



Australian
Human Rights
Commission

Mr Vakhabov v Commonwealth (Department of Home Affairs)

[2022] AUSHRC 146

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Report into a safe place of detention

Australian Human Rights Commission 2022



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

Dear Attorney

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

Mr Vakhobov complains that he was not provided with a safe place of detention whilst accommodated at the Villawood Immigration Detention Centre contrary to article 10(1) of the *International Covenant on Civil and Political Rights* (ICCPR), that is his right to be treated with humanity and with respect for his inherent dignity.

As a result of this inquiry, I have found that the following acts of the Department were inconsistent with or contrary to article 10(1) of the ICCPR:

- The Department's decision to place a detainee who had allegedly assaulted Mr Vakhobov while in immigration detention, into immigration detention accommodation from where he continued to be able to have access to Mr Vakhobov in his respective immigration detention accommodation, without undertaking an adequate or contemporaneous risk assessment, or having adequate regard to Mr Vakhobov's security and safety, and
- The Department's decision to place Mr Vakhobov into immigration detention accommodation where the detainee who had allegedly assaulted him had, just weeks earlier, been relocated for the purpose of separating him from Mr Vakhobov, without any documented risk assessment process.

Pursuant to section 29(2)(b) of the AHRC Act, I have included six recommendations to the Department in this report.

On 17 September 2021, I provided the Department with a notice issued under section 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 29 March 2022. That response can be found in Part 13 of this report.

I enclose a copy of my report.

Yours sincerely

A handwritten signature in black ink that reads "Rosalind Croucher". The signature is written in a cursive style with a large initial 'R'.

Emeritus Professor Rosalind Croucher AM
President
Australian Human Rights Commission

August 2022

1 Introduction to this inquiry

1. The Australian Human Rights Commission (Commission) has conducted an inquiry in response to a complaint by Mr Stanislav Christopher Vakhabov against the Commonwealth, specifically the Department of Home Affairs (Department).
2. Among other things, Mr Vakhabov complained that whilst accommodated at Villawood Immigration Detention Centre (VIDC), he was not provided with a safe place of detention, contrary to article 10(1) of the *International Covenant on Civil and Political Rights* (ICCPR) as scheduled to the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act).
3. This report sets out the Commission's findings in response to its inquiry into Mr Vakhabov's complaint. The Commission has found that the following acts of the Commonwealth are inconsistent with, or contrary to, article 10(1) of the ICCPR:
 - a. The Department's decision to place a detainee who had allegedly assaulted Mr Vakhabov while in immigration detention, into immigration detention accommodation from where he continued to be able to have access to Mr Vakhabov in his respective immigration detention accommodation, without undertaking an adequate or contemporaneous risk assessment, or having adequate regard to Mr Vakhabov's security and safety, and
 - b. The Department's decision to place Mr Vakhabov into immigration detention accommodation where the detainee who had allegedly assaulted him had, just weeks earlier, been relocated for the purpose of separating him from Mr Vakhabov, without any documented risk assessment process.
4. In response to these findings, and having regard to the matters set out in the report below, the Commission makes the following recommendations:

Recommendation 1

That a risk assessment is undertaken for all detainees involved in an act of violence as part of the Department and its service provider Serco's response to that act of violence. The assessment should include an assessment of the likelihood of the alleged perpetrator engaging in a further act of violence in the future, the risks posed to the detainee who was the victim of the violence, and the steps necessary to mitigate those risks.

Recommendation 2

That the Department develop a mandatory protocol for responding to detainee-on-detainee violence, which includes the immediate separation of detainees following any such incident to accommodation where an alleged perpetrator can no longer have access to the purported victim.

Recommendation 3

That the Department ask Serco to review the Security Risk Assessment Tool to ensure that it clearly identifies detainees who are vulnerable to harm from other detainees, and detainees who present a risk to the safety of other detainees.

Recommendation 4

The Commission recommends that any decision to transfer a detainee to different accommodation within the immigration detention network take into account:

- a. any specific identified risks posed to that detainee from other detainees, for example, as a result of previous incidents
- b. any general risks identified to that detainee from other detainees, as revealed in the updated security risk assessment tool amended in accordance with recommendation 3, and

that effective measures are put in place to mitigate or eliminate those risks.

Recommendation 5

That the Department should immediately implement measures to protect people at risk of violence at VIDC, including by exploring alternative detention arrangements, including community detention or grants of bridging visas, that would allow for victims of violence to be separated from the alleged perpetrators.

Recommendation 6

That the Department establish an independent review of threatened and actual violence at VIDC, with a view to identifying measures to prevent violence and protect those at risk of harm.

2 Functions of the Commission

5. The Commission has the function to inquire into any act or practice that may be inconsistent with, or contrary to, any human right pursuant to section 11(1)(f), AHRC Act.
6. This function must be performed by the Commission on receipt of a written complaint that an act is inconsistent with, or contrary to, any human right, pursuant to section 20(1)(b), AHRC Act.
7. An 'act' or 'practice' includes an act done, or a practice engaged in, by, or on behalf of, the Commonwealth or a Commonwealth authority. As per section 3 of the AHRC Act, an 'act' includes the refusal or failure to do an act.

8. The Commission's section 11(1)(f) inquiry function is only engaged where the act complained of is one not required by law to be taken—that is, where the relevant act or practice is within the discretion of the Commonwealth, its officers or agents.
9. Section 8(6) of the AHRC Act requires that the functions of the Commission under section 11(1)(f) be performed by the President.

3 What is a human right?

10. The AHRC Act defines human rights to include the rights and freedoms recognised in the ICCPR.¹ The following ICCPR article has been considered in this inquiry:

Article 10(1): All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

11. Article 7(1) of the ICCPR has also been considered to assist in giving meaning to article 10(1):

Article 7(1): No one shall be subjected to torture or to cruel or inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

4 Safe place of detention

4.1 Right of detainees to be treated with humanity and dignity

12. All people, including those held in immigration detention centres,² whether that facility is operated privately or by a State,³ have the right to be treated with humanity and respect for the inherent dignity of the human person pursuant to article 10(1) of the ICCPR. Article 10(1) requires Australia to ensure that people held in immigration detention are treated fairly and reasonably, and in a manner that upholds their dignity.
13. Australia's common law imposes similar obligations on immigration detention centre owners and operators, and the Department and its service providers legally owe a 'duty of care' to people held in immigration detention.

14. With reference to article 10(1) of the ICCPR, the United Nations Human Rights Committee (UN HR Committee) stated in General Comment 21 that:

Article 10(1) imposes on State parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of their liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the [ICCPR]. Thus, not only may persons deprived of their liberty not be subjected to treatment which is contrary to article 7 ... but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as that of free persons.⁴

15. The UN HR Committee's comment recognises that detained persons are particularly vulnerable. This vulnerability arises because detained persons are wholly reliant on the authority responsible for their detention, or that authority's service providers, to provide for their basic needs,⁵ and that provision is central to their humanity and dignity. This, together with the positive obligation imposed by article 10(1), has been echoed in the UN HR Committee's jurisprudence,⁶ and by internationally recognised human rights lawyer Professor Manfred Nowak, who stated that article 10 of the ICCPR mandates that States:

must provide detainees and prisoners with a minimum of services to satisfy their basic needs (food, clothing, medical care, sanitary facilities, communication, light, opportunity to move about, privacy, etc) ... [T]he 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'.⁷

16. As has been discussed by human rights commentators,⁸ drawing from the UN HR Committee's comments in its 2001 *Concluding observations on Croatia*, it can be said that article 10(1) of the ICCPR obliges States to provide protection for detainees from other detainees. That report states that the Committee:

is concerned at reports about abuse of prisoners by fellow prisoners and regrets that it was not provided with information by the State party on these reports and on the steps taken by the State party to ensure full compliance with article 10 of the [ICCPR].⁹

17. In 2015, 'the Nelson Mandela Rules'¹⁰ were adopted by the United Nations. They streamlined a number of United Nations instruments that set out the standards and norms for the treatment of prisoners, and provide the minimum conditions which the United Nations considers to be suitable.¹¹ To this extent, the rules inform the construction and meaning of article 10(1) of the ICCPR. The rules include:

Rule 1: All prisoners shall be treated with the respect due to their inherent dignity and value as human beings ... the safety and security of prisoners ... and visitors shall be ensured at all times.

Rule 2: ... prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings.

Rule 93(1)(a): The purpose of classification shall be to separate from others those prisoners who, by reason of their criminal records or characters, are likely to exercise a bad influence.

Rule 93(2): So far as possible, separate prisons or separate sections of a prison shall be used for the treatment of different classes of prisoners.

Rule 111(2): Unconvicted prisoners are presumed to be innocent and shall be treated as such.

18. From the above, the following conclusions may be drawn:
 - a. article 10(1) of the ICCPR imposes a positive obligation on States Parties to take actions to ensure that detained persons are treated with humanity and dignity
 - b. 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
 - c. article 10(1) of the ICCPR may be breached if a detainees' rights, protected by one of the other articles in the ICCPR, are breached— unless that breach is necessitated by the deprivation of liberty
 - d. minimum standards of humane treatment must be observed in detention conditions, including immigration detention, and
 - e. article 10(1) of the ICCPR requires detainees and prisoners to be provided with a minimum of services to satisfy their basic needs.

5 Service provider contractual obligations

19. The Department's Immigration Detention Facilities and Detainee Services Contract with Serco in effect at the relevant times (Contract) recognises the duty of care owed to detainees and requires that Serco complies with a Code of Conduct.¹²
20. The Code of Conduct requires Serco to carry out its duties with care and diligence, maintain a safe working environment and 'be alert for Detainees who are or appear to be, traumatised and/or vulnerable to self-harm and by the actions of others, and manage and report on these'.¹³
21. The Contract enumerates several obligations on Serco which are relevant to ensuring the safety of detainees. Under the Contract, Serco is required to:
 - a. provide and maintain a safe and secure environment for detainees,¹⁴ which also supports their individual health and safety needs¹⁵

- b. exercise its responsibility to allocate accommodation and in doing so:
 - i. take into consideration the individual welfare, cultural, family and security related needs and circumstances of the detainee and requests of the detainee,¹⁶ and
 - ii. participate in reviews and notify the Department where it believes that an existing placement is inappropriate for a detainee, including where it believes the detainee should be moved within the existing Facility or should be transferred to another Facility¹⁷
- c. 'immediately report to the Department any concerns that it may have regarding a Detainee's safety and security'¹⁸
- d. to establish processes to:
 - i. promote the welfare of detainees and create a safe and secure environment at each Facility¹⁹
 - ii. prevent detainees being subjected to illegal, anti-social or disruptive behaviour by detecting and managing those behaviours in other detainees²⁰
 - iii. manage and defuse tensions and conflicts before they become serious or violent²¹
 - iv. identify if a detainee is emotionally distressed or at risk of self-harm or harm to others, ensuring the system accounts for advice from the Detention Health Services Provider and includes risk identification and mitigation strategies²²
- e. respond to incidents, and in doing so:
 - i. ensure the safety and welfare of detainees and others at the Facility,²³ and
 - ii. 'immediately inform the Department of any Incidents it believes may have a significant adverse impact on the welfare of any person, or the security and safety of the Facility'²⁴
- f. immediately notify the Department with recommendations for dealing with the perpetrator and preventing any recurrence upon identification or suspicion of a detainee having engaged in behaviour that is illegal, breaches detainee rights or is anti-social, including bullying, harassment, and assault,²⁵ and
- g. 'ensure that Detainees identified as victims of anti-social behaviour are supported by Service Provider Personnel'.²⁶

6 Migration history and detention background

22. Mr Vakhabov is a dual Moldovan and Ukrainian national.
23. On 16 January 2013, he legally entered Australia on a Subclass TE-428 Religious Worker visa, sponsored by the Australian and New Zealand Diocese of the Russian Orthodox Church outside Russia (Russian Orthodox Church), that was due to expire on 7 November 2014. Mr Vakhabov has advised that he is known as Father Christopher in connection with his work with the Russian Orthodox Church.
24. On 18 July 2014, the Russian Orthodox Church notified the Australian Government that it had terminated Mr Vakhabov's employment and withdrawn their sponsorship over concerns relating to his conduct with a minor.
25. Consequently, on 23 July 2014, the Department cancelled Mr Vakhabov's visa, detained him as an unlawful non-citizen at VIDC in its Hughes compound, and notified police of the Russian Orthodox Church's concerns.
26. VIDC is an immigration detention facility used to accommodate adult men and women. At the relevant times it included low security and medium security compounds as part of its main centre, and the Blaxland High Security Centre as a standalone compound separated from the main centre.²⁷
27. On 24 July 2014, Mr Vakhabov requested removal from Australia and arrangements were made for this to occur on 6 August 2014.
28. On 31 July 2014, NSW Police Sex Crimes Squad confirmed with Australian Border Force that, together with the Australian Federal Police, it was investigating allegations of child trafficking against Mr Vakhabov.
29. Also on 31 July 2014, Mr Vakhabov was transferred to VIDC's Blaxland High Security Centre, a decision that on Mr Vakhabov's request was subject to internal review, and upheld. The Department has informed the Commission that the transfer occurred because of the serious criminal investigations notified by police.
30. On 5 August 2014, the Attorney-General's Department issued a Criminal Justice Stay Certificate (CJSC) in connection with the criminal investigation against Mr Vakhabov. The CJSC prevented Mr Vakhabov's planned removal from Australia the next day, but enabled the issuance of a Criminal Justice Stay Visa (CJSV) to be considered. A CJSV would have allowed Mr Vakhabov to be released from detention into the Australian community.

31. On 7 August 2014, Mr Vakhabov was denied a CJSV on the basis that he posed a risk to the safety of individuals generally, a view that had been expressed by the Australian Federal Police to the Department. Mr Vakhabov requested that the decision to refuse to grant him a CJSV be reviewed, which the Department declined on 24 February 2015. Mr Vakhabov remained in Blaxland High Security Centre until charged.

7 Criminal charges

32. On or about 15 May 2015, Mr Vakhabov was charged with child sex related crimes, taken into criminal custody, and transferred to Parklea Correctional Centre.
33. On 17 November 2016, Mr Vakhabov was released from criminal custody on conditional bail and was transferred to VIDC's Mitchell compound. At the relevant times, Mitchell compound was a medium security compound that was part of VIDC's main centre.

8 Complaints whilst in immigration detention

34. In a written complaint to the Department dated 13 December 2016 (First Complaint), Mr Vakhabov alleged that he was kicked in the face by another detainee (alleged perpetrator) in unit 3 of VIDC's Mitchell compound, and on attempting to report the assault, the alleged perpetrator's roommate then threatened, 'I will kill you' (First Incident).
35. On 14 December 2016, the Department informed Mr Vakhabov it had received the First Complaint, and indicated that the First Incident was being investigated.
36. Also on 14 December 2016, Mr Vakhabov saw various medical personnel in response to persistent pain in his jaw that followed the First Incident. His dental treatment notes, provided to the Commission by the Department, indicate that damage was suffered to his jaw and tooth.
37. At Mr Vakhabov's request, the First Incident was also referred to both NSW Police and the Australian Federal Police for investigation. Both police forces declined to investigate the assaults and neither the Department nor its service provider, Serco, that is responsible for the day-to-day management of VIDC, conducted their own investigation of the assaults.
38. Also on 14 December 2016, Serco transferred the alleged perpetrator to VIDC's Mackenzie compound. Serco considered that the Mackenzie compound was appropriate for the alleged perpetrator having regard to his security risk assessment dated 11 December 2016, two days before the First Incident.

39. Like Mitchell compound, at all relevant times Mackenzie compound was, and remains, a medium security compound that is part of VIDC's main centre. The extent of contact possible in December 2016 between detainees in Mitchell compound and those in Mackenzie compound is unclear. Recent correspondence to the Commission from the Department states that the two compounds are separated by fencing but that detainees in the two compounds may have had access to each other in the catwalk area, at the medical centre or in the visits area, which the Commission understands is the current position between the two compounds. The Department has also informed the Commission that the alleged perpetrator was placed on a behaviour management plan and instructed to not enter Mitchell compound upon his transfer to Mackenzie compound. From this instruction it may be inferred that detainees in Mackenzie compound were, in December 2016, able to enter Mitchell compound.
40. That then occurred. On 17 December 2016, Mr Vakhabov made another written complaint to the Department (Second Complaint), which referred to the First Incident and asserted that after the alleged perpetrator had been moved to Mackenzie compound, he had re-entered Mitchell compound 'many time[s]', causing Mr Vakhabov to be fearful for his life (Second Incident). In the Second Complaint, Mr Vakhabov requested that the alleged perpetrator be moved to accommodation where he would not have access to the Mitchell compound.
41. On 19 December 2016, the Department received the Second Complaint and noted that the Second Incident was being investigated.
42. On 20 December 2016, Serco wrote to Mr Vakhabov citing the First Complaint and confirming that the First Incident triggered the alleged perpetrator's removal from Mitchell compound and placement in Mackenzie compound. Serco's letter states that the alleged perpetrator had been placed on a Behavioural Management Plan and advised not to enter Mitchell compound or approach Mr Vakhabov, and that the First Complaint regarding the First Incident had been closed. Serco's letter confirms that on 19 December 2016 it received from Mr Vakhabov a complaint made on 17 December 2016, but the letter does not respond to the allegations made in the Second Complaint – that the alleged perpetrator repeatedly re-entered Mitchell compound after he had been instructed not to do so upon being moved to Mackenzie compound.
43. On 24 December 2016, Mr Vakhabov made a third written complaint (Third Complaint), stating that the alleged perpetrator went to his unit in Mitchell compound, pulled his hair, threatened, insulted, and humiliated him (Third Incident). In the Third Complaint, Mr Vakhabov requested that the alleged perpetrator be placed in an area where he could not access either him or Mitchell compound.

44. On 27 December 2016, Mr Vakhabov again presented for medical treatment. The clinical notes document that he was suffering pain in his face, anxiety and panic attacks, and was fearful for his safety. The notes identify that Serco security were managing an ongoing risk to Mr Vakhabov of harm from others.
45. On 3 January 2017, Serco wrote to Mr Vakhabov citing the Second Complaint and the Third Complaint, and confirmed that both of these complaints had been resolved by the alleged perpetrator being transferred to 'another facility'. That other facility was VIDC's then Blaxland High Security Centre—a more restrictive compound with higher supervision that did not have access to the main centre compounds. This occurred following the Third Incident and receipt of the Third Complaint.
46. On 3 February 2017, the Department emailed Serco requesting that Mr Vakhabov be transferred from Mitchell compound to Blaxland 'as a priority' to 'rebalance the compounds'. That transfer occurred. The email correspondence acknowledged that the alleged perpetrator was accommodated in Blaxland, and the Department said that Mr Vakhabov 'must be kept separated' from the alleged perpetrator upon Mr Vakhabov's transfer to Blaxland. The Department asserts that in making this decision to transfer Mr Vakhabov to Blaxland, it had regard to Blaxland's floorplan.
47. Blaxland comprised three separate dorms, with controlled movements of detainees to keep the dorms separated. The visits area was shared by detainees from all three dorms. While the Department recognised the need to keep Mr Vakhabov and the alleged perpetrator separated, it acknowledged that it was possible for them to come into contact with each other in the visits area when they were both accommodated in Blaxland. The Department said that the visits area was 'closely monitored by staff so as to mitigate any adverse behaviour'.
48. The Department has informed the Commission that Mr Vakhabov's February 2017 transfer to Blaxland occurred because he was a vulnerable person who was at risk of assault in VIDC's main centre because of the 'crimes he had committed'. It relies on Mr Vakhabov's medical records dated 27 December 2016 (see paragraph 44 above) to assert that Mr Vakhabov was at risk of harm from others.
49. The Commission acknowledges that the nature of the criminal allegations against Mr Vakhabov may have put him at risk from other detainees generally. However, the departmental records provided to the Commission do not evidence any risk of assault by any person within VIDC other than the alleged perpetrator. Similarly, no documents provided to the Commission evidence Mr Vakhabov feeling fearful of an attack by any person other than the alleged perpetrator and, perhaps to a lesser extent, the alleged perpetrator's former roommate referred to in the First Complaint.

The Department's decision to move Mr Vakhabov from a medium security compound to the Blaxland High Security Compound in February 2017 does not appear to have been triggered by an event, a documented risk assessment, or changes to such an assessment.

50. On 9 February 2017, Mr Vakhabov made a written complaint that his safety was at risk by virtue of having been placed in Blaxland with the alleged perpetrator, and he requested to be transferred back to Mitchell compound (Fourth Complaint). The Department has told the Commission that Mr Vakhabov's concerns were unfounded because Blaxland had three separate dorms which have no uncontrolled access to each other, and because Mr Vakhabov and the alleged perpetrator were accommodated in separate dorms.
51. On 15 February 2017, Mr Vakhabov made a further written complaint (Fifth Complaint) alleging that on 14 February 2017, he was verbally abused by the alleged perpetrator in the visits area of Blaxland compound (Fourth Incident). He again requested a transfer to Mitchell compound.
52. On 28 February 2017, Serco wrote to Mr Vakhabov in response to the Fifth Complaint. This letter refers to the substance of the Fourth Incident as detailed in the Fifth Complaint, and then with reference to the Fourth Complaint, concludes that the Fourth Incident was not witnessed nor was there a contemporaneous record of it having occurred. This conclusion disregards the Fifth Complaint, which is dated one day post the Fourth Incident and as such is a contemporaneous record of it. Mr Vakhabov's request to be transferred to Mitchell compound is then denied on the basis that a formal request for relocation was required if it were to be considered.
53. The Department has since informed the Commission that Mr Vakhabov's February 2017 transfer requests from Blaxland back to Mitchell compound were denied on the basis that Blaxland was deemed the appropriate accommodation for Mr Vakhabov, and relies on a security risk assessment dated November 2016 to support this position. It appears that this assessment was based on Mr Vakhabov's own risk rating and did not involve any consideration of the risk posed to him by his alleged attacker in the adjoining dorm.
54. On 3 March 2017, a Detention Placement Assessment was conducted with respect to Mr Vakhabov. It concluded that he met the requirements for transfer from VIDC to Christmas Island Immigration Detention Centre (Christmas Island). The Commission has not been provided with any other Detention Placement Assessment undertaken for Mr Vakhabov, including in relation to his move into Blaxland.

55. In March 2017, Serco undertook a Security Risk Assessment for Mr Vakhabov for the period 17 November 2016 to 9 March 2017. It includes two documented incidents of aggressive behaviour, the first on 8 February 2017 in response to being requested to share a room following his transfer to Blaxland compound, and the second, aggression towards another detainee on 14 February 2017, the date of the Fourth Incident. The inclusion of the incident in Mr Vakhabov's March 2017 Security Risk Assessment suggests that the Fourth Incident did occur, notwithstanding the conclusion reached in Serco's 28 February 2017 letter responding to the Fifth Complaint.
56. Later in March 2017, Mr Vakhabov was transferred to Christmas Island.

9 Complaint to Commission and current status

57. Mr Vakhabov made a written complaint to the Commission alleging that he had not been provided with a safe place of detention on the basis that he had been assaulted and threatened by fellow detainees whilst detained at VIDC. This complaint triggered the Commission's inquiry function established by section 11(1)(f) of the AHRC Act.
58. In that written complaint, Mr Vakhabov also complained that:
 - a. property he had in the prison system had not been returned to him
 - b. his ability to prepare for his criminal proceeding were prejudiced by his transfer to Christmas Island
 - c. he was not provided with a safe place of detention at Christmas Island
 - d. his visitation rights at VIDC were restricted
 - e. the use of restraints whilst being transferred to court and prior to the court hearing were an unnecessary use of force, and
 - f. his detention at VIDC was arbitrary.
59. Mr Vakhabov later advised the Commission that he did not wish to pursue the aspects of his complaint that are set out at paragraph 58 above. The Commission has finalised and closed those aspects of the complaint.

10 Outcome of criminal proceedings and current status

60. Since making his complaint to the Commission, Mr Vakhabov has been convicted of some criminal charges and served a 27-month prison term.
61. On completion of his sentence, Mr Vakhabov was released from criminal custody and placed into immigration detention at VIDC.
62. Mr Vakhabov has commenced legal proceedings for wrongful conviction, and for unlawful detention following the Department's failure to remove him from Australia in August 2014 until the time he was charged in May 2015. That proceeding is ongoing.
63. On 13 July 2021, Mr Vakhabov was removed from Australia.

11 Findings

64. The following are the 'acts' of the Commonwealth to which I have given consideration in this inquiry:
 - a. The Department's decision to place the alleged perpetrator in Mackenzie compound where he continued to be able to access to Mr Vakhabov in Mitchell compound, without undertaking a sufficient assessment of the risk this posed to Mr Vakhabov's security and safety (First Act).
 - b. The Department's decision on or about 3 February 2017 to place Mr Vakhabov in Blaxland compound together with the alleged perpetrator, just weeks after placing the alleged perpetrator into Blaxland compound so that he would not be able to come into contact with Mr Vakhabov, without any documented risk assessment process (Second Act).
65. Consistent with past Commission inquiry findings,²⁸ I find that immigration detainees have a basic need for their safety and security to be protected while in detention. Australia must ensure immigration detainees have this basic need met in order to fulfil the obligations imposed on it by article 10(1) of the ICCPR, to treat detainees with humanity and respect for the inherent dignity of the human person.
66. For the reasons set out below, I find that by the First Act and the Second Act, the Department has acted in breach of article 10(1) of the ICCPR.

11.1 First Act

67. On the evidence before the Commission, it is reasonable to accept that, on or about 13 December 2016, Mr Vakhabov was the victim of an assault that caused facial and dental injury, and required ongoing medical treatment. Mr Vakhabov has asserted that as part of that assault he was subjected to a threat on his life, and the Commission has no reason to doubt that persons participating in such an assault would also have made verbal threats of some kind.
68. Shortly after the First Incident, the alleged perpetrator was moved to another compound within VIDC's main centre, and was instructed not to approach Mr Vakhabov. The Department has stated that this move protected Mr Vakhabov's safety while he was in immigration detention.
69. The decision had the effect of distancing the alleged perpetrator from Mr Vakhabov but did not prevent the alleged perpetrator from approaching or having access to him. It is reasonable to accept that this decision was motivated by the First Complaint and First Incident, while the decision as to where to move the alleged perpetrator was informed by the alleged perpetrator's security risk assessment completed two days prior to the First Incident. In other words, the decision was informed by what was most appropriate for the alleged perpetrator, rather than protecting Mr Vakhabov's safety with regard to the positive obligation imposed on the Department by Article 10(1) of the ICCPR.
70. Given the seriousness of the First Incident, I consider that immediate consideration should have been given to moving the alleged perpetrator to a higher security compound such as Blaxland. While the Commission does not have access to this detainee's security risk assessment at this time, an incident of this nature could only have increased his risk profile. Consideration of moving the alleged perpetrator to a higher security compound, instead of a different compound of an equivalent security level, would have more accurately reflected the increased risk that the alleged perpetrator posed to other detainees.
71. Further, I have formed the view that at least by 19 December 2016, it should have been apparent to the Department that the alleged perpetrator's transfer to Mackenzie compound, together with Serco's instruction that the alleged perpetrator ought not enter Mitchell compound or approach Mr Vakhabov, was an insufficient response to the First Complaint and the First Incident, and did not provide adequate protection for Mr Vakhabov's safety from the alleged perpetrator. This is because on 17 December 2016 Mr Vakhabov made the Second Complaint in which he reiterated the fears and concerns he had for his safety as a result of the Second Incident, and the Department and Serco received the Second Complaint on 19 December 2016.

72. The Second Incident involved reports of the alleged perpetrator repeatedly entering Mitchell compound in defiance of an instruction not to do so, and not to approach Mr Vakhabov. The Second Complaint ought to have informed the Department that the measures it put in place in response to the First Complaint were not sufficient, and additional measures were required to protect Mr Vakhabov's safety. Alternative measures were available, including transferring the alleged perpetrator to Blaxland. Nonetheless, by the 20 December 2016 letter, the First Complaint was resolved without regard to allegations made in the Second Complaint, or addressing the shortcomings of the measures the Department had put in place in response to the First Incident, which were by then known to the Department.
73. The alleged perpetrator was not relocated to Blaxland until 3 January 2017, 15 days after the Department received the Second Complaint. The Department has stated that this move occurred in response to the Second Complaint, suggests that the Department accepts that the initial measures put in place in response to the First Incident were insufficient to protect Mr Vakhabov's safety.
74. The Department has not provided any evidence as to how it or its service provider Serco manages detainee-on-detainee violence. Similarly, it has not specified how it gave proper consideration as to whether Mr Vakhabov remained at risk, and if so, how that risk could be managed. A risk assessment that had regard to this question may have identified ongoing risks to Mr Vakhabov, and I consider that undertaking and documenting such an assessment was a necessary step in protecting his basic right to safety.
75. I am not satisfied that the Department had proper regard to ensuring that Mr Vakhabov's safety was protected, nor that it undertook a full and proper risk assessment process in response to the First Incident or the Second Incident. I therefore find that by the First Act, the Department did not take adequate steps to protect Mr Vakhabov's safety and security whilst in detention. Consequently, Mr Vakhabov was deprived of a safe and secure place of detention, in breach of his human rights afforded by article 10(1) of the ICCPR.

11.2 Second Act

76. Contemporaneous departmental email correspondence dated 3 February 2017 indicates that the decision to move Mr Vakhabov to Blaxland compound was required to occur 'as a priority', to 'rebalance the compounds'. The same correspondence recognised that Mr Vakhabov and the alleged perpetrator 'must be kept separated'. Despite asserting that it had regard to Blaxland's floorplan in making this decision, there is no written record of such consideration being given at the time, or that how this would affect the safety and security of Mr Vakhabov was considered.

77. The Department does not provide sufficient reasons as to why Mr Vakhabov was moved into Blaxland. It has stated that Mr Vakhabov's February 2017 transfer to Blaxland was because Mr Vakhabov was a vulnerable detainee, susceptible to risks from other detainees. However, aside from an unspecific reference in Mr Vakhabov's medical records, there is no documentary evidence such as an incident report or a security assessment that indicates that Mr Vakhabov's safety was at risk from any particular person other than the alleged perpetrator. This makes the decision to move Mr Vakhabov to Blaxland particularly problematic given the 3 January 2017 decision to relocate the alleged perpetrator to Blaxland so that he would not be able to come into contact with Mr Vakhabov.
78. There is no evidence to suggest that the Department explored whether there were opportunities to continue to accommodate Mr Vakhabov in Mitchell compound, and that his relocation to Blaxland was required to occur 'as a priority' suggests quite the opposite. Similarly, there is no evidence to suggest that the Department considered whether Mr Vakhabov could have been accommodated elsewhere within the immigration detention network if his removal from Mitchell compound was necessary.
79. Departmental email correspondence on 3 February 2017 acknowledged that the alleged perpetrator was accommodated in Blaxland, and the Department requested that Mr Vakhabov and the alleged perpetrator be separated upon Mr Vakhabov's transfer to Blaxland. The Department has informed the Commission that it had regard to Blaxland's floorplan when it made the decision to move Mr Vakhabov there. Blaxland comprised three separate dorms. However, the Department acknowledged in correspondence to the Commission that it was possible for Mr Vakhabov and the alleged perpetrator to come into contact with each other in the visits area.
80. The Department has not produced any documents to show that, before transferring Mr Vakhabov to Blaxland, proper consideration was given to:
 - a. the alleged assaults and threats by the alleged perpetrator on Mr Vakhabov that occurred in December 2016
 - b. the Department's 3 January 2017 decision to relocate the alleged perpetrator to Blaxland compound so that he would not be able to come into contact with Mr Vakhabov
 - c. whether the alleged perpetrator posed an ongoing risk to Mr Vakhabov's safety, and if so, how these risks could be managed
 - d. whether consideration was given to Mr Vakhabov remaining in Mitchell compound, or being moved to another compound, or another detention centre, and
 - e. whether consideration was given as to whether Blaxland was suitable accommodation for a detainee other than Mr Vakhabov whose safety was not at risk by a fellow detainee in that compound.

81. I consider that consideration of these matters as part of a risk assessment process was a necessary step in assessing and protecting Mr Vakhabov's basic right to safety. On the basis of the material available to me in this inquiry, I am not satisfied that proper consideration was given to these matters. By failing to give them proper consideration, before transferring Mr Vakhabov to Blaxland, the Department failed to give sufficient regard to the positive obligation imposed on it by article 10(1) of the ICCPR.
82. Accordingly, I find that the Department failed to take adequate steps to protect Mr Vakhabov's safety and that Mr Vakhabov was not treated with humanity and with respect for his inherent dignity as required by article 10(1) of the ICCPR.

12 Recommendations

83. 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.²⁹ The Commission may include in the notice any recommendation for preventing a repetition of the act or a continuation of the practice.³⁰ The Commission may also recommend other action to remedy or reduce the loss or damage suffered by a person.³¹
84. This inquiry has identified that the First Act and the Second Act may be considered to have breached Mr Vakhabov's human rights. I am satisfied that both incidents arose because decisions were made by the Department without proper regard to all relevant circumstances to determine the most appropriate accommodation for him within the network.
85. Security risk assessments operate to assign risk ratings to detainees to determine how they will be treated, including where they ought to be accommodated, whilst in immigration detention. The process takes into account a range of factors, including behaviour in detention, and the safety of the detainee and their community. However, while these assessments generate a 'placement risk' for a detainee that can be used to identify a compound with appropriate security for them, the assessments do not deal with the risks that detainees pose to each other.

86. Decisions to move detainees between compounds appear to have been made by a Detainee Placement and Preventative Committee involving stakeholders representing the Department and service providers within VIDC. The Commission has been provided with an agenda for the meeting in which it was determined to move Mr Vakhabov from Mitchell compound to Blaxland. The Commission has not been provided with any written assessment of the risk that the alleged perpetrator posed to Mr Vakhabov, or how those risks could be properly managed following the assault on him (the First Incident) and the alleged perpetrator's subsequent access to him (the Second and Third Incidents). In order to ensure that risks to detainees from other detainees are being properly managed, there ought to be better identification and documentation of these risks.

Recommendation 1

The Commission recommends that, as part of the Department and Serco's response to that act of violence, a risk assessment is undertaken for all detainees involved in an act of violence. The assessment should include an assessment of the likelihood of the alleged perpetrator engaging in a further act of violence in the future, the risks posed to the detainee who was the victim of the violence, and the steps necessary to mitigate those risks.

87. The Commission has previously expressed concern regarding the adequacy of the security risk assessments that are undertaken by the Department and Serco. Following an April 2017 inspection of VIDC the Commission reported that:

The current risk assessment process may not allow for an accurate or appropriate determination of the risks posed by particular individuals. As such, risk assessments may result in some people being subject to measures that are more restrictive than necessary, or placed in environments where they could be at risk of harm.

Urgent action is necessary to ensure the safety of all people at the VIDC. Many people (especially those in higher-security compounds) ... did not feel safe in detention.³²

88. In that same report, the Commission expressed further concern that:

the risk rating system may not be sufficiently nuanced to prevent unnecessary use of restrictive measures ... [nor] an effective means of ensuring the safety of people in detention. In particular, there appeared to be significant variation among people in higher-risk categories with regard to the level of risk they pose to the safety of others. The Commission is concerned that this variation may lead to the co-location of people who pose significant risks to others.³³

89. A number of recommendations for reform of Serco's security risk assessment tool were made in the Commission's May 2019 report, *Use of force in immigration detention*.³⁴ The Department noted that, during the course of the Commission's inquiry, it had engaged an external consultant to review the security risk assessment tool.

90. In November 2019, the Griffith Criminology Institute provided the Department with its *Final Report: Improving Risk Assessment of Immigration Detainees*.³⁵ While a copy of this report has been made public pursuant to freedom of information laws, most of the discussion of the security risk assessment tool was redacted.
91. The Commission is not aware of whether any amendments have been made to the security risk assessment tool, including as a result of that external review.
92. Further, the Department has not provided any information, policies or guidance concerning the way in which it or Serco manage the specific risk of detainee-on-detainee violence.
93. The risk of violence and the threat to detainees' safety by other detainees was reported on by the Commission in 2017 when it expressed deep concern about the lack of policies in place to manage these practices. The Commission is not aware of any new protocols since implemented in immigration detention centres to alleviate this risk and better protect detainees' safety from threats of or actual violence by other detainees.

Recommendation 2

The Commission recommends that the Department develop a mandatory protocol for responding to detainee-on-detainee violence, which includes the immediate separation of detainees following any such incident to accommodation where the alleged perpetrator can no longer have access to the victim.

Recommendation 3

The Commission recommends that the Department ask Serco to review the Security Risk Assessment Tool to ensure that it clearly identifies detainees who are vulnerable to harm from other detainees, and detainees who present a risk to the safety of other detainees.

Recommendation 4

The Commission recommends that any decision to transfer a detainee to different accommodation within the immigration detention network take into account:

- a. any specific identified risks posed to that detainee from other detainees, for example as a result of previous incidents
- b. any general risks identified to that detainee from other detainees, as revealed in the updated security risk assessment tool amended in accordance with recommendation 4, and

that effective measures are put in place to mitigate or eliminate those risks.

Recommendation 5

The Commission recommends that the Department should immediately implement measures to protect people at risk of violence at VIDC, including by exploring alternative detention arrangements, including community detention or grants of bridging visas, that would allow for victims of violence to be separated from the alleged perpetrators.

94. Assaults from other detainees are a serious risk to the personal safety of detainees in immigration detention. The Griffith Criminology Institute report on improving risk assessment of immigration detainees recorded 119 victims of minor assaults and 12 victims of serious assault in VIDC for the 10-month period between January and October 2018.³⁶ During this period, the rates of reported violence at VIDC were higher than at any other Australian immigration detention facility.
95. In addition to the present complaint, the Commission is also inquiring into complaints from other people detained at VIDC that they have not been protected from violence by other detainees. The Commission considers that particular attention should be given to threatened and actual violence at VIDC, and steps that can be taken to prevent it.

Recommendation 6

The Commission recommends that the Department establish an independent review of threatened and actual violence at VIDC, with a view to identifying measures to prevent violence and protect those at risk of harm.

13 The Department's response to my findings and recommendations

96. On 17 September 2021, I provided the Department with a notice of my findings and recommendations.
97. On 29 March 2022, the Department provided the following response to my findings and recommendations:

The Department of Home Affairs (the Department) acknowledges the findings and recommendations made in relation to the alleged breach of Mr Vakhabov's human rights.

Risk Assessment

The Department notes recommendation one. The Department considers there are already risk assessments that are undertaken for all detainees involved in an act of violence. Indeed, a detainee's security risk assessment captures each incident a detainee is involved in regardless of whether they were an alleged victim, an alleged offender or involved in any other capacity. This assessment uses quantitative and qualitative methods to assess and calculate risk based on known criteria for each detainee.

The Facilities and Detainee Service Provider (FDSP) monitors detainee interactions and has mitigation strategies in place to maintain detainee safety and security. The FDSP maintains internal placement strategies and makes recommendations to the Australian Border Force (ABF), on appropriate intrafacility placements.

In the event of an incident of detainee on detainee violence within the Immigration Detention Network (IDN), it is current practice that the involved persons would be immediately separated once the FDSP is aware, and medical assistance offered where required. Depending on ABF approval, the alleged offender may be placed in High Care Accommodation (HCA). If there is a perceived risk to the alleged victim, temporary placement in the HCA may be sought or offered on a voluntary basis. Any placement in the HCA is at the discretion of the ABF based on security and health advice from service providers. Any HCA placement longer than 24 hours must be justified and approved by the ABF.

Within 24 to 48 hours of the incident, placement arrangements for the detainees involved must be reviewed by stakeholders to determine suitability. This includes considering accommodation availability and known intelligence holdings before placement recommendations are made. The final approval for internal compound movements is at the discretion of the ABF Superintendent.

If HCA placement or internal transfers do not occur, enhanced monitoring may be initiated for one or more involved detainees. For all alleged assaults, the FDSP will complete a referral package to the Australian Federal Police or state/territory law enforcement authorities and provide this to the ABF. The ABF will progress the referral package to relevant authorities for their consideration.

In addition, assessment on the likelihood of an alleged perpetrator engaging in a further act of violence in the future and the risks posed to the detainee who was the victim is managed within the following two site-based governance framework meetings. These site-based meetings capture the records of violence and enable relevant stakeholders to implement mitigation strategies.

Morning stakeholder meeting:

The morning stakeholder meetings are held every weekday with representatives from the ABF, the FDSP and Detention Health Service Provider (DHSP). The meetings are chaired by the ABF, and discuss the following:

- Incidents that have occurred within the past 24 hours, including detainees involved and local management strategies that were used in response to those incidents, such as Keepsafe, enhanced monitoring and high care accommodation placements,
- Updates regarding the FDSP intelligence holdings,
- DHSP updates regarding detainees on the Psychological Support Program (PSP) and health related incidents in the last 24 hours,
- ABF overview and update, and
- FDSP operational update on Keepsafe, enhanced monitoring, behaviour management plans and scheduling for upcoming external escorts.

Individual Management and Placement Review Committee (IMPRC) Meeting:

The IMPRC meetings are held monthly and is chaired by the FDSP. The IMPRC is attended by all stakeholders, including the ABF, DHSP and FDSP, and provides a regular consultative forum for stakeholders to review 'at risk' or 'vulnerable' detainees, taking advice and recommendations that reflect the broad range of views and experience of the stakeholders in attendance.

- Review, update and action Individual Management Plans (IMPs).
- Develop and implement prevention strategies for detainees at risk.
- Review detainee placement options for those at risk.
- Review, update and action Behaviour Management Plans (BMPs) for detainees conducting in inappropriate behaviours and actions.

In summary the FDSP employs a risk assessment that involves the Security Risk Assessment Tool (SRAT), the morning stakeholder meeting and ongoing monthly reviews via the IMPRC. These risk assessments capture acts of violence, and assist in preventing further violence from occurring, and they entail ongoing and continuing review and monitoring of detainees. It is current practice that all incidents are documented and reported according to the FDSP and ABF's policies and procedures.

Mandatory Protocol

The Department notes recommendation two as it considers that there are currently multiple measures to manage incidents for detainee-on-detainee violence, which are sufficient for responding to violence when it occurs. The Department remains committed to providing a safe environment for all persons in an immigration detention facility (IDF). The Department now has a suite of detention operational policy instructions which provide clear guidance to officers for managing incidents, such as violence, and providing appropriate placement within the IDF.

These procedural instructions and standard operating procedures specifically include incident management and reporting, managing and responding to offences against the person, and closer supervision and engagement of high-risk detainees. Separating high-risk detainees from the general population (high-care accommodation) is a last resort, and may be used when necessary and appropriate to manage the good order and security of an IDF and the safety of people within it.

IMPs are also an important tool to monitor and manage the welfare of detainees in immigration detention. The procedural instructions outline the circumstances which trigger reviews of a detainees IMP. This includes responding to incidents that present an unacceptable risk to a detainee or to the safety of others. This can include assessment of placement arrangements of detainees following an incident. Post incident reviews, security intelligence reporting, and daily operational stakeholder meetings are additional mechanisms to ensure the appropriate placement of detainees post an incident, including detainee on detainee violence.

All of the above mentioned tools, forums and instructions work in collaboration to protect the safety of victims of detainee violence, and negates the need for further protocol development.

The Department notes that these measures to manage incidents for detainee-on-detainee violence have evolved over the last five years since the incidents that were the subject of this complaint, in late 2016 and 2017.

In 2018-2019, a revision of all detention related procedural instructions was conducted under a whole of ABF Policy and Procedure Control Framework (PPCF) project. As part of the PPCF, procedural instructions and standard operating procedures are comprehensively reviewed on a three yearly cycle, with amendments and updates made on an adhoc basis as required. These procedural instructions and standard operating procedures entered their next three yearly review cycle during 2021, with all remaining documents scheduled for completion throughout 2022. The FDSP also undertakes reviews of their relevant Policy Procedure Manuals (PPMs) concerning incident management (including reporting and handover), individual and behaviour management, and complex case reviews. There is a requirement for the FDSP under contractual agreements to update and align their PPMs in accordance to any Departmental policy or procedure changes.

Security Risk Assessment Tool

The Department notes recommendation three however considers that an update to the SRAT tool to ensure that it clearly identifies detainees who are vulnerable to harm from other detainees, and detainees who present a risk to the safety of other detainees, is not required at this stage, as that information is captured through the IMPs and BMPs.

As per contractual requirements, the SRAT is designed to provide a risk rating on an individual in relation to the security risks posed by that individual against the IDN, including other detainees and stakeholders. By elevating the risk rating for detainees who pose a threat to the IDN (including detainees and staff) the SRAT identifies those detainees that require further mitigation strategies to ensure the safety, security and good order of the IDF, the detainees and staff within. The SRAT identifies risks including escape, demonstration, violence and aggression, self-harm and criminality.

The purpose of and capability of the SRAT is not to risk assess the vulnerability of harm to other detainees. When a detainee is involved in an incident of violence/harm or when there is information to suggest a detainee present a risk to others, or a detainee is vulnerable to harm; consideration is made to update a detainee's IMP and/or create/update a BMP.

The considerations are conducted through IMPRC Meetings, where stakeholders consider:

- Review, update and action IMPs.
- Develop and implement prevention strategies for detainees at risk.
- Review detainee placement options for those at risk to harm from other detainees, and detainees who present a risk to the safety of others.
- Review, update and action BMPs for detainees conducting in inappropriate behaviours and actions.

The Department continues to review the functionality of the SRAT to ensure the safety and security of the IDN, detainees, and staff.

Detainee transfers within IDN

The Department notes recommendation four, and considers there is already a robust process in place which includes consideration of identified risks posed to a detainee from other detainees when determining the transfer of a detainee. Prior to detainee transfers, a rigorous assessment is undertaken which includes feedback from stakeholders relating to a detainee's prior incidents in detention, security risk rating, family and community links, criminal history, vulnerability, health, ongoing legal and any criminal or immigration related matters. The number of accommodation areas where each detainee can be suitably placed is therefore limited and all factors are considered when making a placement decision.

A decision to transfer a detainee to another IDF is made after consultation with stakeholders of both sending and receiving IDFs including internal stakeholders such as Home Affairs Status Resolution and ABF Detention Operations, and external stakeholders such as detention service providers and in the case of minors – Immigration Guardianship of Children delegates and/or Child Wellbeing Officers.

The Department promotes flexible management of the capacity at each IDF due to the changing requirements of the individuals detained within each IDF. Inter-compound placement decisions are made at the IDF and may at times need to be made quickly due to operational requirements. Decisions in relation to detainee placement within the facility are taken after careful consideration of a number of factors, including the operational capacity of each facility and the need to ensure the safety and security of all detainees in immigration detention.

The SRAT is one source of information that is considered when completing a Detention Placement Assessment (DPA) to identify any documented risks when making a placement consideration at an IDF. This includes, but is not limited to associations of the detainee and any vulnerabilities. Other points that are considered include:

- Identity
- Placement security risk and facility suitability
- Location history
- Criminality offences and scheduled court details
- Unlawful links and criminal associations
- Incident history within immigration detention
- Vulnerability (both mental and physical health, and safety within the facility)
- Escape risks
- Detention visit history
- Family and community links to employment or advocate groups or family residing in Australia
- Non-family links (this may include negative associations with other detainees)

- Health details that have been shared with the ABF or DHSP such as self-harm attempts
- Warning indicators such as propensity for non-compliance and/or violence when challenged.

Limited capacity at facilities necessitates transfers of detainees around the IDN in order to ensure facilities are managed at safe operating capacity and provide appropriate amenities for detainees. Again, it is noteworthy that the Department's transfer procedures have evolved over the last five years since the incidents that were the subject of this complaint, in late 2016 and 2017. Specifically the DPA has evolved and been updated to streamline the assessment process to capture all of a detainee's information, including incidents, within a single location on the Compliance, Case Management and Detention Portal (CCMD). The development of the DPA was initiated as an online form in CCMD and implemented on 16 November 2020. The DPA assists officers in determining the most appropriate placement option for a detainee within the IDN. The CCMD is used for both record keeping and decision making. The DPA supports officers in assessing and determining risks associated with individual detainees, while also taking welfare issues into consideration.

Alternative Detention Arrangements

The Department notes recommendation five. The Department has previously provided advice to the Commission that the Department has a framework in place of regular reviews, escalations and referral points to ensure that people are detained in the most appropriate placement to manage their health and welfare, and to manage the resolution of their immigration status. The Department maintains that review mechanisms regularly consider the necessity of detention and where appropriate, the identification of alternate means of detention or the grant of a visa, including through Ministerial Intervention.

Ministerial Intervention policy does not provide for automatic assessment, or assessment at certain intervals, against the Minister's Intervention guidelines, or referral of cases under Ministerial Intervention powers for detainees in immigration detention. It is not a legal requirement that a person in detention be considered for assessment against Ministerial Intervention guidelines, or be referred to a Portfolio Minister for consideration under their personal intervention powers.

The Minister's powers under sections 195A and 197AB of the Migration Act 1958 (the Act) are personal and non-compellable. The Minister is under no obligation to consider a case or to make a decision on a case. The Minister is not required to provide an explanation for a decision made under sections 195A or 197AB of the Act and is not bound by any timeframes.

Independent review of Villawood Immigration Detention Centre (VIDC)

The Department disagrees that an independent review of the management of risk at the VIDC is warranted based on the issues raised in the original complaint given current procedures and ongoing program governance arrangements.

The Department has a number of mechanisms in place to assess risk of harm to immigration detainees, visitors and personnel, as described in the response to recommendation two. These policies and procedures are subject to regular review by process owners to assess their effectiveness in proportion to identified or foreseeable threats within IDFs.

In addition to the AHRC, independent oversight of the immigration detention program, including the management of safety and security, is conducted by the Commonwealth Ombudsman and Comcare. The Department maintains a number of internal assurance processes in relation to the management of immigration detention separate to and independent from, operational areas of the ABF through the Detention Assurance Team and the Department's Clinical Assurance Team. Internal assurance and external oversight processes are in place to ensure that the health, safety and wellbeing of all detainees is maintained.

- The Department uses three lines of assurance to assess, analyse and mitigate risks in immigration detention. These include:
- security risk assessments with controls identified to mitigate risks;
- independent assurance to review immigration detention practices, policies and detention-related decision-making; and
- post incident reviews to identify measures to prevent similar incidents occurring and enhance processes such as police referrals.

Table 1 – Summary of Department's response to recommendations

Recommendation number	Department's response
1	Notes
2	Notes
3	Notes
4	Notes
5	Notes
6	Disagree

98. I report accordingly to the Attorney-General.



Emeritus Professor Rosalind Croucher AM
President
Australian Human Rights Commission

August 2022

Endnotes

- 1 *Australian Human Rights Commission Act 1986 (Cth) s 3; International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171, (entered into force 23 March 1976), [1980] ATS 23 (entered into force for Australia 13 November 1980).
- 2 Human Rights Committee, *General Comment No 21: Article 10 (Humane treatment of persons deprived of their liberty)*, 44th sess, UN Doc HRI/GEN/1/Rev.1 at 33 (10 April 1992) [2].
- 3 Human Rights Committee, *Views: Communication No. 1020/2001*, 78th sess, UN Doc CCPR/C/78/D/1020/2001 (7 August 2003) 15 [7.2] (*'Cabal and Bertran v Australia'*).
- 4 Human Rights Committee, *General comment No. 21: Article 10 (Humane treatment of persons deprived of their liberty)* 44th sess, UN Doc HRI/GEN/1/Rev.1 (10 April 1992) [3].
- 5 Human Rights Committee, *General Comment No 21: Article 10 (Humane treatment of persons deprived of their liberty)*, 44th sess, UN Doc HRI/GEN/1/Rev.1 at 33 (10 April 1992) [3].
- 6 Human Rights Committee, *Views: Communication No. 639/1995*, 60th sess, UN Doc CCPR/C/60/D/639/1995 (28 July 1997) (*'Walker and Richards v Jamaica'*); Human Rights Committee, *Views: Communication No 845/1998*, 74th sess, UN Doc CCPR/C/74/D/845/1998 (26 March 2002) (*'Kennedy v Trinidad and Tobago'*); Human Rights Committee, *Views: Communication No 684/1996*, 74th sess, UN Doc CCPR/C/74/D/684/1996 (2 April 2002) (*'R.S. v Trinidad and Tobago'*).
- 7 Manfred Nowak, *UN Covenant on Civil and Political Rights CCPR Commentary* (N.P. Engel, 1993) 188.
- 8 Melissa Castan, Jennifer Schultz & Sarah Joseph, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (Oxford University Press, 3rd ed, 2013) 318.
- 9 Human Rights Committee, *Concluding observations of the Human Rights Committee, Croatia*, 71st sess, UN Doc CCPR/CO/71/HRV (30 April 2001) [14].
- 10 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', 70th sess, UN Doc A/RES/70/175 (17 December 2015).
- 11 Preliminary observation 2(1), Nelson Mandela Rules, [7].
- 12 Immigration Detention Facilities and Detainee Services Contract between the Commonwealth of Australia and Serco Australia Pty Ltd dated 10 December 2014 (Serco Contract), cl 13(a) & (b), 3.9.
- 13 Contract, cl 2.1 of Annexure C to Schedule 2.
- 14 Contract, cl 1.1(a), 3.1(a)(i) & 3.6(a) of Section 4 of Schedule 2; cl 7(a) of Section 2 of Schedule 2.
- 15 Contract, cl 6(b) of Section 2 (Statement of Work); cl 1.2(d) & 7.1(a) of Section 6 of Schedule 2.
- 16 Contract, cl 6.12(a) and (b)(i) & (iii) of Section 6 of Schedule 2.
- 17 Contract, cl 6.13 of Section 6 of Schedule 2.
- 18 Contract, cl 3.6(d) of Section 4 of Schedule 2.
- 19 Contract, cl 1.2(e) of Section 6 of Schedule 2.
- 20 Contract, cl 7.1(a)(iii), 7.9(a)(ii) & 7.10(a) of Section 6 of Schedule 2.
- 21 Contract, cl 7.9(a)(ii) of Section 6 of Schedule 2.
- 22 Contract, cl 7.13(a) of Section 6 of Schedule 2.
- 23 Contract, cl 4.1(a)(i) of Section 4 of Schedule 2.
- 24 Contract, cl 4.1(d) of Section 4 of Schedule 2.
- 25 Contract, cl 4.1(d) of Section 4 of Schedule 2.

- 26 Contract, cl 7.10(f) of Section 6 of Schedule 2.
- 27 Blaxland High Security Centre has since been decommissioned from use, and an alternate high security centre operates in its place.
- 28 *CD v Commonwealth (Department of Immigration and Multicultural Affairs)* [2006] AusHRC 36 (1 August 2006).
- 29 *Australian Human Rights Commission Act 1986 (Cth)* s 29(2)(a).
- 30 *Australian Human Rights Commission Act 1986 (Cth)* s 29(2)(b).
- 31 *Australian Human Rights Commission Act 1986 (Cth)* s 29(2)(c).
- 32 Australian Human Rights Commission, *'Inspection of Villawood Immigration Detention Centre: Report 10-12 April 2017* (Report, April 2017) <<https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspection-villawood-immigration-detention-centre>>.
- 33 Australian Human Rights Commission, *'Inspection of Villawood Immigration Detention Centre: Report 10-12 April 2017* (Report, April 2017) <<https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspection-villawood-immigration-detention-centre>> [12].
- 34 *Use of force in immigration detention* [2019] AusHRC 130.
- 35 Griffith University and Griffith Criminology Institute, *Final Report: Improving Risk Assessment of Immigration Detainees* (Report, FA 20/02/00255, November 2019), released under FOI on 20 August 2020 <<https://www.homeaffairs.gov.au/foi/files/2020/fa-200200255-document-released.PDF>>.
- 36 Griffith University and Griffith Criminology Institute, *Final Report: Improving Risk Assessment of Immigration Detainees* (Report, FA 20/02/00255, November 2019), released under FOI on 20 August 2020 <<https://www.homeaffairs.gov.au/foi/files/2020/fa-200200255-document-released.PDF>>.

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