



Australian  
Human Rights  
Commission

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Mr Al Dahan v Commonwealth of Australia  
(Department of Home Affairs)

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**[2024] AusHRC 168**

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July 2024

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Australian Human Rights Commission  
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# **Mr Al Dahan v Commonwealth of Australia (Department of Home Affairs)**

[2024] AusHRC 168

*Report into the use of force*

Australian Human Rights Commission 2024

The Hon Mark Dreyfus KC MP  
Attorney-General  
Parliament House  
Canberra ACT 2600

Dear Attorney

I have completed my report pursuant to s 11(1)(f) of the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act) into the human rights complaint of Mr Al Dahan, alleging a breach of his human rights by the Department of Home Affairs (Department).

Mr Al Dahan complains that the force used against him by staff of Serco Australia Pty Ltd (Serco) while detained at Villawood Immigration Detention Centre (VIDC), contravened article 10(1) of the *International Covenant on Civil and Political Rights* (ICCPR).

As a result of this inquiry, I find that the decision to re-enter Mr Al Dahan's room on 28 December 2019 and the use of force against Mr Al Dahan to restrain and lower him to the floor of his room was not utilised as a measure of last resort, nor was there sufficient justification to warrant it. Accordingly, by using force at that time, Serco officers did not treat him with humanity or inherent respect for his dignity, contrary to article 10(1) of the ICCPR.

On 16 February 2024, I provided the Department with a notice issued under s 29(2) of the AHRC Act setting out my findings and recommendations in this matter. The Department provided its response to my findings and recommendations on 11 June 2024. That response can be found in Part 9 of this report.

I enclose a copy of my report.

Yours sincerely,



Emeritus Professor Rosalind Croucher AM FAAL  
**President**  
Australian Human Rights Commission  
July 2024

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## 1 Introduction

1. The Australian Human Rights Commission (Commission) has conducted an inquiry into a complaint by Mr Ali Al Dahan against the Commonwealth of Australia, Department of Home Affairs (the Department) alleging a breach of his human rights. The inquiry has been undertaken pursuant to section 11(1)(f) of the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act).
2. Mr Al Dahan complains about force used against him by Serco Australia Pty Ltd (Serco) officers while he was detained in Hotham compound at the Villawood Immigration Detention Centre (VIDC). Serco operates as a contractor for the Department to manage detention centres.
3. Mr Al Dahan's complaint raises possible breaches of articles 7 and 10(1) of the *International Covenant on Civil and Political Rights* (ICCPR) as scheduled to the AHRC Act.
4. This document comprises a report of my findings in relation to this inquiry and my recommendations to the Commonwealth.

## 2 Summary of findings and recommendations

5. As a result of this inquiry, I find that the decision to use force against Mr Al Dahan on 28 December 2019 was not used as a last resort and cannot be justified as reasonable and necessary, in breach of Mr Al Dahan's rights under article 10(1) of the ICCPR.
6. I make the following recommendations:

### **Recommendation 1**

The Commission recommends that the Department facilitate Mr Al Dahan receiving legal advice to discuss his options for seeking compensation as a result of the matters raised in the Commission's report, and either make available an interpreter or provide him with sufficient funding for an interpreter in the provision of that legal advice.

### **Recommendation 2**

The Commission recommends that the Department ensures that Serco discusses this incident with officers involved as a reminder of the importance

of utilising their body worn cameras, and review whether any changes to policy or training materials are warranted.

### **Recommendation 3**

The Commission recommends that the Department request Serco to update its 'Post Incident Review' template form to include a requirement to identify whether:

- body worn cameras had been turned on for the incident (and if not, why not)
- any footage (CCTV and/or body worn camera) of the incident was available
- if footage was available, whether it was viewed in the course of the review process.

## **3 Background**

7. Mr Al Dahan is a citizen of Iraq. He arrived in Australia on 20 December 1999 and became a permanent resident on 9 July 2008.
8. On 19 January 2015, Mr Al Dahan's Protection visa was cancelled pursuant to section 501(3A) of the *Migration Act 1958* (Cth), and he was detained at the VIDC on 31 January 2015. He remains in immigration detention.

### **3.1 Use of force incident on 28 December 2019**

9. Mr Al Dahan was detained in High Care Accommodation in the Hotham compound at VIDC from 13 December 2019 to 2 January 2020.
10. Mr Al Dahan alleges that he was beaten by Serco officers on 28 December 2019.
11. In incident reports provided by the Department, Serco has recorded that at approximately 11:45 am, Mr Al Dahan covered the CCTV camera in his room with toilet paper. Serco officers entered the room to request that he remove the toilet paper. Mr Al Dahan responded negatively and was verbally abusive towards the officers. After a second request, he did remove the toilet paper, and was then informed that he was to be escorted to the IHMS medical centre for a prescribed dose of methadone. Mr Al Dahan initially refused to comply, and eventually the enhanced escort position (EEP) was used by officers to escort him. On the way to the clinic, Mr Al Dahan continued to resist, by dropping his weight and requiring Serco officers to physically carry him.

12. According to the incident reports, upon returning to Hotham at approximately 12:02 pm, Mr Al Dahan refused to enter his room. The Serco officers again used the EEP to force Mr Al Dahan to the floor until he was compliant, at which time he was escorted back into his room. The incident reports state that while officers were attempting to exit the room, Mr Al Dahan lunged towards the officers and spat at them. The Serco officers entered the room and utilised force to lower Mr Al Dahan to the floor, where he was left while officers exited.
13. The Department has provided CCTV footage of the incident. The CCTV footage provided covers only the parts of the incident where Mr Al Dahan was in his room (Hotham 4), and no sound is available. At 11:45:20 am (as timestamped on the footage), Mr Al Dahan can be seen removing an obstruction from the camera. Mr Al Dahan exits the room with officers at 11:45:53 am.
14. At 12:02:32 pm, Mr Al Dahan can be seen entering the room with his hands held behind his back, accompanied by 4 officers. The footage skips slightly at this point, but at 12:02:37 pm, Mr Al Dahan appears to break free, turn around, and move towards the officers. At this point, the door to the room is being closed, but at 12:02:40 pm, the officers open the door and enter the room. Three officers make contact with Mr Al Dahan, who has run towards the bed, taking hold of his legs and arms, and lowering him to the ground, while the fourth officer speaks into a radio. The officers then depart the room, leaving Mr Al Dahan.
15. According to IHMS records, at 11:07 pm in the evening, an IHMS nurse was asked by Serco to assess Mr Al Dahan, who was complaining of pain to his ribs. The nurse inspected his chest area but identified no issues of concern. Mr Al Dahan requested an ambulance be called for him, in response to which the IHMS primary health nurse wrote the following notes:

Client has numerous calls for ambulance over past week to 10 days, some of it was with drug seeking behaviour as noted in previous consult notes.

## **4 Legal framework**

### **4.1 Functions of the Commission**

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



17. Section 20(1)(b) of the AHRC Act requires the Commission to perform this function when a complaint is made to it in writing alleging that an act is inconsistent with, or contrary to, any human right.
18. Section 8(6) of the AHRC Act requires that the functions of the Commission under section 11(1)(f) be performed by the President.
19. The rights and freedoms recognised by the ICCPR are 'human rights' within the meaning of the AHRC Act.<sup>1</sup>

#### **4.2 Scope of 'act' and 'practice'**

20. The terms 'act' and 'practice' are defined in section 3(1) of the AHRC Act to include an act done or a practice engaged in by or on behalf of the Commonwealth or an authority of the Commonwealth or under an enactment.
21. Section 3(3) provides that the reference to, or to the doing of, an act includes a reference to a refusal or failure to do an act.
22. The functions of the Commission identified in section 11(1)(f) of the AHRC Act are only engaged where the act complained of is not one required by law to be taken, that is, where the relevant act or practice is within the discretion of the Commonwealth, its officers or those acting on its behalf.<sup>2</sup>

### **5 Human rights of detainees**

23. Persons subject to immigration detention are entitled to the human rights protected by the ICCPR, including special protections as persons deprived of their liberty by the State.
24. Article 7 of the ICCPR provides:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
25. Article 10(1) of the ICCPR provides:

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
26. States have a responsibility to ensure that the rights guaranteed in articles 7 and 10 of the ICCPR are accorded to detainees in privately run detention facilities.
27. Article 10(1) imposes a positive obligation on States to ensure that detainees are treated with humanity and respect for their inherent dignity.<sup>3</sup> This is in

recognition of the fact that detained persons are particularly vulnerable because they are wholly reliant on a relevant authority to provide for their basic needs.<sup>4</sup> In this case, the relevant authority is the Commonwealth of Australia through the Department and the service providers who act on its behalf.

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

In contrast to article 7, article 10 relates only to the treatment of persons who have been deprived of their liberty. Whereas article 7 primarily is directed at specific, usually violent attacks on personal integrity, article 10 relates more to the general state of a detention facility or some other closed institution and to the specific conditions of detention. As a result, article 10 primarily imposes on States parties a positive obligation to ensure human dignity. Regardless of economic difficulties, the State must establish a minimum standard for humane conditions of detention (requirement of humane treatment). In other words, it must provide detainees and prisoners with a minimum of services to satisfy their basic needs and human rights (food, clothing, medical care, sanitary facilities, education, work, recreation, communication, light, opportunity to move about, privacy, etc). ... Finally it is again stressed that the requirement of humane treatment pursuant to article 10 goes beyond the mere prohibition of inhuman treatment under article 7 with regard to the extent of the necessary 'respect for the inherent dignity of the human person'.<sup>5</sup>

29. These conclusions are also evident in the jurisprudence of the United Nations Human Rights Committee, which discusses the positive obligation on relevant authorities to treat detainees with humanity and respect for their dignity.<sup>6</sup>
30. The content of article 10(1) has been developed through a number of United Nations instruments that articulate minimum international standards in relation to people deprived of their liberty,<sup>7</sup> including:
- the *Nelson Mandela Rules*,<sup>8</sup> and
  - the *Body of Principles for the Protection of all Persons under Any Form of Detention* (Body of Principles).<sup>9</sup>
31. In 2015, the Mandela Rules were adopted by the United Nations. They provide a restatement of a number of United Nations instruments that set out the standards and norms for the treatment of prisoners.<sup>10</sup> At least some of these principles have been determined to be minimum standards regarding the

conditions of detention that must be observed regardless of a State Party's level of development.

32. Several of the Mandela Rules are relevant to the use of force on detainees by detaining officers. Rule 82(1) of the Mandela Rules provides:

Prison staff shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Prison staff who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the prison director.

33. This rule provides limits on the circumstances in which force may be used and limits the use of force in those circumstances to what is necessary.

34. Rule 121 requires that civil prisoners 'shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order'.

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

- article 10(1) of the ICCPR imposes a positive obligation on State parties to take action to ensure that detained persons are treated with humanity and dignity
- the threshold for establishing a breach of article 10(1) of the ICCPR is lower than the threshold for establishing 'cruel, inhuman or degrading treatment' within the meaning of article 7 of the ICCPR, which is a negative obligation to refrain from such treatment
- article 10(1) of the ICCPR may be breached if a detainee's rights protected by one of the other articles of the ICCPR are breached, unless that breach is necessitated by the deprivation of liberty
- minimum standards of humane treatment must be observed in detention conditions, including immigration detention.

## **6 Legal and policy framework for use of force in immigration detention**

36. Serco's contract with the Department to run immigration detention facilities, and the Department's Detention Services Manual (DSM), are the primary documents that set out the obligations of Serco and departmental staff with respect to use of force.

37. The Serco contract provides that Serco must ensure that force is not used unless as a measure of last resort, and then only with the reasonable level of force necessary. It further states that all reasonable precautionary measures must be taken to ensure the safety of the detainee. It requires personnel who use force to be properly trained and accredited.<sup>11</sup>
38. When Serco has used force or instruments of restraint such as handcuffs on a detainee, it must prepare an incident report for the Department and refer the detainees to the Detention Health Services Provider for a medical examination immediately after the use of force or restraints.<sup>12</sup>
39. Both the Department and its service providers owe a duty of care to all persons held in immigration detention. This means that they are legally obliged to exercise reasonable care to prevent detainees from suffering reasonably foreseeable harm. The Department's duty of care is non-delegable.
40. When the Department contracts out the provision of services to people in held detention to third parties, it has a responsibility to ensure the contracted service providers are qualified and can meet the standards outlined in the contract.
41. While these third parties must also discharge their own duty of care obligations to a detainee in held detention, this duty is additional to, and is not a substitute for, the Department's duty of care.
42. The Department's DSM provides that:
  - conflict resolution through negotiation and de-escalation is, where practicable, to be considered before the use of force and/or restraint is used
  - reasonable force and/or restraint should only be used as a measure of last resort
  - reasonable force and/or restraint may be used to prevent the detainee inflicting self-injury, injury to others, escaping or destruction of property
  - reasonable force and/or restraint may only be used for the shortest amount of time possible to the extent that is both lawfully and reasonably necessary

- if the management of a detainee can be achieved by other means, force must not be used<sup>13</sup>
  - the use of force and/or restraint must not include cruel, inhumane or degrading treatment
  - the use of force and/or restraint must not be used for the purposes of punishment
  - the excessive use of force and/or restraint is unlawful and must not occur in any circumstances
  - the use of excessive force on a detainee may constitute an assault
  - all instances where use of force and/or restraint are applied (including any follow-up action), must be reported in accordance with the relevant FDSP operational procedures.<sup>14</sup>
43. The Department's DSM provides that 'all use of force and/or restraint should be proportionate to the situation, objectively justifiable and only used as a measure of last resort' and that the 'level of force must be proportionate to the threat being faced and always at the minimum level required to achieve legislative outcomes'.<sup>15</sup>

## **7 Consideration**

### **7.1 Act or practice of the Commonwealth**

44. Serco was acting under a contract with the Department, and therefore the act or practice of Serco is an act or practice by or on behalf of the Commonwealth.
45. The relevant act or practice by or on behalf of the Commonwealth for the purposes of this inquiry is the decision to use force against Mr Al Dahan on 28 December 2019.

### **7.2 Use of force incident on 28 December 2019**

46. The use of force incident the subject of the Commission's inquiry, is the force used by Serco officers when Mr Al Dahan was returned to his room in the Hotham compound following the IHMS appointment. As set out above, Serco has provided incident reports for this use of force incident, and the Department has provided CCTV footage. The CCTV footage is of Mr Al Dahan's room only, and no sound is available.

47. The CCTV footage shows Mr Al Dahan being escorted back to his room at 12:02:32 pm in the EEP by four officers (Figure 1).



**Figure 1:** Mr Al Dahan being escorted to his room at Hotham

48. A part of the CCTV footage skips momentarily, but once it resumes, Mr Al Dahan appears to break free, turn around, and move towards the officers (Figure 2). The Serco incident reports state that while officers were attempting to exit the room, Mr Al Dahan lunged towards the officers and was spitting.



**Figure 2:** Mr Al Dahan moving towards the officers

49. At this point, the officers were in the process of closing the door to Mr Al Dahan's room, as seen in Figure 3 below.

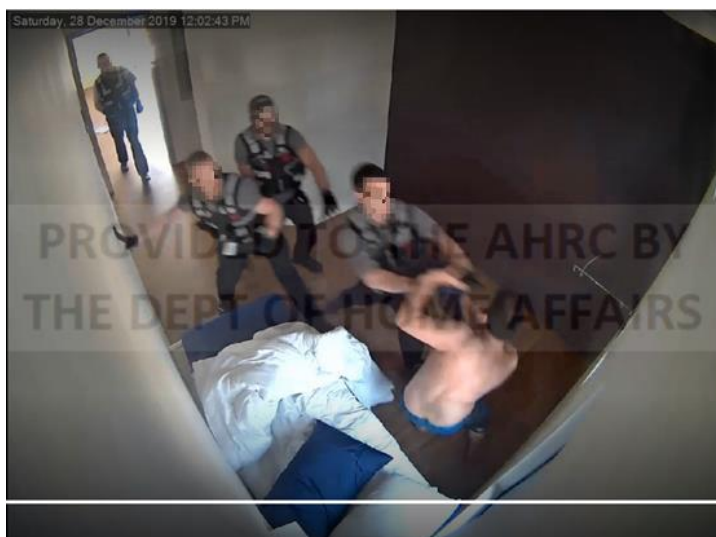


**Figure 3:** Officers have commenced closing the door

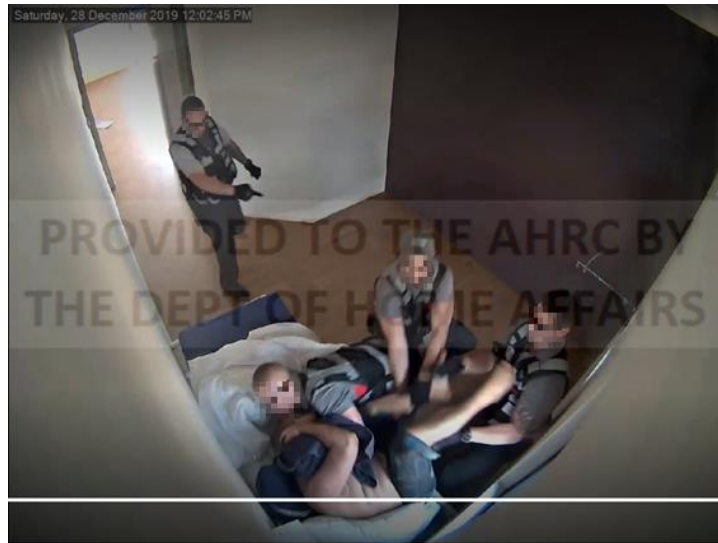
50. Instead of closing the door fully, the officers open it again, and enter the room and run towards Mr Al Dahan (Figure 4), who backs away and attempts to shield himself from them before falling or being pushed onto his bed (Figure 5).



**Figure 4:** Officers open the door fully



**Figure 5:** Mr Al Dahan attempts to shield himself from officers



**Figure 6:** Officers restrain Mr Al Dahan on his bed

51. From there, the officers restrain Mr Al Dahan (Figure 6), and lower him to the floor (Figure 7). The Serco officers then leave the room.



**Figure 7:** Officers lower Mr Al Dahan to the floor

52. The Serco incident reports state that while the officers were exiting the room, Mr Al Dahan lunged at them and was spitting. The CCTV footage confirms that Mr Al Dahan broke free, turned and moved toward the officers. The CCTV footage also shows that at this time, the officers have started closing the door.
53. In my view, it was open to the officers to close the door to Mr Al Dahan's room to prevent harm to themselves or Mr Al Dahan. Instead, they opened it, and entered his room and restrained him again. In my view, this force was not used as a last resort, nor was it reasonable and necessary to prevent Mr Al Dahan inflicting self-injury, injury to others, escaping or destruction of



property as required by the Department's DSM. The Department's DSM also states that force must not be used if the management of a detainee can be achieved by other means.

54. Mr Al Dahan's management plan in place at the time of this incident contained instructions that Mr Al Dahan was to be accommodated in Hotham 4 on an 'open door policy with access to the Hotham 4 lounge area only', but that 'if [his] behaviour escalates to the point of physical aggression (including spitting, hitting or kicking ... permission is sought to lock him down in his room until his behaviour de-escalates'. This event had been considered and prepared for, according to this management plan.

55. In response to a question to the Department by the Commission about the availability of body camera footage with respect to this incident, the Department stated:

There was no body camera footage recorded in relation to this incident, only the CCTV footage that was originally provided as part of this request. Body Worn Cameras (BWC) are not a regulatory requirement, however were introduced by Serco as a tool to complement existing evidence capturing mechanisms. BWC's are generally utilised when an incident appears to be escalating, However, in some instances an incident can escalate so quickly that the immediate act of activating the BWC outweighs the need to react in deescalating the situation, as appears to have been the case in relation to the use of force incident involving Mr Al Dahan on 28 December 2019.

56. The entire incident which occurred on 28 December 2019 spanned at least 17 minutes, during which time I consider an opportunity to turn on body cameras might have presented itself, if not before entering Mr Al Dahan's room at 11:45 am. In light of the history of the interactions between Serco officers and Mr Al Dahan that involved a number of use of force incidents, I consider that the officers should have utilised their body cameras more frequently in their interactions with him. This would have provided not only further video evidence of the incident, but also contemporaneous audio recording of the incident.

57. On 12 October 2023, I issued a preliminary view to the Department and Mr Al Dahan, raising each of the matters expressed in this notice. The Department responded to my preliminary view on 9 February 2024, stating that the allegations raised 'warrant further departmental investigation'.

The Department takes all complaints seriously and wishes to assure the Commission that allegations of staff misconduct are investigated, assessed under contractual mechanisms and any cases that may involve criminal, corrupt and/or serious misconduct are referred to police or the Department's Integrity and Professional Standards.

Further to its response dated 3 January 2023, the Department seeks to clarify that the Facilities and Detainee Services Provider (FDSP) is contractually required to digitally record an audio and visual record of all instances where there is any incident that the FDSP, acting reasonably, knows that the Department would wish to view or hear as evidence of the actions of its officers.

58. The Department did not take any position as to whether a breach of Mr Al Dahan's rights had occurred.
59. I find that the decision to re-enter the room at 12:02 pm on 28 December 2019 and the use of force against Mr Al Dahan to restrain and lower him to the floor in Hotham 4 was not utilised as a measure of last resort, nor was there sufficient justification to warrant it. In my view, it was open to the Serco officers to close the door, rather than open it and re-enter the room and engage in further force. Accordingly, by using force at that time, Serco officers did not treat him with humanity or inherent respect for his dignity, contrary to article 10(1) of the ICCPR.

## **8 Recommendations**

60. Where, after conducting an inquiry, the Commission finds that an act or practice engaged in by a respondent is inconsistent with or contrary to any human right, the Commission is required to serve notice on the respondent setting out its findings and reasons for those findings.<sup>16</sup> The Commission may include in the notice any recommendations for preventing a repetition of the act or a continuation of the practice.<sup>17</sup> The Commission may also recommend other action to remedy or reduce the loss or damage suffered by a person.<sup>18</sup>

### **8.1 Compensation**

61. Mr Al Dahan has sought compensation as a remedy for the breach of his human rights. Such recommendations for compensation are expressly contemplated in the AHRC Act.<sup>19</sup>
62. In considering the assessment of a recommendation for compensation under section 35 of the AHRC Act (relating to discrimination matters under Part II, Division 4 of the AHRC Act), the Federal Court has indicated that tort principles for the assessment of damages should be applied.<sup>20</sup> For this reason, so far as is possible in the case of a recommendation for compensation, the object should be to place the injured party in the same position as if the wrong had not occurred.<sup>21</sup>

63. My assessment of the appropriateness of making such a recommendation as requested by Mr Al Dahan is made more difficult by the fact that Mr Al Dahan has been unrepresented in his complaint to the Commission. Based on the limited information I have before me, I cannot ascertain whether Mr Al Dahan has suffered any compensable loss. He did not specify the basis for seeking compensation in his complaint, and has not provided any evidence of loss.
64. Rather than make a recommendation for compensation in Mr Al Dahan's case, I consider it appropriate that the Department facilitate him receiving legal advice to ensure that all options available to him are canvassed, and that the Department provide sufficient funding for an interpreter to be used.

### **Recommendation 1**

The Commission recommends that the Department facilitate Mr Al Dahan receiving legal advice to discuss his options for seeking compensation as a result of the matters raised in the Commission's report, and either make available an interpreter or provide him with sufficient funding for an interpreter in the provision of that legal advice.

## **8.2 Body-worn cameras**

65. The Department's response to the Commission's preliminary view appears to indicate that the Department agrees with the Commission's views expressed at paragraph 56 and 57 above, namely that Serco officers should have identified this incident as one which warranted their body cameras being switched on.
66. Accordingly, this incident could be used as a mechanism for further training to be provided to the individual officers involved, and for Serco officers more generally in their ongoing professional development.

### **Recommendation 2**

The Commission recommends that the Department ensures that Serco discusses this incident with officers involved as a reminder of the importance of utilising their body worn cameras, and review whether any changes to policy or training materials are warranted.

## **8.3 Post Incident Review**

67. Following the incident subject to this report, Serco completed a 'Post Incident Review', which has been provided to the Commission. The purpose of the review appears to be to verify the 'quality and completeness of incident report[s]' completed by officers involved in the use of force.

68. A useful addition to the checklist included on the template form used by Serco in its review would be to identify whether officers involved had used body-worn cameras during the use of force, and whether footage either from body-worn cameras or CCTV had been recorded and/or viewed during the review.
69. Had this been included as a routine inquiry by Serco, it might have been identified sooner as a gap in the processes, policies or training for officers involved. It would also be useful for any later internal or external complaint process for any person reading the post incident review to know whether footage had been viewed by the reviewer.

### **Recommendation 3**

The Commission recommends that the Department request Serco to update its 'Post Incident Review' template form to include a requirement to identify whether:

- Body-worn cameras had been turned on for the incident (and if not, why not)
- any footage (CCTV and/or body-worn camera) of the incident was available
- if footage was available, whether it was viewed in the course of the review process.

## **9 The Department's response to my findings and recommendations**

70. On 16 February 2024, I provided the Department with a notice of my findings and recommendations.
71. On 11 June 2024, the Department provided the following response to my findings and recommendations:

The Department of Home Affairs (the Department) values the role of the Australian Human Rights Commission (the Commission) to inquire into human rights complaints and acknowledges the findings identified in this report and the recommendations made by the President of the Commission.

The Department does not agree that the Commonwealth engaged in acts that were inconsistent with, or contrary to, article 10(1) of the International Covenant on Civil and Political Rights (ICCPR).

### **Recommendation 1 - Disagree**

*The Commission recommends that the Department facilitate Mr Al Dahan receiving legal advice to discuss his options for seeking compensation as a result of the matters raised in the Commission's report, and either make available an interpreter or provide him with sufficient funding for an interpreter in the provision of that legal advice.*

The Department disagrees with recommendation one.

Subsequent to the complaint, Mr Al Dahan was granted a Bridging Visa R (070) on 14 March 2024 and is eligible for case management and other support through Status Resolution Support Services (SRSS). While the SRSS program does not provide legal assistance, caseworkers can provide information on request to Mr Al Dahan about accessing legal assistance.

### **Recommendation 2 - Agree - already implemented**

*The Commission recommends that the Department ensures that Serco discusses this incident with officers involved as a reminder of the importance of utilising their body worn cameras, and review whether any changes to policy or training materials are warranted.*

The Department agrees and has already implemented recommendation two.

On 4 April 2024, the Department provided written correspondence to the Facilities and Detainee Services Provider (FDSP) regarding the use of Body Worn Cameras (BWC) within the Immigration Detention Network (IDN). This correspondence included the request that the FDSP discuss the incident regarding Mr Al Dahan with the officers involved as a reminder of the importance of utilising their BWC and that the FDSP review its policy and training materials relating to the use of BWC.

On 15 April 2024, the FDSP advised the Department in writing that they had discussed the incident with the officers involved and reminded them of the importance of utilising their BWCs. The FDSP further advised that they regularly send reminders to all their staff across the IDN who operate BWCs confirming the requirement to utilise BWCs during an incident response. The FDSP review the BWC Standard Operating Procedure and associated training materials annually. The last review was conducted in October 2023 and all training materials were found to be adequate with no immediate changes or updates required. The Department refers the Commission to the attached correspondence with the FDSP at Attachment B.

### **Recommendation 3 - Agree - already implemented**

*The Commission recommends that the Department request Serco to update its 'Post Incident Review' template form to include a requirement to identify whether:*

*body worn cameras had been turned on for the incident (and if not, why not) any footage (CCTV and/or body worn camera) of the incident was available if footage was available, whether it was viewed in the course of the review process.*

The Department agrees and has already implemented recommendation three.

On 4 April 2024, the Department provided written correspondence to the FDSP regarding the use of BWCs within the IDN. This correspondence included the request that the FDSP update its Post Incident Review (PIR) template form to identify the following:

If BWC was turned on for the incident (if not, why?)

If any footage of the incident was available (CCTV and/or BWC)

If footage was available, whether it was viewed in the course of the PIR process.

On 15 April 2024, the FDSP advised the Department in writing that they are currently in the process of replacing their case management system. The FDSP intends to make the necessary requested amendments to the PIR template as part of development/implementation of their new case management system. The FDSP can consider covering these aspects in a free text field in the current PIR template as an interim measure until the new system is implemented. The Department refers the Commission to the attached correspondence with the FDSP at **Attachment B**.

04 April 2024

[REDACTED]  
Serco Immigration Services  
[REDACTED]

Dear [REDACTED]

**Use of Body Worn Cameras within the IDN**

I am writing to you regarding the use of Body Worn Cameras within the IDN after the outcome and findings of the inquiry by the Australian Human Rights Commission (AHRC) regarding the use of force complaint made by Mr Ali Al Dahan.

In line with the recommendations from the AHRC (attached), the Department requests the following actions from Serco:

- Discuss this incident regarding Mr Ali Al Dahan with the officers involved as a reminder of the importance of utilising their Body Worn Camera.
- Review its policy and training materials relating to the use of Body Worn Cameras to see if any changes or updates are required.
- Update its Post Incident Review (PIR) template form to identify the following:
  - a. Body Worn Camera has been turned on for the incident (if not, why?)
  - b. If any footage was available of the incident (CCTV and/or Body Worn Camera)
  - c. If footage was available, whether it was viewed in the course of the PIR process?

With the current cohort of high-risk detainees within the IDN, the correct use of Body Worn Cameras is crucial to ensure reliable footage is recorded of any incidents that arise.

Please provide a response to the Department by 17 April 2024 to advise if the above requests have been actioned.

[REDACTED]

If you would like to discuss this matter further please do not hesitate to contact

Yours sincerely,

Serco Restricted and Sensitive

**serco**

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Department of Home Affairs

15 April 2024

Dear

**Use of Body Worn Cameras within the Immigration Detention Network**

Thank you for your letter dated 04 April 2024 providing the outcomes / findings of the Australian Human Rights Commission (AHRC) inquiry regarding the use of Body Worn Cameras (BWC) within the Immigration Detention Network (IDN).

Serco note the recommendations from the AHRC and agree with the implementation of the Department requested actions. Serco note that the Mr Ali Al Dahan Use of Force (UoF) incident in question occurred on 28 December 2019 and that some of the requested actions are already addressed. Feedback on the Department requested actions as follows:

- **Action 1. Discuss this incident regarding Mr Ali Al Dahan with the officers involved as a reminder of the importance of utilising their BWCs.** Serco can confirm that all Emergency Response Team (ERT) Detention Service Officers (DSOs) involved in the incident were reminded of the importance of utilising their BWCs during an incident response as part of the incident debrief session. Please note that only one (1) ERT DSO that was involved in the incident is still employed by Serco. Serco regularly send out reminders to all staff across the IDN who operate BWCs confirming this requirement.
- **Action 2. Review its policy and training materials relating to the use of Body Worn Cameras to see if any changes or updates are required.** Serco review the BWC Standard Operating Procedure and the associated training materials on a yearly basis. The last review was conducted in October 2023, and we can confirm that the policy, procedures, and training materials are adequate, and no immediate changes or updates are required.
- **Action 3. Update its Post Incident Review (PIR) template form to identify the following:**
  - a. **Body Worn Camera has been turned on for the incident (if not, why?)**
  - b. **If any footage was available of the incident (CCTV and/or Body Worn Camera)**
  - c. **If footage was available, whether it was viewed in the course of the PIR process?**

Please note that not all Serco employees are issued with a BWC while on shift in an Immigration Detention Facility (IDF), therefore Action 3. a. will only apply where incident response includes ERT officers and/or an incident occurring in a T&E vehicle that has a BWC mounted. There might be instances whereby Residential DSOs respond to and resolve an

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incident prior to ERT attendance in which case no BWC footage would be available. In these cases, Serco would rely on CCTV (not all areas within an IDF are covered by CCTV) footage as part of the PIR process and note the reason for no BWC footage availability.

As the Department of Home Affairs (the Department) / the Australian Border Force (ABF) is aware, Serco is currently in the process of replacing our Case Management System (Serco Care Manager - SCM) with Serco Care 360. It is Serco's intent to make the necessary amendments requested to the PIR template as part of the Serco Care 360 Project development / implementation, rather than updating SCM. Serco can consider covering these aspects in the free text under "Analysis and evaluation of action taken" as part of the current PIR template as an interim measure until such time Serco Care 360 is implemented. Serco would welcome feedback from the Department / ABF on this proposed approach.

If you wish to discuss this matter further, please do not hesitate to contact [REDACTED]

Yours Sincerely,

Serco Asia Pacific

72. I report accordingly to the Attorney-General.

Emeritus Professor Rosalind Croucher AM FAAL  
**President**  
Australian Human Rights Commission  
July 2024

## Endnotes

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- <sup>1</sup> The ICCPR is referred to in the definition of 'human rights' in s 3(1) of the AHRC Act.
- <sup>2</sup> See *Secretary, Department of Defence v HREOC, Burgess & Ors* (1997) 78 FCR 208.
- <sup>3</sup> UN Human Rights Committee, *General Comment No 21: Article 10 (Humane treatment of persons deprived of their liberty)*, 44<sup>th</sup> sess, UN Doc HRI/GEN/1/Rev.9 (10 April 1992) 1 [3].
- <sup>4</sup> UN Human Rights Committee, *General Comment No 21: Article 10 (Humane treatment of persons deprived of their liberty)*, 44<sup>th</sup> sess, UN Doc HRI/GEN/1/Rev.9 (10 April 1992) 1 [3].
- <sup>5</sup> Manfred Nowak, *UN Covenant on Civil and Political Rights CCPR Commentary* (N.P. Engel, 2<sup>nd</sup> ed, 2005) 250.
- <sup>6</sup> UN Human Rights Committee, *Communication No 629/1993*, UN Doc CCPR/C/60/D/639/1995 (28 July 1997) (*Walker and Richards v Jamaica*); UN Human Rights Committee, *Communication No 845/1998*, 74<sup>th</sup> sess, UN Doc CCPR/C/74/D/845/1998 (26 March 2002) (*Kennedy v Trinidad and Tobago*); UN Human Rights Committee, *Communication No 684/1996*, 74<sup>th</sup> sess, UN Doc CCPR/C/74/D/684/1996 (2 April 2002) (*R.S. v Trinidad and Tobago*).
- <sup>7</sup> UN Human Rights Committee, *General Comment No 21: Article 10 (Humane treatment of persons deprived of their liberty)*, 44<sup>th</sup> sess, UN Doc HRI/GEN/1/Rev.9 (10 April 1992) 1 [3].
- <sup>8</sup> UN General Assembly, *Standard Minimum Rules for the Treatment of Prisoners*, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, United Nations Publication, UN Doc. A/CONF/611 (30 August 1955), as amended by 'the Nelson Mandela Rules', UN Doc A/RES/70/175 (17 December 2015).
- <sup>9</sup> The Body of Principles were adopted by the UN General Assembly in *Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment*, GA Res 43/173, UN GAOR, 6<sup>th</sup> Comm, 43<sup>rd</sup> sess, 76<sup>th</sup> plen mtg, Agenda Item 138, UN Doc A/43/49 (9 December 1988) Annex.
- <sup>10</sup> UN General Assembly, *Standard Minimum Rules for the Treatment of Prisoners*, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, United Nations Publication, UN Doc. A/CONF/611 (30 August 1955), as amended by 'the Nelson Mandela Rules', UN Doc A/RES/70/175 (17 December 2015), preliminary observation 2(1), 7.
- <sup>11</sup> Immigration Detention Facilities and Detainee Services Contract between the Commonwealth and Serco, 10 December 2014, Sch 2 (Statement of Work), Section 4 (Security Services) clause 3.8.
- <sup>12</sup> Immigration Detention Facilities and Detainee Services Contract between the Commonwealth and Serco, 10 December 2014, Sch 2 (Statement of Work), Section 4 (Security Services) clause 3.10.
- <sup>13</sup> Department of Home Affairs, *Detention Services Manual – Chapter 10.18 – Safety and security – Use of force* (October 2018) [4].
- <sup>14</sup> Department of Home Affairs, *Detention Services Manual – Chapter 10.18 – Safety and security – Use of force* (October 2018) [5].
- <sup>15</sup> Department of Home Affairs, *Detention Services Manual – Chapter 10.18 – Safety and security – Use of force* (10 October 2018) [5].
- <sup>16</sup> *Australian Human Rights Commission Act 1986* (Cth) ('AHRC Act') s 29(2)(a).
- <sup>17</sup> AHRC Act, s 29(2)(b).
- <sup>18</sup> AHRC Act, s 29(2)(c).
- <sup>19</sup> AHRC Act, s 29(2)(c).
- <sup>20</sup> *Peacock v The Commonwealth* (2000) 104 FCR 464 at 483 (Wilcox J).
- <sup>21</sup> *Hall v A&A Sheiban Pty Limited* (1989) 20 FCR 217, 239 (Lockhart J).