation to house people who are a low security risk.
- **Alternative Places of Detention (APOD)** accommodate people who have been assessed as posing a minimal risk to the Australian community.

The Standards are intended to guide the independent monitoring and inspections of all immigration detention facilities operated by the Australian Government (or its contractors). However, so-called 'community detention' is not covered by the Standards as it does not meet the definition of detention in OPCAT.

At the time these Standards were prepared, the day-to-day management of detention facilities has been contracted out to a private company. However, this does not affect the Australian Government's responsibilities under international human rights law. The Australian Government must manage the contract with the company so as to ensure compliance with international human rights standards.

3. Security and facility management

Immigration detention is for the purposes of immigration control not criminal punishment. Consequently, security measures should be commensurate with the identified risks, and should be based on positive relationships between staff and detainees, as opposed to physical barriers and restraints. This understanding of security should be embedded in the staff culture of immigration detention facilities. Like other places of detention, immigration detention facilities will require rules and codes of conduct and, occasionally, restraints and force may have to be used.

3.1 Relationships and environment

Standard	Sources
All detainees are treated with humanity and with respect for the inherent dignity of the person.	Treaties: ICCPR 10. Interpretive instruments: BOP 1.

3.2 Standards of behaviour

Standard	Sources
Clear rules setting out expected standards of behaviour for detainees and staff are disseminated in languages and formats that detainees understand and are readily available.	Interpretive instruments: SMR 27; BOP 3.
The standards of behaviour reflect respect for the human rights of detainees and staff.	
The human rights of detainees are not limited more than is necessarily required by the fact of detention.	

3.3 Behaviour management

Standard

No person in immigration detention is subjected to torture or to cruel, inhuman or degrading treatment or punishment. There is no:

- collective punishment
- single separation for the purposes of punishment (rather than for managing immediate risks such as injury to others)
- corporal punishment
- placement in a dark cell
- sensory deprivation
- punishment with instruments of restraint
- denial of contact with family members.

Behaviour management regimes are developed by reference only to what is necessary for safe custody and well-ordered community life.

Behaviour that rises to the level of a criminal offence as defined under relevant Australian law is managed in accordance with memoranda of understanding with the relevant police force.

Where the behaviour of children is concerned, both parents have common responsibilities for the upbringing and development of the child with appropriate professional support from staff where required.

Behaviour management regimes are applied openly, fairly and consistently without discrimination.

Behaviour management agreements have regard to the detainee's physical and mental health. All behavioural management agreements are recorded.

Sources

Treaties:

ICCPR 7, 10; CRC 37(a); CAT 2, 16; CRPD 15; ICERD 5(b); ICCPR 2, 3, 26; CRC 18.

Interpretive instruments:

SMR 27, 31; BOP 6, 30; UNRPJDL 87(a); (by analogy) EPR 60.3, 60.6.

3.4 Security

Standard

Security measures are the least restrictive possible, taking into account the particular vulnerabilities of people held in immigration detention.

Sources

Treaties:

ICCPR 6, 7, 10; CAT 2, 16.

Interpretive instruments:

CC Law Enforcement 3; SMR 27; CPT Standards (2011) pp 65-66.

3.5 Searches

Standard

All searches of detainees, their accommodation or personal effects (such as mail) by staff respect the privacy of detainees and are therefore only conducted for sound security reasons and at reasonable times.

Fully trained personnel of the same gender as the detainee only conduct strip searches in exceptional circumstances for sound security reasons. If a transgender or intersex detainee is searched, the detainee may require that either a male or a female conduct the search.

Strip searches occur in private. Alternative screening methods, such as scans, shall be developed to replace strip searches.

Sources

Treaties:

ICCPR 7, 10, 17; CAT 2, 16.

Interpretive instruments:

Bangkok Rules 19, 20.

International case law:

European Court of Human Rights jurisprudence e.g. *Salah v. the Netherlands, Application, no. 8196/02, ECHR 2006-IX (extracts)*, holding that routine strip-searches without convincing security reasons violate article 3 European Convention on Human Rights (the prohibition on torture and inhuman or degrading treatment or punishment).

3.6 Use of force and restraints

Standard

Force (control and restraint) is only to be used as a last resort, when strictly necessary and for the shortest possible period of time to prevent the detainee inflicting self-injury, injuries to others, serious destruction of property, or escaping. In addition, restraints are used solely by order of the manager of the facility.

Restraints are not used as punishment.

Instruments of restraint are never used on women during labour, birth or immediately after birth.

Restraints are not used on detainees who are hospitalised, in transport to and from hospital, or in sick bay within a detention facility, unless on medical grounds as directed by medical staff.

Immigration detention facility staff are only issued with self-defensive equipment, approved by the Department, in specific circumstances, and if the staff have been trained in appropriate use of the equipment.

Weapons are not carried in parts of immigration detention facilities where children are detained.

All uses of force and restraint are recorded and reported to the management of the immigration detention facility.

Medical staff check detainees as soon as practicable after the use of force or restraints.

Sources

Treaties:

ICCPR 7, 9 (security of the person), 10; CAT 2, 16; ICESCR 12.

Interpretive instruments:

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials 15; CC Law Enforcement 3; SMR 33, 54; UNRPJDL 64, 65; (by analogy) EPR 64.1; Bangkok Rules 24.

3.7 Single separation

Standard

Single separation, in which a detainee is held away from other detainees, only occurs as a last resort and where strictly necessary to avoid a serious and imminent threat of self-harm, injury to others, or serious destruction of property. Single separation is used only for as long as is necessary to prevent such events and for the shortest practicable time.

Medical staff monitor the health of detainees in single separation regularly.

Single separation is not used for children, pregnant women, women with infants and breastfeeding mothers.

The reasons for single separation are communicated to the detainee to the extent possible.

Detainees have access to counsellors, case managers, religious representatives, educational staff, and social and legal visits during single separation.

Detainees are permitted to exercise, be outdoors and access educational and reading materials while in single separation.

All instances of single separation are documented, reported to the management of the immigration detention facility, and reviewed.

Sources

Treaties:

ICCPR 7, 10; CAT 2, 16; ICESCR 12.

Interpretive instruments:

BOP 18, 19, 29; SMR 37–39; Bangkok Rules 22; CPT Standards (2011) p 34.

3.8 Emergency management

Standard

All immigration detention facilities prepare for emergencies such as fires or riots.

Each immigration detention facility prepares, maintains and implements an emergency plan that provides for emergency procedures, testing of emergency procedures and information, and training and instruction on implementing the emergency procedures.

Each immigration detention facility ensures that emergency management plans address the potential for natural disasters such as cyclones, flooding and bush fires, where relevant.

The Department has an agreement with specialised response services that are able to promptly control, limit or modify the emergency.

Sources

Treaties:

ICCPR 6, 10; ICESCR 12.

Interpretive instruments:

UN Human Rights Committee General Comment 6; UNRPJDL 32.

National law:

Common law duty of care; *Work Health and Safety Regulations 2011* (Cth) reg 43.

3. Security and facility management

3.9 Work health and safety

Standard

Work health and safety measures are in place to ensure that risks to the health and safety of workers and other persons, including detainees, are eliminated or minimised so far as is reasonably practicable.

Staff are aware of, and receive training on, work health and safety matters.

Sources

Treaties:

ICCPR 6, 9 (security of the person); ICESCR 12.

National law:

Work Health and Safety Act, particularly ss 17-19, 28-29, 35-39, 46.

4. Duty of care

The Commonwealth owes a non-delegable duty of care to people in immigration detention.⁴ Further, detainees are owed a greater than normal duty of care regarding their health and well-being, as they ‘must be ... at much greater risk of suicide than the general community’.⁵

Under the *Work Health and Safety Act 2011* (Cth), the Department has duties to ensure detainees’ health and safety, as far as is reasonably practicable. Staff and other people in a detention facility each hold duties to take reasonable care of their own health and safety, and the health and safety of other people.

4.1 Self-harm or suicide

Standard

Detention authorities develop and implement effective procedures to manage the risk of self-harm with input from appointed or nominated health experts.

All staff members who directly supervise detainees are trained to assist in the prevention of suicide and self-harm and to react appropriately to any incidents of suicide and self-harm by detainees. Training emphasises ‘being with’ detainees, rather than watching them.

Detainees who are at risk of self-harm are assessed by a mental health clinician. Every effort should be made to accommodate an at-risk detainee in their regular living environment, while making the detainee safe and secure.

Staff inform detainees of the mental health services available in immigration detention facilities and encourage them to speak openly to mental health staff.

Facilities have equipment necessary for dealing with suicide or suicide attempts and self-harm, including ligature shears and resuscitation equipment. Staff know where this equipment is located and are trained regularly in its use.

Sources

Treaties:

ICCPR 6, 7, 9 (security of the person), 10; CAT 2, 16; ICESCR 12.

Interpretive instruments:

SMR 82(4).

National law:

Common law duty of care; Work Health and Safety Act ss 17-19, 28-29, 46.

4.2 Violence, bullying and harassment

Standard

A strategy against violence, bullying and harassment is in place. The strategy includes an outline of the consequences for violence, bullying and harassment, including sexual and gender-based violence and harassment. The strategy is effectively disseminated amongst detainees and staff.

Staff supervision provides protection from violence, bullying and harassment for detainees in all areas of the facility.

Police are notified of incidents of violence such as assault. Victims of violence and bullying can access medical treatment and counselling and are protected from retaliation.

Sources

Treaties:

ICCPR 2, 7, 9 (security of the person), 10, 17; CAT 2, 16; ICESCR 12.

Interpretive instruments:

UNRPJDL 87(d); Bangkok Rules 25; Yogyakarta Principles 9D; UNHCR Guidelines 9.3 [60], [61].

National law:

Common law duty of care.

4. Duty of care

4.3 Critical incident review

Standard

There is a policy applicable to all facilities concerning full and timely critical incident review to identify any necessary changes in the handling of critical incidents.

Staff can identify when an incident notifiable under work health and safety legislation has occurred, and know how they should report the incident.

Sources

Treaties:

ICCPR 9 (security of the person).

National law:

Common law duty of care;
Work Health and Safety Act,
ss 35-39.

5. Transport and removal

People are entitled to be treated respectfully and courteously when subjected to transfer between facilities, escorted outside facilities, or removed from a facility. This includes detainees being informed about where they are going, and being given the opportunity to inform family members and legal advisers. The conditions of transport should be safe and conducive to treatment with respect for the inherent dignity of the human person.

5.1 Minimising transfers and giving adequate notice of transfers

Standard

Detainees are not subject to unnecessary movements between immigration detention facilities, as this may disrupt their contacts with medical practitioners, lawyers, family, religious leaders and communities.

Authorities give detainees adequate notice of any transfer, discharge or removal from the country.

Detainees have the opportunity to inform legal advisers, volunteer visitors, family and friends of the proposed movement via a free telephone call, fax, or email.

Sources

Treaties:

ICCPR 17, 27; ICESCR 12; CRC 3.

Interpretive instruments:

BOP 16, 20; SMR 44; UNRPJDL 26; UNHCR Guidelines 8 [48 (xiv)].

5.2 Removal from Australia and discharge from facility

Standard

Removal or discharge is conducted sensitively and humanely. Systems are in place to ensure that detainees are assessed by health staff, are fit to travel and that property is returned to them.

Detainees who are being removed from Australia are given adequate time to contact relatives, close their affairs in Australia and receive information they may need in order to enter the country to which they are being removed.

Detainees who are being released into the Australian community should be provided with information about any assistance they are eligible to receive post-release.

Sources

Treaties:

ICCPR 6, 7, 9 (security of the person), 10, 17, 23; CAT 2, 16; ICESCR 12.

Interpretive instruments:

UNRPJDL 35, 79, 80.

5.3 Conditions of escort

Standard

Detainees are escorted in vehicles that are:

- safe, secure, clean and comfortable
- equipped with adequate storage for their property
- equipped with emergency supplies and hygiene packs suitable for the needs of women and children
- reasonably private for detainees.

Appropriate vehicles are used to transport detainees with special needs, such as pregnant women, women with babies, children, and detainees with a disability, in a dignified manner.

Detainees are monitored and are able to communicate with staff during escort.

Escort staff have the necessary training, skills and background checks to transport vulnerable detainees, including children.

Adequate meals and drink are supplied at meal times, and detainees are permitted to go to the bathroom when necessary.

An appropriate protocol governing medication during transport is in place.

Restraints are only used as specified in these Standards (see the Standards on 'security').

Sources

Treaties:

ICCPR 7, 9 (security of the person), 10, 17; CAT 2, 16; ICESCR 12; CRC 3, 37(c); CRPD 14(2).

Interpretive instruments:

SMR 45; BOP 24; UNRPJDL 26, 29; (by analogy) EPR 32.1, 32.2, 33.3.

6. Monitoring and complaints

Independent monitoring, and the ability of detainees to make complaints to independent monitors, is essential for the prevention of torture and the protection of other human rights in detention. This is recognised in many international and regional human rights instruments and in Australian legislation.

6.1 Independent monitoring

Standard

All immigration detention facilities should allow monitoring by independent bodies, for example, the Commonwealth Ombudsman, the Australian Human Rights Commission, the United Nations High Commissioner for Refugees and Australian Red Cross. The purpose of this monitoring includes ensuring that immigration detention facilities are administered in accordance with international obligations and with relevant statutory requirements.

Detainees must be able to communicate freely and in full confidentiality with monitoring bodies.

Sources

Interpretive instruments:

OPCAT 4, 12, 14, 15, 19, 21; Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 'Guidelines on national preventive mechanisms', 9 December 2010; SMR 55; UNRPJDL 72-74; BOP 29; UNHCR Guidelines 10.

National law:

Ombudsman Act, s 5, 9, 14, 15; Migration Act part 8 C; Australian Human Rights Commission Act s 13.

6.2 Complaints

Standard

Facilities regularly provide an opportunity for detainees to raise concerns and issues regarding the conditions within detention, either in a group setting or individually, as necessary.

Detainees have the right to make complaints to management of the facility regarding the conditions of, and their treatment in, immigration detention.

Detainees are also able to make a complaint to external authorities including the Commonwealth Ombudsman and the Australian Human Rights Commission. Such complaints are forwarded unopened to those authorities.

Detainees are informed about how to make a complaint, including the procedure for taking a complaint that is not (in their view) satisfactorily resolved by management of the immigration detention facility to external authorities.

Unless evidently frivolous or groundless, every complaint submitted to the management of an immigration detention facility is investigated impartially and promptly.

Detainees are not victimised because they have made a complaint.

Sources

Treaties:

ICCPR 7, 10; CAT 2, 13, 16.

Interpretive instruments:

SMR 35, 36; BOP 7, 33; UNRPJDL 75-78, 87(c); UNHCR Guidelines 8 [48 (xv)]; (by analogy) EPR 70.1, 70.3, 70.4.

National law:

Ombudsman Act s 7; Australian Human Rights Commission Act s 20(6)-(7).

7. Staff

Immigration detention facility staff are responsible for the well-being of detainees. Staff must treat detainees with humanity and with respect for the inherent dignity of the person. Failure to do so may cause serious harm to detainees, and result in serious consequences for the staff concerned. Australia's human rights responsibilities and duty of care to persons in immigration detention apply regardless of whether detention or aspects of detention are contracted out to private companies.

7.1 Accountability and contract management

Standard

Where detention or aspects of detention are contracted out to private companies, the Australian Government retains responsibility for human rights protection and a non-delegable duty of care. The government must exercise adequate oversight in order to meet its international human rights obligations.

Sources

Treaties:

ICCPR 2, 7, 10; ICESCR 2; CAT 2, 16.

Interpretive instruments:

Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework [5]; UNHCR Guidelines 8 [48(xvii)].

National law:

Common law duty of care.

7.2 Staff selection and code of conduct

Standard

Staff selection, performance appraisal and training procedures ensure the personal integrity, professional capacity and personal suitability for employment in an immigration detention facility and the ongoing professional development of staff.

There are adequate staffing numbers, and diversity of gender and ethnicity among staff, in each immigration detention facility.

Staff are aware of, and receive training on, the standard operating procedures of the facility, (including work health and safety matters), human rights, and relevant codes of conduct (for example, the Australian Public Service code of conduct) or relevant contractual obligations.

Sources

Treaties:

ICCPR 7, 10; CAT 2, 10, 16.

Interpretive instruments:

BOP 1; SMR 46, 47; UNRPJDL 82, 85; CPT Standards (2011) pp 76, 91; Bangkok Rules 32; Yogyakarta Principles 9G; UNHCR Guidelines 8 [48 (xvi)].

National law:

Common law duty of care; Work Health and Safety Act ss 17-19, 28-29, 35-39, 46.

8. Arrival and induction

The first night in detention can be very distressing, especially for detainees who are asylum-seekers and who may have suffered torture and trauma. It is therefore important that detainees are received into a safe environment, are treated with respect and have their immediate basic needs met. They should be made aware of their right to contact family, lawyers and independent monitors as soon as possible. The arrival and induction process is also an important opportunity to explain detainees' rights and responsibilities, and ensure that detainee details are properly recorded in a register so that they do not get 'lost' in the system and are contactable.

8.1 Arrival

Standard

On arrival at an immigration detention facility, detainees are promptly received into a safe, clean and supervised area, consistent with standards on humane detention.

Detainees with special needs are identified at induction and receive priority treatment consistent with those needs.

Sources

Treaties:

ICCPR 7, 10; CRPD 14(2); CRC 37(c).

National law:

Work Health and Safety Act ss 17-19, 28-29, 35-39.

8.2 Registration

Standard

On reception, detainee details are recorded and kept securely (see the Standards on 'information privacy'). Detainee details include:

- information concerning identity
- the day and hour of the detainees' admission to an immigration detention facility
- precise information concerning the place of detention
- details of contact or attempted contact with relatives on admission.

Sources

Treaties:

ICCPR 9, 10, 17.

Interpretive instruments:

SMR 7; BOP 12; UNRJPDL 21; UNHCR Guidelines 8 [48(iv)].

8.3 Physical and mental health screening

Standard

All detainees are screened on arrival by health staff, in private and using interpreters of the appropriate ethnicity. Detainees are offered appointments with staff and interpreters of the same gender where possible. Screening results are recorded in each detainee's health summary.

Children are also given a health screening appropriate to their age. If accompanied, children's screening occurs with the permission and involvement of their parents. If unaccompanied, an appropriate guardian or advocate should be present.

Detainees are assessed for the risk of self-harm or suicide before being allocated accommodation and arrangements are made to ensure their well-being.

Detainees are assessed for a history of torture and trauma.

Sources

Treaties:

ICESCR 12; ICCPR 9 (security of the person), 10, 17; CRPD 15, 25; CRC 3, 5, 16, 18, 20, 23, 24.

Interpretive instruments:

BOP 24; Principles of Medical Ethics 1.

National law:

Common law duty of care that extends to preventing self-harm and suicide.

8.4 Notifying relatives or other designated contact person

Standard

Promptly after arrival in an immigration detention facility, a detainee is entitled to notify, or to require the facility staff to notify, members of his or her family or other appropriate persons about their arrival and detention.

Notification arrangements respect detainees' privacy and are free of charge.

Detainees are promptly informed of their rights to communicate by appropriate means (e.g. telephone):

- with the embassy or consulate of their country if they so wish *or*
- the United Nations High Commissioner for Refugees.

(See further the Standards on 'external communication and contact'.)

If a detainee is a child or is otherwise not capable of informing family members, consular staff or the United Nations High Commissioner for Refugees as appropriate, the staff of the facility notify the appropriate persons. Particular effort is given to the notification of parents or guardians of children.

Sources

Treaties:

ICCPR 17, 23; CRC 3(2), 8, 22; Refugee Convention 35; VCCR 36.

Interpretive instruments:

BOP 16; UNHCR Guidelines 7 [47(vii)]; CPT Standards (2011) pp 71-72.

8.5 Information on arrival

Standard

Staff promptly, and in a language and in terms and formats detainees understand:

- tell detainees the reasons for their detention
- give detainees precise information concerning the place of detention
- inform detainees of their rights and responsibilities in connection with detention, including the right to legal assistance and advice and to the services of an interpreter when needed, as well as relevant worker and detainee work health and safety duties (see further 'information dissemination and communications' section of the Standards).

Sources

Treaties:

ICCPR 9; CRC 37(d).

Interpretive instruments:

BOP 10, 12-14, 17; UNHCR Guidelines 7 [47 (i)]; Basic Principles on the Role of Lawyers, 5; SMR 35; UNRPJDL 24; CPT Standards (2011) p 72; UN Human Rights Committee, General Comment 8 [1].

International case law:

Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo) (Judgment) [2010] International Court of Justice (ICJ) Rep 639, 670.

8.6 Meeting immediate basic needs

Standard

Detainees are offered a shower and clean clothing if necessary, food and drink, and a hygiene pack containing essential items (e.g. toothbrush), if necessary.

Sources

Treaties:

ICCPR 10; ICESCR 11, 12.

8.7 Induction to the facility

Standard

Each detainee is provided with an induction to the immigration detention facility.

The induction ensures detainees know how to contact and complain to monitoring bodies such as the Australian Human Rights Commission, the Commonwealth Ombudsman and the United Nations High Commissioner for Refugees.

Sources

Interpretive instruments:

SMR 35; UNRPJDL 24, 25; UNHCR Guidelines 7 [47(vii)].

9. Information dissemination and communications

Clear communication is essential for ensuring that detainees know their rights and responsibilities. Detainees will require clear information about their rights and responsibilities at various times throughout the immigration process – for example, when they arrive in detention or they are transferred or removed.

9.1 Information dissemination and communications

Standard

Important information is provided in writing and orally, and in terms that are easily understood by detainees. This may require the provision of information through means such as handbooks, posters and DVDs displayed in communal areas of the facility. The information to be provided includes:

- detainees' rights and responsibilities while in detention
- the contact details of providers of legal assistance to resolve status
- contact details of the Commonwealth Ombudsman and the Australian Human Rights Commission
- contact details of diplomatic or consular representatives of the State of origin or nationality
- contact details of the United Nations High Commissioner for Refugees
- the detention facility rules and procedures including behaviour management agreements and procedures for making complaints.

All communication and information dissemination must be in a language and in terms that the detainee can understand.

Detainees who do not understand English or whose English is not adequate should be provided with translations of important documents relevant to their detention and legal status. In addition, where the detainee has low literacy, the information should be communicated orally in a language and in terms that the detainee understands.

Sources

Treaties:

ICCPR 2, 10; Refugee Convention 35; VCCR 36(b).

Interpretive instruments:

CPT Standards (2011) p 66; BOP 7, 16(2), 18(2), 33; SMR 30(3), 35, 36, 38; UNRPJDL 75-78; UNHCR Guidelines 7 [47(i),(ii), (vi) & (vii)].

10. External communication and contact

Holding a person ‘incommunicado’ – that is, detaining them without communication or contact with people outside the detention facility – is a serious violation of international human rights law. It may enable torture and may itself amount to torture or cruel or inhuman or degrading treatment. Detention must not have a disproportionate impact on rights such as family life, freedom of association or freedom of expression. Legal matters relating to the person’s detention (e.g. challenges to the power to detain or hearings to determine refugee status) must be facilitated. Detainees must know how to contact a lawyer and to complain about their treatment in detention, for example to the Commonwealth Ombudsman or the Australian Human Rights Commission.

10.1 Visits and other direct contact with people outside the facility

Standard

Detainees are able to receive regular visits from, and communicate by telephone, mail, email and social media with members of their family, friends, religious leaders, the community, and community-based or non-governmental service providers. Any service providers are properly inducted into the facility.

On request, detainees are, if possible, located in facilities within a reasonable distance from their relatives, friends or communities.

Child detainees who have been separated from their parents have the right to maintain personal relations and direct contact with their parents, and particular care shall be given to facilitating this contact.

Detainees are informed promptly after arrival in detention, in a language, terms and formats they understand, how to contact their families and other persons with whom they wish to communicate.

Detainees have the same rights of access to the media as members of the Australian community.

Under no circumstances is the ability to communicate with people outside the detention facility denied for longer than a few days.

Sources

Treaties:

ICCPR 7, 10, 17, 18, 19, 22, 23, 24, 27; CAT 2, 16; CRC 9, 10(2), 13, 15, 30; ICESCR 15.

Interpretive instruments:

BOP 15, 16, 19, 20; SMR 37, 49(2), 79, 92; UNRPJDL 59-62, 81; CPT Standards (2011) p 66; UNHCR Guidelines 8 [48 (vii)].

10.2 News and library services

Standard

Each detainee has access to news and current events, including by:

- newspapers, periodicals and other publications in his or her languages
- radio, television programs and films
- the internet
- other means as appropriate.

Detainees have access to a library containing books, newspapers, dictionaries, up-to-date legal reference materials, and DVDs/videos in languages that correspond with the major national groups in the facility’s population.

Sources

Treaties:

ICCPR 19; ICESCR 15.

Interpretive instruments:

SMR 39, 40; BOP 28; UNRPJDL 41, 62; UNHCR Guidelines 8 [48(xii)].

10.3 Telephones and mail

Standard

Each detainee has access to telephones that:

- are maintained in good working order
- have international dialling capacity
- enable conversations of a reasonable length to occur in private
- permit incoming calls to reach detainees within a reasonable time.

A telephone interpreter service is available free of charge for official calls, and detainees know how to use it.

Detainees without means are, within reason, able to send letters, emails and faxes and make telephone calls at public expense and in sufficient numbers to enable them to maintain their rights.

Monitoring of phone calls and mail is generally not permitted. Any restrictions on privacy of phone calls, mail or other correspondence, must be in accordance with the law and necessary and proportionate in the individual case. Restrictions may be imposed for the purposes of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Correspondence with monitoring bodies such as the Australian Human Rights Commission and the Commonwealth Ombudsman must be treated confidentially.

Sources

Treaties:

ICCPR 17, 19.

Interpretive instruments:

BOP 19; SMR 37; UNRPJDL 18(a); (by analogy) EPR 24.1; UNHCR Guidelines 8 [48 (vii)].

National law:

Ombudsman Act s 7(3) & (4); Australian Human Rights Commission Act s 20(6) and (7).

10.4 Legal visits, hearings and communications

Standard

Each detainee has the right to communicate with a lawyer privately and promptly upon arrival in detention.

Legal advice is free of charge where the detainee does not have the means to pay for it, including the costs of correspondence with legal advisers such as mail, faxes, email and telephone calls.

Detainees are informed of their rights concerning legal representation in a language, terms and formats they understand, and contact with an appropriate legal service is facilitated.

Legal correspondence and documents are respected as confidential and never opened or searched.

Detainees have adequate time and facilities, including interpreting services, for consultation with their lawyers and other advisers who act for them in legal matters.

Unobtrusive visual inspection of legal visits for security or safety purposes is permitted and may be required. However others must not, under any circumstances, overhear conversations with legal advisers.

Sources

Treaties:

ICCPR 9, 19.

Interpretive instruments:

BOP 11, 13, 14, 17, 18; CPT Standards (2011) p 66; UNHCR Guidelines 7 [47(ii)]; SMR 93.

National law:

Common law legal professional privilege.

Detainees receive proper notice of legal hearings on matters concerning them and they are able to attend hearings on time.

Transfers do not interfere with detainees' ability to attend hearings or to consult with their lawyers.

10.5 United Nations High Commissioner for Refugees and consular assistance

Standard

Detainees are informed of their rights to contact their national consulate and/ or the United Nations High Commissioner for Refugees.

Information about consular services and the United Nations High Commissioner for Refugees and their roles is made available to all detainees promptly upon their arrival in detention.

Detainees have adequate time and facilities to communicate in private with these representatives.

Sources

Treaties:

Refugee Convention 35; VCCR 36.

Interpretive instruments:

BOP 16(2); SMR 38; UNHCR Guidelines 7 [47(vii)], 8 [48(vii)].

10.6 Conduct of non-legal visits

Standard

Visits take place in an appropriate place and in private.

Visitors are able to store their personal property securely.

Visitors are treated with respect and courtesy.

Family and friends are able to make appropriate physical contact with detainees they are visiting.

Sources

Treaties:

ICCPR 17, 22, 23, 24; ICESCR 10.

Interpretive instruments:

BOP 19, UNRPJDL 60; UNHCR Guidelines 8 [48 (vii)].

10.7 Temporary permission to leave a facility

Standard

Detainees are permitted, where reasonable, to leave the facility under escort to visit a sick relative, attend a funeral or the birth of their child or for other humanitarian reasons.

Sources

Treaties:

ICCPR 17, 22, 23, 24, 26; ICESCR 10.

Interpretive instruments:

UNRPJDL 58; SMR 44(2); (by analogy) EPR 24.7 (convicted prisoners are permitted in certain circumstances to leave prisons; therefore equality requires similar treatment for immigration detainees).

11. Personal information and property

Detainees should enjoy the right to privacy and rights relating to property on an equal basis with others. The Standards in this section focus on the privacy of personal information that may be collected by, for example, the Department. Equal protection of the right to own property is recognised as a human right (ICERD 5(v)), and may also be fundamental to the enjoyment of other rights, such as freedom of religion (religious items: ICCPR 18) and, in certain circumstances, freedom of expression (clothing, for example: ICCPR 19).

11.1 Personal information

Standard

All personal information concerning detainees is treated in confidence.

Only personal information collected for lawful purposes, directly related to the function or activity of the Department, that is necessary for that purpose, is collected.

Access to detainee records is restricted to authorised personnel.

Detainees are able to access their personal information, contest inaccurate information, and add or delete information, unless the record keeper is required or authorised not to permit access by Commonwealth law.

The Department retains ultimate ownership of all records of persons in immigration detention.

If it is necessary to disclose personal information, but there are concerns about privacy, the information is not disclosed unless Information Privacy Principle 11 is satisfied or a public interest determination is sought from the Privacy Commissioner.

Sources

Treaties:

ICCPR 17, 19.

Interpretive instruments:

UNRPJDL 19; UNHCR Guidelines 7 [47(viii)].

National law:

Privacy Act s 14 (particularly Information Privacy Principles 1, 2, 6, 7, 8, 10, 11), s 95B; National Privacy Principles 7, 8, 9, 10.

Information Privacy Principle 11 permits disclosure of personal information in certain circumstances, including where it 'is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or of another person'.

11.2 Property

Standard

Detainees are able to safely store some personal property, including clothing, in their accommodation units.

Personal property that a detainee is not allowed to retain, for valid reasons (for example, reasons relating to safety or security within the facility), is securely stored.

All property held in trust by the detention service provider is inventoried in case of theft, damage or loss. Detainees sign the inventory, which is explained to them in a language they understand.

Upon release from detention, transfer to another institution or removal from Australia, all personal property is returned to the detainee who owns it, and he or she signs a receipt for it.

Detainees are fairly compensated for lost, stolen or damaged property.

Detainees are able to retain and make copies of their legal documents.

Sources

Treaties:

ICERD 5(v); ICCPR 17, 18, 19, 27; ICESCR 11.

Interpretive instruments:

SMR 43; UNRPJDL 35; CPT Standards (2011) p 86; (by analogy) EPR 31.1-31.3, 31.7.

12. Food

The right to adequate food is essential to the fulfilment of the rights to health, life and to enjoy one's own culture (ICESCR 11). Food provision in a detention context is particularly important because of the duty of care owed to detainees.

12.1 Provision of food

Standard

Each immigration detainee is provided with sufficient food of nutritional value and quality adequate for health and strength.

There will always be at least one substantial cooked meal each day.

Appropriate meals are provided in the following cases:

- for babies and infants
- where it is established that a special diet is required for medical reasons
- for vegetarians and vegans
- to comply with religious beliefs or cultural practices of the detainee
- where the detainee has other reasonable special needs.

Meals are provided at regular intervals.

Fresh drinking water is always available.

Appropriate extra food supplies are available for detainees arriving or being discharged late, for pregnant women and nursing mothers and for children.

Detainees are able to buy snacks and drinks through the individual allowance program.

Sources

Treaties:

ICCPR 6, 10, 18, 27; ICESCR 11, 12; CRC 6, 24, 27.

Interpretive instruments:

SMR 20; CPT Standards (2011) p 92; (by analogy) EPRs 22.1 & 22.3-22.5; UNHCR Guidelines 8 [48(xi)].

13. Clothing

Adequate clothing is an essential aspect of an adequate standard of living. Clothing may also be significant aspect of a person's ability to exercise their rights to religious freedom, freedom of expression and private life. People in immigration detention are not in detention as punishment and are therefore entitled to wear their own clothing. However, clothing must be provided for them if they do not have sufficient suitable clothing.

13.1 Provision of clothing

Standard

Where a detainee does not have their own, or sufficient, suitable clothing, they are provided with sufficient clothing, underwear and footwear on induction to the facility.

Clothing provided by the facility is:

- a type of clothing that is worn in the community
- suitable to meet religious or cultural requirements of particular detainees
- presentable
- suitable for different purposes e.g. work or sport
- inconspicuous when detainees are at immigration hearings or outside the facility
- adequate to keep them in good health
- suitable for weather conditions.

Detainees wear their own clothing where possible, and are able to receive clothing from visitors.

All detainees have access to laundry facilities to wash and iron their clothing.

Sources

Treaties:

ICESCR 11; ICCPR 10, 17, 18, 19.

Interpretive instruments:

SMR 17, 18, 88; UNRPJDL 36; UNHCR Guidelines 8 [48 (x)]; (by analogy) EPR 20.1-20.4.

14. Health care

The right to health is fundamental. It is interdependent with the right to life. Consequently, health services are a vital area of any immigration detention facility. Both international law and the common law duty of care require the provision of health services to persons in detention. There are well-documented links between prolonged immigration detention and deterioration of mental health. It is therefore crucial that alternatives to detention are used where feasible.

14.1 Adequate health care

Standard

Medical treatment and care is provided:

- to a standard commensurate with that provided in the Australian community
- in a manner which is culturally appropriate
- which recognises the specific needs of detainees as displaced persons who may have experienced trauma
- which respects the inherent dignity of the human person.

Each detainee is provided, free of charge, with remedial medical treatment and care, dental, ophthalmological and mental health care, as determined by the Department in consultation with its nominated health advisors.

Preventative health care measures are undertaken where necessary, as determined by the Department in consultation with its nominated health advisors. This includes age-appropriate immunisation, oral health education and drug and alcohol programs.

Detention authorities must provide detainees with access to services of community non-government organisations that provide expert services such as torture and trauma counselling.

Each detainee is informed in a language and in words and formats they can understand about the health care services available in immigration detention; the health issues that may affect them; and about health promotion, including oral health care, and control of communicable disease.

Detention authorities consult health staff when devising meals schedules, services and programs that may impact on the health of detainees.

Health staff have the requisite qualifications, memberships or recognition to practice and undergo regular training, including training in issues specific to the populations within immigration detention facilities.

Sources

Treaties:

ICESCR 12; CRC 24; CEDAW 12; CRPD 14(2), 25.

Interpretive instruments:

BOP 24; Basic Principles 9; SMR 22, 24, 25, 51; UNRPJDL 49, 51, 54; UNHCR Guidelines 8 [48 (vi)]; Principles of Medical Ethics 1; (by analogy) World Health Organisation Guidelines on HIV Infection and AIDS in prisons [1], [53] and [54]; UN Committee on Economic Social and Cultural Rights, General Comment 14; CPT Standards (2011) pp 38-47.

National law:

Common law duty of care and relevant legislative and other standards concerning health care, including accreditation.

14.2 Provision of medical treatment

Standard

The physical facilities for health services within immigration detention facilities are an adequate size and allow the provision of health care in conditions that maintain privacy and respect for human dignity.

Each detainee has equal access to health services, and access is not unduly restricted by security procedures.

Detainee patients are treated in a professional and caring manner that is sensitive to their diverse needs.

Health services are delivered in culturally appropriate ways.

An interpreter is used unless the detainee freely affirms they are confident and comfortable for medical consultations to proceed in English.

Detainees can request medical consultations with doctors of the same gender as themselves, and this will be provided whenever possible.

Detainees are given a clear explanation in a language they understand about the need for, and purpose of, any medical examination.

Medical examinations take place in private. Unless the detainee agrees to the presence of a friend or family member, only medical staff and interpreters may be present during medical examinations. If it is essential for security staff to be present, the detainee's dignity and privacy shall be protected.

Detainees know how to make a complaint about their medical care and treatment. They are not discouraged from doing so and are supported to do so when necessary.

Sources

Treaties:

ICESCR 12; ICCPR 10, 17, 26; CEDAW 12; CRPD 25; CRC 24, 37(c).

Interpretive instruments:

Basic Principles 9; Principles of Medical Ethics 2; UNRPJDL 6, 75, 76; SMR 35; Bangkok Rules 10(2).

National law:

Common law duty of care requires provision of adequate medical care.

14.3 Equipment

Standard

Immigration detention facilities have adequate and appropriate medical equipment.

All medical and safety equipment (including the resuscitation kit) is used, checked, cleaned and maintained in line with relevant standards of regulatory bodies. Staff understand how to access the equipment and use it effectively.

Sources

Treaties:

ICESCR 12; ICCPR 6, 10.

National law:

Common law duty of care.

14.4 Out-of-hours service

Standard	Sources
Detainees have access to out-of-hours and emergency medical care that is well organised, responsive and effective.	Treaties: ICESCR 12.

14.5 Health screening on arrival and continuous monitoring

Standard	Sources		
<p>Health staff assess the health care needs of each new immigration detainee as soon as possible after arrival, with a view to identifying any physical or medical condition requiring medical attention, including the effects of torture and trauma or substance dependence (see the Standards on ‘arrival and induction’).</p> <p>Detainees are given a clear explanation in a language they understand about the need for, and purpose of, any medical examination.</p> <p>Detainees consent to the examination.</p> <p>The mental health care needs of each immigration detainee are regularly monitored. In particular, the health staff report to facility management whenever they consider that a detainee’s physical or mental health has been or will be injuriously affected by continued detention or by any condition of detention.</p>	Treaties: ICESCR 12; ICCPR 6, 10; CRPD 14, 25.	Interpretive instruments: BOP 24; SMR 24; UNRPJDL 50, 51, 52; UNHCR Guidelines 8 [48(vi)].	National law: Common law duty of care; <i>Privacy Act 1988</i> (Cth) s 14 Information Privacy Principle 1.

14.6 Transfers

Standard	Sources
Where a detainee is moved to another place, arrangements for continuing medical treatment and/or torture and trauma counselling are put in place. Health staff are notified of impending departures and, if necessary, make arrangements for medication to be administered prior to departure (as clinically indicated) and during the journey.	Treaties: ICESCR 12; ICCPR 6, 10; CAT 2, 16.

14.7 Pharmacy and safe distribution of medications

Standard

Each immigration detention facility has an adequate supply of medications that are commonly required by detainees. Detainees are properly advised concerning the benefits and risks of medications, and the self-administration of medication.

Medicines are stored, handled and dispensed safely and securely in line with relevant state or territory legislation.

Drugs that have a potential for abuse or dependency are only prescribed when clinically indicated and by persons authorised under Australian law to prescribe them.

Sources

Treaties:

ICESCR 12; ICCPR 6, 7, 10; CAT 2, 16; CRPD 14, 25; CRC 24, 37(c).

Interpretive instruments:

UNRPJDL 49, 55.

National law:

State and territory regulations concerning drugs, poisons and controlled substances.

14.8 Consent to, or refusal of, treatment

Standard

Patients are involved in planning their own care and treatment.

Health staff comply with medical ethics. In particular, with respect to competent adults:

- free and informed consent is required for all medical treatment and the disclosure of personal information
- patients may change their mind and withdraw consent at any point
- refusal of treatment must be documented and the implications of not receiving treatment must be fully explained to the detainee in a language and in terms that they understand.

Only medical research that is expected to produce a direct and significant benefit to detainee health may be conducted. Only adult detainees may participate in experiments or trials of drugs or treatment, and detainees must freely consent to any medical research.

Sources

Treaties:

ICCPR 7, 9 (security of the person), 10; CAT 2, 16; CRPD 25(d).

Interpretive instruments:

Principles of Medical Ethics 1; BOP 1, 22; Declaration of Alma-Ata IV; UNRPJDL 55; (by analogy) World Health Organisation Guidelines on HIV Infection and AIDS in prisons [38].

National law:

Statute and common law regarding assault and the common law principle of self-determination or personal inviolability: *Department of Health and Community Services (NT) v JWB ('Marion's Case')* (1992) 175 CLR 218. The common law has been overridden by *Migration Regulations 1994* (Cth) reg 5.35, which enables involuntary medical treatment in certain circumstances.

14.9 Women and girls

Standard

Screening for diseases specific to women and girls, including pap smears and mammograms, is available and accessible.

Qualified counsellors offer information about birth control, pregnancy and termination options in a culturally sensitive manner.

Pre and post-natal services and accommodation are available for women who need them.

Where possible, there is continuity of obstetric and/or midwifery staff providing care before, during and after birth.

Where a child is born in detention, a birth certificate is issued and the detention facility is not mentioned on the birth certificate.

Instruments of restraint are never used on women during labour, during birth or immediately after birth.

Sources

Treaties:

CEDAW 12, 16(e); CRC 7(1), 24, 37(c); ICCPR 2, 3, 10, 24(2), 26; CRPD 6, 25; ICESCR 12.

Interpretive instruments:

SMR 23; BOP 5(2); Declaration of Alma-Ata VII(3); Beijing Declaration 17, 30; Bangkok Rules 24; UNHCR Guidelines 8 [48(xviii)].

National law:

Common law duty of care.

14.10 Children's health

Standard

If detained, children have the right to health care and treatment that takes account of the medical needs particular to children.

Children are assessed to ascertain whether they are competent to provide informed consent before any treatment. If the child is judged as not competent to give consent, arrangements are made for consent to be obtained from parents or carers, or, if the child is separated from their parents, the guardian or a court, as appropriate.

If unaccompanied minors become seriously ill or suffer serious injuries, attempts must be made to notify parents or guardians.

Sources

Treaties:

CRC 3, 5, 6, 9, 12, 18, 19, 23(3), 24, 37(c); CRPD 7, 17, 25.

Interpretive instruments:

UNRPJDL 49, 56.

National law:

A child who 'achieves a sufficient understanding and intelligence to enable him or her to understand fully what is proposed' is competent to consent to treatment: *Department of Health and Community Services (NT) v JWB ('Marion's Case')* (1992) 175 CLR 218, 238.

14.11 Hygiene and public health

Standard

All parts of immigration detention facilities are properly maintained and cleaned.

Immigration detention facilities provide the facilities, services and items necessary to maintain general hygiene.

Detainees are able to bathe or shower daily at a temperature suitable to the climate, and to have their hair cut.

Detainees' safety and privacy, particularly when using communal bathing or showering facilities, is protected.

Appropriate measures are taken to minimise health hazards.

Vermin and pests are exterminated. Safety precautions are observed.

Feminine hygiene products are readily available free of charge to female detainees and never require a request to male security staff. Toilets for women have disposal bins for feminine hygiene products.

Standard precautions for infection control apply.

Sources

Treaties:

ICCPR 7, 10; ICESCR 11, 12; CAT 16; CRC 3(3), 37(c); CRPD 14.

Interpretive instruments:

SMR 12-16; UNRPJDL 34; UNHCR Guidelines 8 [48(x)]; BOP 1; Bangkok Rules 5.

National law:

Common law duty of care.

14.12 Contagious and notifiable diseases

Standard

Health staff comply with the duty to report notifiable diseases under relevant state or territory legislation.

There are systems in place for liaison with Commonwealth and state health authorities in the event of an outbreak of a contagious disease in order to protect the wider Australian community.

When absolutely required in order to protect the general population of the facility from infectious disease, detainees are isolated or quarantined and treated before being allowed to enter the normal routine of the facility. The reasons for quarantine must be explained to the detainee. All cases of isolation or quarantine for health reasons are notified to the Department.

The rights of these detainees are fully respected, subject to permissible limitations that are required in the circumstances, and they are able to participate in meaningful activities equivalent to the rest of the facility's population. A qualified medical officer visits regularly to assess the impact of isolation on the detainee's physical and mental health.

Sources

Treaties:

ICCPR 6; ICESCR 12(2)(c).

Interpretive instruments:

SMR 24, 25; World Health Organisation 'Ethical Considerations in Developing a Public Health Response to Pandemic Influenza' (WHO, 2007) ch 4; (by analogy) World Health Organisation Guidelines on HIV Infection and AIDS in prisons [27].

National law:

Common law duty of care; relevant state or territory legislation concerning notifiable diseases.

14.13 Continuity of care

Standard	Sources
<p>The Department, facility management and all staff recognise that continuity of health care is a vital element of health care.</p> <p>Detainees are able to contact health providers who treated them prior to being detained.</p> <p>Detainees who have appointments and continuing treatment with specialist services are not transferred to different facilities, unless alternative appropriate arrangements have been explored.</p> <p>When they are released from detention facilities, detainees are provided with a summary of their medical history while in immigration detention.</p> <p>Where necessary, on release from an immigration detention facility, detainees are also given a referral to a community health provider.</p>	<p>Treaties: ICESCR 12.</p> <p>Interpretive instruments: BOP 26; SMR 91.</p>

14.14 Second medical opinions

Standard	Sources
<p>Each immigration detainee can seek a second medical examination or opinion prior to treatment as an aspect of informed consent to medical treatment.</p>	<p>Treaties: ICESCR 12.</p> <p>Interpretive instruments: BOP 25; CPT Standards (2011) p 66.</p>

14.15 Specialists and medical aids

Standard	Sources
<p>Each detainee has access to the services of specialist medical practitioners as well as psychiatric, dental, optical and radiological diagnostic services, on medical referral.</p> <p>Prostheses and aids required by a detainee, such as glasses or wheel chairs, are made available on the recommendation of medical staff.</p>	<p>Treaties: ICESCR 12; ICCPR 6, 7, 10; CAT 2, 16; CRPD 14, 25, 26; CEDAW 12; CRC 24, 37(c).</p> <p>Interpretive instruments: SMR 22, 24, 25; UNRPJDL 49; UNHCR Guidelines 8 [48(vi)].</p> <p>National law: Common law duty of care.</p>

14.16 Health records and confidentiality

Standard

Each detainee has a clinical record containing an up-to-date and comprehensive assessment and care plan (if required), including medical history, which conforms to professional guidance and regulatory standards.

All health records are kept securely in accordance with relevant legislation and national guidelines.

Doctor-patient confidentiality is respected. Medical information is provided to staff of the facility and the Department in accordance with the use and disclosure provisions of the Privacy Act.

Sources

Treaties:

ICESCR 12; ICCPR 10, 17.

Interpretive instruments:

BOP 26; UNRPJDL 19, 21; UNHCR Guidelines 7 [47(viii)]; (by analogy) World Health Organisation Guidelines on HIV Infection and AIDS in prisons [31] and [32].

National law:

Privacy Act s 14 (Information Privacy Principle 10, 11); Common law duty of care.

14.17 Sexual health

Standard

Culturally appropriate information and counselling regarding sexual health and family planning is available to all detainees and detainees are able to obtain barrier contraceptives discreetly e.g. by asking health staff or through a dispenser.

Age-appropriate education concerning sexual health is available for children and young persons. This is delivered in a culturally sensitive manner in cooperation with their parents.

Sources

Treaties:

ICESCR 12; ICCPR 10; CEDAW 12, 16(e); CRC 24(f), 29; CRPD 25(a).

Interpretive instruments:

Declaration of Alma-Ata VII(3); Beijing Declaration 17, 30; (by analogy) Bangkok Rules 14.

14.18 Substance abuse

Standard

Substance dependent detainees are comprehensively and promptly assessed on arrival in detention to determine their immediate care needs. Subject to clinical recommendations, existing prescribing regimes should be continued or an equivalent provided. A suitable stabilisation or detoxification prescribing program for the detainee should be prescribed.

A range of effective drug, alcohol and tobacco avoidance and harm minimisation strategies are in operation.

Drug and alcohol programs are adapted to the age, gender and other requirements of detainees. Where children are involved, personnel qualified to treat children administer the programs.

Sources

Treaties:

ICESCR 12; ICCPR 6, 7, 10; CAT 2, 16.

Interpretive instruments:

BOP 24; UNRPJDL 54; Bangkok Rules 15.

National law:

Common law duty of care.

14.19 Notification of death, illness, injury

Standard

Upon detainee death or serious illness or injury, the authorities inform the designated next-of-kin or contact person as soon as possible.

In the event of the death in detention of a detainee, the immediate vicinity is secured as a crime scene and the police called so that the Coroner can be notified.

The next-of-kin have the right to inspect the death certificate, view the body and determine methods of disposal of the body.

The detention authority notifies an immigration detainee of the death or serious illness of any near relative or a member of his or her extended family. In the case of the death or critical illness of a relative in Australia, the detainee has the opportunity to attend the funeral of the deceased or the bedside of a critically ill relative unless reasons of immigration detention facility security or the safety of detainees and/or staff justify denial of attendance.

Sources

Treaties:

ICCPR 2, 6, 17, 19, 23.

Interpretive instruments:

SMR 44; BOP 34; UNRPJDIL 56-58.

National law:

Obligations to report death, serious injury or illness, or a dangerous incident to COMCARE under Work Health and Safety Act ss 35, 38, 39.

14.20 Mental health treatment and care

Standard

Mental health professionals oversee the mental health treatment and care of detainees.

Any determination that a detainee has a mental illness is made in accordance with internationally accepted medical standards.

The mental health treatment and care provided to each immigration detainee is based on an individually prescribed plan and in accordance with applicable legal and health standards of ethics for mental health practitioners.

Where clinically indicated and in accordance with relevant state and territory legislation, clients with serious mental health issues are transferred to an appropriate facility as soon as possible. Alternatives to detention, and alternative forms of detention, with appropriate levels of mental health treatment and care, are considered.

Mental health care for detainees with special needs, such as children, are suitably tailored to those needs.

Mentally ill detainees are never disciplined for behaviour that is a consequence of their illness.

Sources

Treaties:

ICESCR 12; ICCPR 7, 10; CAT 2, 16; CRC 22, 24, 25, 37(a), 39; CRPD 14(2).

Interpretive instruments:

SMR 22, 26; UNRPJDIL 49, 52, 53; The Principles for the Protection of Persons with Mental Illness and the Implementation of Mental Health Care, UNGA Res 46/119 (17 December 1991) sets out important principles relating to the diagnosis, treatment and rehabilitation of persons living with a mental illness, including the principle of free and informed consent, subject to the question of capacity.

International case law:

UN Human Rights Committee, *C v Australia*, UN Doc CCPR/C/76/900/1999.

National law:

Common law duty of care

14.21 Survivors of torture and trauma

Standard

Detainees who are survivors of torture and trauma have prompt access to assessment and treatment by a qualified professional with expertise in the assessment and treatment of torture and trauma. Where an appropriately qualified professional is not on the staff of the immigration detention facility, referral is made to an external specialist agency. Active consideration is given to alternatives to detention for asylum-seekers who are survivors of torture and trauma.

Sources

Treaties:
ICESCR 12; ICCPR 10; CRC 39.

Interpretive instruments:
SMR 22(2); UNRPJDL 49;
UNHCR Guidelines 9.1 [49].

14.22 Counselling

Standard

Counselling (e.g. for anxious detainees) is available from qualified and culturally-aware counsellors. Counselling services are appropriate for detainees with special needs, including children and young persons.

Sources

Treaties:
ICESCR 12; ICCPR 7, 10.

14.23 Staff training in mental health

Standard

All staff receive basic mental health training and regular refresher training.

Sources

Treaties:
ICESCR 12; ICCPR 7, 10; CAT
2, 16.

National law:
Common law duty of care.

15. Religion

The right of freedom of conscience and belief, including the right not to have a belief, and the right to manifest one's religious beliefs, may be particularly important to people deprived of their liberty and to asylum-seekers who may have been persecuted for reasons of religion. Freedom of conscience and belief is absolute, while the right to manifest religious beliefs may be limited but only as prescribed by law and if necessary and proportionate to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

15.1 Religious practice

Standard

Each detainee has the right to profess and practise the religion of his or her choice alone and in community with other members of his or her religion.

When there are sufficient numbers of detainees of a particular religion, they are able to attend regular services in appropriate spaces within immigration detention facilities conducted by qualified religious representatives, at appropriate times as required by their religion. Detainees are able to attend services outside the facility and/or to conduct their own services within the facility.

At the request of detainees, qualified religious representatives are able to pay them pastoral visits in private.

Detainees are able to celebrate all major religious holidays and festivals and the facility actively promotes these.

Detainees are able to attend religious education classes and to keep religious books and other religious items with them.

Religious education should be consistent with the rights of others in the facility and the broader Australian community, and it should promote tolerance.

Sources

Treaties:

ICCPR 18, 27; CRC 14, 29(d), 30; ICESCR 13; Refugee Convention 4.

Interpretive instruments:

SMR 41, 42; UNRPJDL 48; UNHCR Guidelines 8 [48(ix)]; Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief UNGA Res 36/55 (25 November 1981).

16. Education

Education is a fundamental right of all people. It includes free and compulsory primary education, access to secondary education and ‘fundamental education’ for adults who have not completed their primary education. Where children are held in immigration detention facilities, they must be assured of an education. Adult educational opportunities are a vital aspect of a meaningful activities program for persons in detention and will assist their integration into Australian society upon release or provide skills that may be useful upon return to their home country.

16.1 Adult education

Standard

Detainees have access to a range of classes, training (including vocationally-oriented training) and creative and cultural pursuits that include the teaching of English and they are encouraged to attend.

Education is provided according to identified needs. The range, frequency, quantity and quality of classes are sufficient to meet the differing needs of detainees.

Sources

Treaties:

ICESCR 6(2), 13; Refugee Convention 22.

Interpretive instruments:

SMR 71(5), 77; UNHCR Guidelines 8 [48(xiii)].

16.2 Children’s education

Standard

If detained, children continue with their education. Primary school education is compulsory and secondary schooling is available. Older children no longer attending school should have access to other educational opportunities such as vocationally-oriented training.

Wherever possible, children’s education takes place within the Australian community. Where education is provided within the facility, it is of a standard and quality equivalent to that offered in Australian schools for students with special needs such as English-language instruction.

Parents are consulted about the education of their children and, where possible, offered a choice of schools such as religious schools.

Sources

Treaties:

ICESCR 13; CRC 28, 29.

Interpretive instruments:

UN Committee on Economic, Social and Cultural Rights, *General Comment 13* provides that the right to education ‘extends to all persons of school age residing in the territory of a State party, including non-nationals, and irrespective of their legal status’; UNRPJDL 4, 38, 39; SMR 77; UNHCR Guidelines 8 [48(xiii)].

17. Activities and recreation

Meaningful activities, including education, voluntary work and recreation, are a vital component of the humane treatment of people deprived of their liberty. This is vital as a lack of meaningful activities results in boredom, health and behavioural problems.

17.1 Activities

Standard

There are sufficient opportunities for association with peers and participation in cultural, spiritual and religious activities, including voluntary work in the community, sports, physical exercise and leisure activities and activities in the open air, so as to provide physical and mental stimulation.

These activities reflect the needs of the population of the immigration detention facility and meet the needs of all detainees, including women, older persons and children.

Relevant health and safety standards are applied and observed with respect to these activities and the storage and maintenance of relevant equipment.

Sources

Treaties:

ICCPR 2(1), 3, 7, 10, 18, 19, 22, 26, 27; CAT 16; ICESCR 2(2), 3, 12, 15; CRC 6, 13-15, 22-24, 27, 30, 31, 32, 37(c), 39; CRPD 21, 25, 26, 30; CEDAW 11; CRPD 27.

Interpretive instruments:

SMR 21, 71(3), 73, 74, 75, 76, 78, 89; UNRPJDL 32, 44, 46, 47; CPT Standards (2011) pp 65, 76; BOP 8; Bangkok Rules 42; UNHCR Guidelines 8 [48(viii)].

17.2 Excursions

Standard

There are regular excursions to places of interest outside of the detention facility (such as libraries, museums, cinemas and sporting facilities) for detainees.

Detainees are consulted about the places they would like to visit.

Restrictions on excursions in the case of individual detainees are only imposed if necessary and proportionate for the purpose of promoting the general welfare in a democratic society. For example, a restriction could be justified in cases of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Sources

Treaties:

ICESCR 4, 15.

Interpretive instruments:

UNRPJDL 59.

18. Accommodation

Immigration detainees should not be detained in accommodation that is prison-like. The European Committee for the Prevention against Torture (CPT) has stated that prisons are ‘by definition’ unsuitable for immigration detainees who are neither convicted nor suspected of a criminal offence. Further, it has said that immigration detention facilities should be specifically designed for their purpose, avoid ‘any impression of a ‘carceral environment’, be staffed by suitably qualified personnel and have an appropriate regime of activities, including ‘outdoor exercise, access to a day room and to radio/television and newspapers/magazines, as well as other appropriate means of recreation (e.g. board games, table tennis)’.⁶

18.1 Design and fit-out

Standard

Accommodation facilities meet the requirements of health and human dignity. This includes design and fit-out that meet relevant standards concerning cubic content of air, minimum floor space, room height, lighting, hygiene, heating and ventilation suitable for the climate, and the health, dignity, privacy and other needs of detainees, such as accessibility for persons with a disability.

Sources

Treaties:

ICCPR 7, 10, 17; CAT 16; ICESCR 11; CRPD 9, 14(2), 15

Interpretive instruments:

BOP 1; (by analogy) Basic Principles 1; UNRPJDL 31, 33; SMR 10, 11, 19; CPT Standards (2011) p 17 (overcrowding may constitute inhuman or degrading treatment); UNHCR Guidelines 8 [48 (x)].

National law:

Building Code of Australia 2011 Part A3 Classification of Buildings and Structures, Part F3 Room Heights, Part F4 Lighting and Ventilation.

18.2 Organisation of accommodation

Standard	Sources
<p>As a general rule, unrelated men and women are accommodated in separate areas for reasons of safety and privacy.</p> <p>Decisions concerning accommodation also take into account particular vulnerabilities such as risks of violence to gay, lesbian, bisexual, transgender and intersex detainees. As far as possible, these detainees participate in decisions concerning their accommodation.</p> <p>If detained, primary care givers and the children they are caring for are accommodated separately from unrelated adults.</p> <p>Wherever possible detention authorities meet the wishes of particular groups of detainees who, for familial, religious or cultural reasons, wish to be accommodated together.</p> <p>While detainees are responsible for the care of their children living in immigration detention facilities, the Department and the staff of the facility take reasonable steps to ensure a safe environment for the children.</p>	<p>Treaties: ICCPR 10(2), 17, 18, 22, 23, 24, 27; CRC 2, 3, 5, 9, 14(2), 16, 18, 19, 20, 24, 25, 27, 31, 37; CEDAW 2; ICESCR 15.</p> <p>Interpretive instruments: UNHCR Guidelines 8 [48 (v)]; SMR 8, 23; UNRPJL 29; (by analogy) Standard Minimum Rules for the Administration of Juvenile Justice Rule 26.3; (by analogy) Standard Guidelines for Corrections Australia Revised 2004 2.53-2.56; (by analogy) EPR 36.1-36.3; UN Committee on the Elimination of Discrimination against Women, <i>General Recommendation No 19</i>: discrimination against women includes violence against women; Yogyakarta Principles 9.</p>

18.3 Accommodation safety and security

Standard	Sources
<p>Detainees are safe when in their rooms and in communal areas of the facility.</p> <p>Security measures are appropriate in light of the particular vulnerabilities of persons held in immigration detention (see the Standards on 'security').</p> <p>Accommodation is free from hanging points.</p> <p>There is suitable storage for property.</p> <p>Adequate emergency management procedures are in place.</p>	<p>Treaties: ICCPR 6, 7, 10; CAT 2, 16.</p> <p>Interpretive instruments: SMR 27.</p>

19. Children's special needs

Children should not be held in immigration detention facilities except as a 'last resort' and for the 'shortest appropriate period of time' (CRC 37(b)). In the exceptional case where children are held in immigration detention facilities, they are owed particular obligations because of their status as children.

19.1 Decisions to detain children and their families

Standard

Children are not detained except as a 'last resort and for the shortest appropriate period of time'.

Children are not separated from parents or primary care-givers unless this is in the best interests of the child.

Primary care-givers of children are not detained unless they are individually assessed as posing an unacceptable risk to the Australian community and that risk cannot be met in a less restrictive way.

Facilities in which children and their families are detained have the least restrictive environments possible.

Children and their families are accommodated separately from unrelated adults.

If a young person's age is in doubt, a suitably qualified and trained interviewer with the consent of the young person and their guardian or other independent adult conducts an age assessment interview. Any age assessment process applies the principle of the benefit of the doubt and is conducted in a manner that ensures the protection of the best interests of the child. X-ray or other scientific evidence is not used as evidence that a young person is an adult.

Sources

Treaties:

CRC 3, 9, 22, 37(b); ICCPR 23, 24(1); ICESCR 10.

Interpretive instruments:

UNRPJDL 2, 28; UNHCR Guidelines 9.2; UN Committee on the Rights of the Child, *General Comment 6* [31] (i); UNHCR Guidelines on Determining the Best Interests of the Child.

19.2 Decision-making in the best interests of the child

Standard

In all actions concerning a child in an immigration detention facility, the best interests of the child is a primary consideration.

Child detainees capable of forming their own views are enabled to express their views freely in all matters affecting them. Their views are accorded appropriate weight having regard to the child's age and maturity.

The Department, facility management and staff respect parents' and care-givers' rights and responsibilities:

- for the upbringing and development of their children or children they care for who are living in immigration detention facilities
- to provide appropriate advice and guidance in the exercise of the child's rights.

Professional support for parents is provided where required.

Sources

Treaties:

CRC 3, 5, 9, 12, 14, 16, 18, 22; ICCPR 23, 24(1); ICESCR 10(1) and (3).

Interpretive instruments:

UNHCR Guidelines on Determining the Best Interests of the Child.

19.3 Unaccompanied minors

Standard

Unaccompanied minors, like other children, are detained only as a last resort. If detained, their accommodation is separate from unrelated adults.

Unaccompanied minors have the right to maintain direct contacts with their parents.

Unaccompanied minors in immigration detention facilities receive special protection and assistance.

An independent legal guardian or adviser is appointed for every unaccompanied minor.

Sources

Treaties:

CRC 9, 10, 20, 22; ICCPR 17, 23, 24.

Interpretive instruments:

UNRPJDL 28; UNHCR Guidelines 9.2 [54] & [56]; BOP 31; UNHCR Guidelines on Determining the Best Interests of the Child.

National law:

Immigration (Guardianship of Children) Act 1946 (Cth), s 6.

19.4 Babies and young children

Standard

There is professional support for parents to meet the developmental needs of babies and young children in immigration detention facilities.

Sources

Treaties:
CRC 18(2), 27(3).

Interpretive instruments:
CPT Standards (2011) p 92; UN Committee on the Rights of the Child, *General Comment 7* [28].

19.5 Child protection

Standard

Measures are taken to protect children in immigration detention facilities from all forms of violence, injury or abuse, maltreatment or exploitation, including sexual abuse. Where child abuse is suspected, procedures for reporting and responding are followed in accordance with relevant legislation.

Children are supported following any disclosure of past or current abuse or mistreatment.

All necessary measures are taken without delay to promote the physical and psychological recovery and social integration of child victims of abuse, torture or cruel inhuman or degrading treatment or punishment.

Sources

Treaties:
CRC 3(3), 19, 39.

Interpretive instruments:
UNRPJDL 28, 87(d).

National law:
Mandatory reporting is required of certain persons, as are criminal background checks, under state and territory legislation.

19.6 Activities and education

Standard

Children's rights to education, to rest and leisure, to engage in play and recreational activities and to participate in cultural life and the arts are respected and actively promoted.

(See further 'education' and 'activities' in these Standards.)

Sources

Treaties:
CRC 29, 30, 31.

Interpretive instruments:
UNRPJDL 4; CPT Standards (2011) p 86; UNHCR Guidelines 8 [48 (xiii)].

19.7 Child care arrangements when parents are unavailable or absent

Standard

Safe child care arrangements are made when a parent or primary care-giver is participating in legal or immigration proceedings, and children are not to be present, or, where necessary, when a parent or primary care-giver is participating in activities offered by the facility.

When a parent or primary care-giver is hospitalised, the parent or primary care-giver is consulted in relation to care arrangements for the child(ren) in their absence.

When a child detainee is admitted to hospital, bed watch by detention facility staff is authorised only after a risk assessment, in consultation with medical staff. Restraints are not used on children, including during transport.

Sources

Treaties:

CRC 5, 18(2), 37(c); ICCPR 23, 24, 26; ICESCR 2(2), 3, 10.

Interpretive instruments:

UNRPJDL 49; BOP 31; CPT Standards (2011) p 92; Bangkok Rules 42(2).

20. Detainees with special needs

Alternatives to detention should be actively considered for many people with special needs, including children, victims of trauma and torture and the elderly. Where detention of people with special needs occurs, their requirements will have to be met within detention facilities. This will sometimes require treatment that differs from other detainees.

20.1 Individual care requirements to be identified

Standard

Individual care requirements of detainees with special needs, including unaccompanied elderly people and children, single women, gay, lesbian, bisexual, transgender or intersex persons, torture and trauma victims, trafficked persons, victims of sexual and gender-based violence, and people with a mental or physical disability, are identified and addressed.

Sources

Treaties:

ICCPR 2, 3, 24, 26; ICESCR 2, 3, 10; CRC 20, 22, 23, 37(c), 39; CEDAW 2; CRPD 14(2).

Interpretive instruments:

UNRPJDL 27, 28.

20.2 Women

Standard

To respect cultural values and enhance the physical protection of women in immigration detention, female detainees should be attended and supervised only by female members of staff when in the bathroom and sleeping areas of the facility or when under observation (for mental health reasons, for example). This does not preclude male members of staff, particularly medical officers and teachers from carrying out their professional duties in the parts of immigration detention facilities set aside for women.

(See further the Standards on 'accommodation' and 'health'.)

Sources

Treaties:

ICCPR 2, 3, 26; CEDAW 2.

Interpretive instruments:

SMR 53; CPT Standards (2011) p 91; UNHCR Guidelines 9.3. [59]; UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 19: discrimination against women includes violence against women.

20.3 Persons with disabilities

Standard

Detainees with disabilities are entitled to respect for their human rights, including the rights set out in the *Convention on the Rights of Persons with Disabilities*. Where required, reasonable accommodation is made to ensure that all goods, services and facilities are accessible to detainees with disabilities, and that they are integrated into the routine of the facility, including activities and recreation.

(See further the Standards on 'accommodation'.)

Sources

Treaties:

CRPD 5, 9, 14(2) (among others); ICCPR 2, 26; ICESCR 2; CRC 23. Reasonable accommodation is defined in CRPD 2 as 'necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.'

Interpretive instruments:

UNRPJDL 47; UNHCR Guidelines 9.5.

Endnotes

- 1 Information on the Australian Human Rights Commission's periodic visits to immigration detention facilities, and analysis of Australia's immigration detention and asylum seeker policy more generally, is available at www.humanrights.gov.au/human_rights/immigration/detention_rights.html.
- 2 The Commission receives complaints and conducts inquiries under section 11(1)(f) of the *Australian Human Rights Commission Act 1986* (Cth). More information is available at www.humanrights.gov.au/legal/humanrightsreports/index.html.
- 3 Section 11(1)(n) of the *Australian Human Rights Commission Act 1986* (Cth).
- 4 *S v Secretary, Department of Immigration and Multicultural and Indigenous Affairs* [2005] 143 FCA 549.
- 5 *Inquests into the Deaths of Josefa Rauluni, Ahmed Obeid Al-Akabi and David Saunders*, findings of the NSW State Coroner, NSW Coroner's Court, Glebe, 19 December 2011 at p 10.
- 6 CPT Standards (2011) pp 65-66.

- **Further Information**

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