



Australian Government

Department of Immigration and Citizenship

Response to the
Australian Human Rights
Commission's
2008 Immigration Detention Report

Introduction

The Department of Immigration and Citizenship (DIAC) welcomes the release of the *2008 Immigration Detention Report* by the Australian Human Rights Commission (AHRC) and acknowledges the important independent scrutiny of the immigration system provided by the AHRC.

The Department appreciates the Commission's recognition of many of the immigration detention reforms that have taken place in recent years. The 2008 report also highlights a number of areas requiring further improvement – DIAC is already working to address a large number of these issues and will give active consideration to many of the recommendations in the AHRC report in the ongoing reform process.

Immigration detention is an integral part of Australia's border security and an important component in ensuring the integrity of the migration program.

Immigration detention has attracted a considerable degree of scrutiny and comment, and has been subject to considerable reform, over recent years. The Government's New Directions in Detention policy, which was announced by the Minister for Immigration and Citizenship, Senator Chris Evans, on 29 July 2008, represents the latest and most significant reform of Australia's immigration detention system.

The New Directions in Detention policy provides for seven Key Immigration Detention Values to guide detention policy and detention practices into the future.

Key Immigration Detention Values

1. *Mandatory detention is an essential component of strong border control.*
2. *To support the integrity of Australia's immigration program, three groups will be subject to mandatory detention:*
 - a) *all unauthorised arrivals, for management of health, identity and security risks to the community*
 - b) *unlawful non-citizens who present unacceptable risks to the community and*
 - c) *unlawful non-citizens who have repeatedly refused to comply with their visa conditions.*
3. *Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre (IDC).*
4. *Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review.*
5. *Detention in IDCs is only to be used as a last resort and for the shortest practicable time.*

6. *People in detention will be treated fairly and reasonably within the law.*
7. *Conditions of detention will ensure the inherent dignity of the human person.*

In giving effect to the Government's reforms, it is the Minister's intention to initially implement administrative and regulatory reform and then pursue possible legislative changes. Reflecting this approach, DIAC has already implemented a number of new policies and practices, while others are under active review.

A major stakeholder consultation process to inform the implementation of the New Directions in Detention reforms was recently completed. In addition, as part of the broad reform process, DIAC is already taking into account the recommendations in the first report of the Joint Standing Committee on Migration's review of immigration detention, published in December 2008. Many of the AHRC's recommendations in the *2008 Immigration Detention Report* will similarly be given active consideration.

Explanatory Note: In DIAC's response to the *2008 Immigration Detention Report*, the Commission's recommendations have been reproduced and appear in grey text boxes. Footnotes have also been used to reference the recommendations as they appeared in the version of the Commission's report provided to DIAC on 10 December 2008.

The initial chapters of the Commission's report deal with an introduction, an overview, methodology and background. The report summarises its recommendations in Chapter 3 and elaborates on recommendations and observations from Chapter 6 onwards.

6 Monitoring of standards in immigration detention ***Standards for conditions and treatment***

Recommendation: Minimum standards for conditions and treatment of persons in immigration detention should be codified in legislation. These should be based on relevant international human rights standards.¹

DIAC already has put in place mechanisms to ensure minimum standards for the treatment of people in immigration detention as detailed below.

Detention Value 6 states: 'People in detention will be treated fairly and reasonably within the law,' and Detention Value 7 states: 'Conditions of detention will ensure the inherent dignity of the human person.'

DIAC has implemented, and continues to develop, instructional material (Detention Instructions) that direct how departmental staff and service providers must interact with and support people in immigration detention. These instructions are reviewed regularly to ensure they are up to date and represent best practice. Adherence to these instructions is stipulated in Chief Executive Instruction 30. DIAC's contract management area also monitors service providers' performance to ensure compliance with Detention Instructions.

In June 2007, the Royal Australian College of General Practitioners published the *Standards for Health Services in Australian IDCs*. These standards stipulate the level of health care that people in immigration detention can expect to receive. While the standards are being adhered to currently, new arrangements are currently being negotiated that will compel DIAC's health services providers to adhere to these standards.

Broad reform of the immigration detention framework to reflect the Government's New Directions in Detention policy and Key Immigration Detention Values is currently being progressed. Detention Values 6 and 7 are particularly relevant to the Commission's recommendation concerning the standards for conditions and treatment of persons in immigration detention. Detention Value 6 states: 'People in detention will be treated fairly and reasonably within the law,' and Detention Value 7 states: 'Conditions of detention will ensure the inherent dignity of the human person.'

As indicated above, it is the Minister's intention to initially implement administrative and regulatory reform and then pursue possible legislative changes to reflect the Government's policies. DIAC undertakes to consider the Commission's recommendation when progressing policy development in these areas and prior to embarking on possible legislative changes.

¹ *Ibid*, p.18.

6.2 External scrutiny of immigration detention facilities

Recommendation: The Australian Government should accede to the Optional Protocol to the Convention against Torture and establish an independent National Preventive Mechanism to conduct regular inspections of all places of detention, including immigration detention facilities.²

The Australian Government has already indicated that it is working toward acceding to the Optional Protocol to the Convention against Torture.

Given the importance of treaty obligations, a number of procedures must be completed before Australia can accede to the Optional Protocol, as it is important to ensure domestic legislation, policies and practice comply with the treaty obligations.

Consultations with states and territories are continuing and possible options for a national mechanism are the subject of these discussions. The Government has also sought the views of non-government organisations.

A whole-of-government approach will be taken in completing and assessing the results of consultations before preparing a National Interest Analysis that will be tabled in Parliament. Following tabling, the Joint Standing Committee on Treaties will hold a public inquiry.

7 Number of people in detention

8 Length and uncertainty of detention

Recommendations: Australia's mandatory detention law should be repealed.

The Migration Act should be amended so that immigration detention occurs only when necessary. This should be the exception, not the norm. It must be for a minimal period, be reasonable and be a proportionate means of achieving at least one of the aims outlined in international law. These limited grounds for detention should be clearly prescribed in the Migration Act.

The Migration Act should be amended so that the decision to detain a person is subject to prompt review by a court, in accordance with international law.

The Migration Act should be amended to include periodic independent reviews of the ongoing need to detain an individual, and a maximum time limit for detention.³

As indicated above, it is the Minister's intention in implementing the Government's New Directions in Detention policy and Key Immigration Detention Values to initially implement administrative and regulatory reform and then pursue possible legislative changes. DIAC has already implemented a number of new policies and practices,

² *Ibid*, p.19.

³ *Ibid*, p.21.

while others are under active review. DIAC undertakes to take the Commission's recommendations regarding the length and uncertainty of detention into account prior to embarking on possible legislative changes.

Elements of the Commission's recommendations regarding the length and uncertainty of detention are also reflected in the recent recommendations of the Joint Standing Committee on Migration and are dealt with in the Government's New Directions in Detention policy.

The retention of mandatory detention is a matter of Government policy. The Government maintains a commitment to a system of mandatory detention, as reflected in Key Immigration Detention Values 1 and 2:

1. *Mandatory detention is an essential component of strong border control.*
2. *To support the integrity of Australia's immigration program, three groups will be subject to mandatory detention:*
 - a. *all unauthorised arrivals, for management of health, identity and security risks to the community*
 - b. *unlawful non-citizens who present unacceptable risks to the community and*
 - c. *unlawful non-citizens who have repeatedly refused to comply with their visa conditions.*

Key Immigration Detention Value 5 states that '*Detention in IDCs is only to be used as a last resort and for the shortest practicable time.*' As the Minister stated on 29 July 2008, under the Government's reforms the onus of proof will be reversed in determining the ongoing detention of a person. A departmental decision-maker will have to justify why a person should be detained against these values that presume that that person should be in the community. Appropriate procedures to effect this Key Immigration Detention Value are being considered and a review of the Client Placement Model is currently underway.

The Government's New Directions in Detention reforms also include arrangements to increase the transparency and robustness of detention review. Key Immigration Detention Value 4 states: '*Detention that is indefinite or otherwise arbitrary is not acceptable and the length and condition of detention, including the appropriateness of both the accommodation and the services provided, would be subject of regular review.*' A new senior departmental officer review every three months is being established to determine whether the further detention of an individual is justified. Additionally, a six-monthly review of detention placements by the Commonwealth Ombudsman will be instituted.

The possibility of further changes to review arrangements for detention, including the introduction of judicial review, will remain under consideration as the arrangements already announced by the Government take effect.

9 Staff attitudes

Recommendation: DIAC and GSL should ensure that all current and future staff are provided with adequate training to educate them about the human rights of persons in immigration detention. Staff training and performance management procedures should ensure that all staff treat immigration detainees in a humane manner, with respect for their inherent dignity, and with fairness and cultural sensitivity.⁴

The current Detention Service Provider (DSP), Global Solutions Limited (GSL) is contractually required to provide appropriate training to its staff. As part of the Initial Training Course (ITC), GSL has a module specifically dealing with the human rights of people in immigration detention. In addition, all GSL officers must accept and sign the GSL Code of Conduct that encompasses respect for human rights.

The tender documents for the new contract encompass an increased focus on the training requirements for DSP and DIAC staff. Additionally, roll-out of instructional materials for use by staff working in the immigration detention environment is planned to enhance the effective use of these materials. It is envisaged that there will be a role here also for the Training College.

DIAC staff members working in immigration detention facilities are given a comprehensive four-week training program. The Immigration Training College delivers this training and provides accreditation to Certification IV level in its current course.

Both the DIAC and GSL training programs cover issues such as humane treatment, cultural sensitivity and dealing with victims of torture and trauma.

Importantly, all detention activities and policies are underpinned by the Government's New Directions in Detention policy and the Key Immigration Detention Values. Detention Value 7 states: *'Conditions of detention will ensure the inherent dignity of the human person.'*

In implementing the Government's New Directions in Detention policy, DIAC acknowledges that there is also scope to improve the manner in which it deals with people in immigration detention who come from a diverse range of cultures and experiences. Accordingly, DIAC is striving to identify and implement improvements as part of the current review of detention policy.

⁴ *Ibid*, p.21.

10 Mainland IDCs: cross-cutting concerns

10.1 Detention infrastructure and environment

Recommendation: A comprehensive redevelopment of the Villawood and Perth IDCs should be undertaken as a matter of priority. This should include the demolition of Stage 1 at the Villawood IDC as a matter of urgency, and its replacement with a new facility. This is subject to there being a continuing need for such a facility, given the Government's stated intention to detain people in IDCs only as a last resort. It should also include comprehensive refurbishments to the Perth IDC, to address the issues raised in this report.⁵

DIAC shares the Commission's concerns surrounding some infrastructure at Villawood Immigration Detention Centre (VIDC). The 2008-09 Budget included \$1.1 million for a feasibility study for the redevelopment of the VIDC. This redevelopment is in the planning and approval stage following the Government's approval to progress the project for consideration in the 2010 Budget context.

Current network plans are for Villawood to be a referral centre for higher-risk cases. The size and configuration of the centre will be examined in detail as part of the design development.

In addition, a total of \$7 million has been approved for urgent interim works at VIDC including the refurbishment of Stage 1. The works will improve the amenity for clients accommodated in Stage 1, create a better visits experience and includes refurbishment of internal spaces and the outdoor recreation areas and courtyards. Other works include refurbishment of the Management Support Unit (MSU), part removal and realignment of fences in Stages 2 and 3.

Early works have been completed in the MSU and Stage 1 concurrently with the design and tendering for the remainder of the works which will commence in January 2009.

Perth Immigration Detention Centre (IDC) is being refurbished and is midway through construction. The refurbishment will provide wide-ranging improvements to amenity and operations of the Centre, within the confines of the current site.

As part of the refurbishments being undertaken at the Perth IDC there will be more room allocated for providing specific programs, such as religious activities. One of the previous dormitory rooms is planned to be refurbished into a multi-purpose room. This room will be available for uses such as recreational, educational and religious activities.

⁵ *Ibid*, p.23.

10.2 Physical health care

(a) Availability and quality of health care

Recommendations: DIAC should ensure that detainees are updated regularly about the status of any requests they have made for external specialist treatment, and any reasons why a referral has not been approved.

DIAC should ensure that detainees can request and obtain a second medical examination or opinion if they wish to do so.⁶

As is the case in the wider Australian community, there can sometimes be delays in obtaining appointments with specialists. As a standard process, people in immigration detention are regularly updated on the status of any referral to specialists, and are notified both orally and in writing as soon as specialist appointment details are known. Where a person in immigration detention's request for medical treatment is considered unwarranted by medical staff, the person is immediately advised of the reason why.

DIAC's current Health Service Provider at IDCs is International Health and Medical Services (IHMS). According to IHMS's Standard Operating Policies and Procedures, if a person in immigration detention wishes to seek a second opinion, unless there is a clinical indication for this to occur, this would be facilitated at the person's own expense. IHMS staff is able to assist clients in making any external appointments. Additionally, DIAC will usually agree to meet any costs associated with providing the DSP escorts for an off-site appointment. Where opinions as a result of third-party assessments conflict with advice provided by IHMS, all efforts are taken to resolve this conflict in consultation with the Medical Director of IHMS.

(b) Procedures prior to leaving detention

Recommendations: For each detainee leaving immigration detention, DIAC should ensure that a health discharge assessment is conducted; a health discharge summary is provided to the person in a language they can understand; copies of all relevant medical records and test results are provided to the person; and appropriate arrangements are made for their follow-on medical care in the Australian community or in the country of return.

DIAC should review its policy regarding certification of 'fitness to travel', in particular the provision that allows certification to be validly based on a physical examination completed within the previous 28 days.⁷

To ensure that people have some continuity of health care in either the country to which they are returning, or the Australian community, all people being discharged from immigration detention are provided with a Health Discharge Assessment. This provides a summary of the person's medical history and current health status.

⁶ *Ibid*, p.24.

⁷ *Ibid*, p.25.

Where a person is being removed from Australia or transferred interstate by aircraft, the Health Discharge Assessment will provide a fitness to travel certification. In some situations, consideration is given to having the discharge summary translated into the client's nominated language. An example would be if the client has a significant health condition for which they require follow up with a specialist in the country to which they are returning. Where clinically necessary any relevant medical referrals, records and/or test results are provided.

In regard to follow-up care in the community or in the country to which a person may be returning, arrangements are put in place where this is clinically indicated. For follow-up care in the return country, the person is usually provided with the contact details of an appropriate provider and encouraged to contact the provider on their return. From experience, this system has proven more successful than making an actual appointment for a person.

Generally, people leaving immigration detention are physically fit and healthy. As such, Departmental policy currently states that a fitness to travel certification remains valid for 28 days from the date of the person's last physical examination by a registered nurse or general practitioner. However, where there is an obvious or suspected change in a person's health status within this 28 day period or the person requests an updated physical examination this will be undertaken by the Health Services Provider, at which time the person's fitness to travel certification will be reassessed.

10.3 Mental health care

(a) Availability of mental health staff

Recommendation: DIAC should ensure that additional psychological support services are provided in immigration detention facilities whenever those services are required by detainees. DIAC should seek regular feedback from onsite mental health staff and act promptly to increase the availability of psychological support services when that feedback indicates a need in the current detainee population.⁸

DIAC currently engages Professional Support Services (PSS) to provide psychological and counselling services within IDCs. DIAC regularly meets with PSS to discuss contractual issues and, most importantly, ensure that appropriate care is provided.

DIAC is currently reviewing psychological and other counselling service arrangements under the Psychological and Other Counselling Services Agreement to ensure clients are well supported and provided with an appropriate level of mental health care. Currently psychological and other counselling services are based on centre occupancy levels; however this is used as a guide only. The Agreement allows PSS staff to use their own judgement and provide additional services when required.

⁸ *Ibid*, p.25.

(b) *Mental health referrals and recommendations*

Recommendation: DIAC should ensure that any detainee in an immigration detention facility who has, or is suspected to have, significant mental health concerns or a background of torture or trauma is considered for community detention or a bridging visa as soon as possible.⁹

DIAC has procedures in place under which the physical and mental health of all people entering immigration detention is assessed by formally accredited health professionals. The Department has case management support and health management practices in place for all people in immigration detention, including those clients who have, or are suspected to have, significant mental health concerns or who have experienced torture or trauma. If a person is found to be in need of psychological support or other health care to address the effects of torture and trauma, this is taken into account when they are placed within the detention network, particularly in respect of whether they are considered for Community Detention.

DIAC's Health Services Provider advises DIAC of any person in detention who has, or is suspected to have, significant health concerns. In most instances, these people are placed outside an IDC. The standard process for people in immigration detention who are suspected to have torture and/or trauma issues is that the Health Services Provider advises DIAC of this, and the person is subsequently referred for consideration of Community Detention as a priority. Delays sometimes experienced with these referrals usually stem from delays in obtaining appointments with specialist torture and trauma providers, who assess clients and provide summary reports to assist the referral process. The procedures around this have been improved recently so that referrals can now be made based solely on written advice from the Health Services Provider, rather than waiting for specialist reports.

Client reviews are conducted regularly, and decisions are made on a case-by-case basis in relation to client placement and support needs, or possible bridging visa grants. The circumstances of a person's detention will be reviewed by a senior departmental officer every three months. The Department is currently developing the methodology and format of the three month senior officer review of detention in the context of the Government's new Key Immigration Detention Values. The circumstances of a person's detention may be reviewed more often if new information comes to light or circumstances change.

The Client Placement Model that is used to determine the most appropriate form of detention states:

Assessment and consideration should be given to a person's physical and mental health (including any physical disabilities and/or evidence that the person may have suffered torture or trauma). Health information and recommendations regarding the medical care arrangements for a person in detention will be made by the health services provider and may occur following the induction of a person into the detention accommodation location or as part of new information that may

⁹ *Ibid*, p.27.

trigger a fresh placement assessment. Together with other factors of an individual's case, it may be appropriate for people with special health needs that cannot be cared for in an IDC to be considered for placements such as alternative detention or community detention.

(c) *Suicide and self-harm observation*

Recommendation: Detainees on SASH [suicide and self harm] observation in Stages 2 and 3 at the Villawood IDC should not be transferred to observation rooms in Stage 1. Purpose-built observation rooms should be constructed in Stages 2 and 3. Detainees should be observed in their own rooms when appropriate.¹⁰

It is expected that new purpose-built observation rooms in stage 1 at the VIDC will be completed in mid 2009. The present observation rooms located in Stage 1 of Villawood will be developed into high-care accommodation.

The existing MSU in stage 3 is also to be modified and extended as high care and observation accommodation. This will negate the requirement to transfer stage 2 and 3 people in immigration detention to stage 1 for observation. These works are scheduled for completion by July 2009.

10.4 Recreational activities

(a) *Outdoor space for sport and recreation*

Recommendations: DIAC should ensure that necessary changes are made at the IDCs so that all detainees are provided with adequate access to open grassy space for sport and recreation. This is a particular priority in Stage 1 at Villawood IDC, Perth IDC and Maribyrnong IDC.

In the meantime, DIAC and GSL should ensure that detainees in Maribyrnong IDC and Perth IDC have regular access to organised sporting activities, such as soccer, outside the detention centre. All detainees at Villawood IDC, including those in Stage 1, should be permitted to use the soccer pitch in Stage 3 for sporting activities on a regular basis.¹¹

In 2009, DIAC will undertake water mitigation works that will make it possible to create grassed areas at Northern IDC.

The Perth IDC courtyards are being redesigned as part of the refurbishment. While not large and grassy, they will be enlarged, purpose designed for effective exercise and human interaction and surfaced artificially as is appropriate for more intensive use.

¹⁰ *Ibid*, p.28.

¹¹ *Ibid*, p.30.

At Villawood, the Stage 1 outdoor sport area is being refurbished and the grassy area between Dormitories 2 and 3 is being redesigned completely for more effective use.

All people in immigration detention in Villawood have access to the soccer pitch. Swimming is planned to be offered to people when a suitable location is identified. Group excursions that may include sports activities may be introduced after the refurbishment and if the number of people in the centre increases.

(b) Access to reading materials

Recommendations: DIAC and GSL should ensure that each IDC has an onsite library area stocked with reading materials in the principal languages spoken by detainees at the centre. All detainees should have regular access to this area. Management at each of the IDCs should explore the possibility of borrowing reading materials on a regular basis from a local library or a mobile library service.¹²

GSL is contractually required to provide access to appropriate reading material. This is achieved through a variety of means including mobile library services, excursions to local library facilities and a stock of onsite material. DIAC regularly checks with GSL to ensure these facilities are provided.

Recently, DIAC instructed GSL to provide strategies on how to improve the quality and use of the VIDC library.

The Northern IDC has an arrangement with local Darwin City Council libraries to borrow books in Bahasa, Indonesian and Mandarin, as required. A stock of books loaned from the libraries is held on site at the Northern IDC and exchanged each month. Books are exchanged more frequently if there are large numbers or prolific readers in the centre. People in immigration detention have also been taken to the local library to select their own reading material. A recent Mandarin speaking person was reading about twenty books each week, and was taken to the library weekly. After he had exhausted the local library supplies, inter-library loans were arranged. GSL has also purchased books in Indonesian, Mandarin and English, which are held in the recreation rooms on site and can be signed out by people to read. Additional books in Indonesian language suitable for juveniles have been purchased for juvenile foreign fishers who are held in alternate detention in Darwin. Northern IDC's on-site library is being expanded over time. Indonesian and Mandarin daily papers are ordered for the centre and are delivered throughout the week. The Indonesian weekly magazine *Tempo* is provided each week.

Maribyrnong's library area has been completed and people have permanent access to foreign-language reading material. The centre has an ongoing relationship with the local library service to provide people with foreign-language books.

The requirement for reading material can be met by various means and at times books have not been used by people in immigration detention. In Maribyrnong for example, there has been extensive use of on-line reading material since the rollout of

¹² *Ibid*, p31.

computers into each zone and books are made available and used as part of the education program.

(c) *Gym facilities*

Recommendation: DIAC should upgrade the outdoor gym facilities at the Perth IDC, at Maribyrnong IDC, and in Stage 1 at Villawood IDC. These facilities should be enclosed to ensure adequate privacy and protection from the weather.¹³

Upgrades are in place for Perth IDC with a ventilated covered area and new equipment. Improvements to Villawood Stage 1 gym facilities will be included as part of works during early 2009. Maribyrnong weather protection and privacy improvements are currently unfunded and will be considered as part of the 2009 budget review.

10.5 Educational programs

Recommendations: DIAC should repeal its policy of prohibiting immigration detainees from undertaking a course of study that leads to a formal qualification. DIAC should allow detainees to enrol in substantive education courses at TAFE and other educational or vocational training institutions. Enrolment could be by correspondence. However, where possible, DIAC should consider permitting detainees to attend some classes in person.

DIAC and GSL should arrange for the provision of structured educational classes at the Northern IDC for detainees who wish to participate. This should include ESL classes and computing classes.

DIAC should ensure that each immigration detention facility has adequate space dedicated to educational activities. In particular, DIAC should upgrade the Perth IDC to provide dedicated classroom space. The Commission is of the view that Stage 1 at Villawood IDC is an inappropriate facility and should be demolished. However, if DIAC intends to continue to use Stage 1, it should upgrade the facility to provide dedicated space for educational classes.¹⁴

Historically, longer-term people in immigration detention have not been given access to formally accredited courses offered by tertiary institutions which lead to a substantive qualification. If allowed, this would represent an inequity for lawful full-fee paying students and would have the potential to undermine Student visa policy objectives.

The Government's Key Immigration Detention Value 5 states that "Detention in IDCs is only to be used as a last resort and for the shortest practicable time". As a consequence of this policy, it is expected that the incidence and duration of detention will be significantly reduced, further rendering it impracticable for people in immigration detention to embark on a course of study of extended duration.

¹³ *Ibid*, p32.

¹⁴ *Ibid*, p32.

DIAC provides a range of activities and programs, including educational programs, to people in immigration detention. Adults may undertake community college, vocational or adult education courses and may obtain a certificate or other accreditation for their studies. Generally, the educational programs accessed by people in immigration detention are of a short duration, usually up to four months.

Recreational activities are provided to people accommodated at the Northern IDC. The centre's caseload, mainly illegal foreign fishers who remain in immigration detention for only a couple of weeks, means that it is usually impracticable to commence structured educational programs. While Northern IDC has commenced a procurement process for a service provider to conduct conversational English classes, the demand for structured English as a second language and computing courses is low because of the short duration of most peoples' stay and because they generally do not have a high level of English literacy or access to computers when they return home.

The computer area in Perth has also been used as a classroom as the people in immigration detention numbers have been very low. An alternate computing area will be provided in the new multi purpose dining room.

A scope of the works for Stage 1 of Villawood has been tendered and includes designs for improved educational facilities in the central area of Stage1. These are scheduled for construction later in 2009.

While no child is accommodated in an IDC, in accordance with Government policy, all school-aged children in community detention attend primary or secondary school.

10.6 External excursions

Recommendations: DIAC should adopt minimum standards for the conduct of regular external excursions from immigration detention facilities, and include these standards in the contract with the detention services provider. DIAC should monitor compliance with these standards on an ongoing basis and take appropriate remedial action when they are not being complied with.

In the meantime, Villawood management should increase the frequency of group excursions, and make them available to detainees in all sections of the centre. Maribyrnong management should introduce regular group excursions for all detainees. Management at the Perth IDC and Northern IDC should facilitate detainee requests for home visits or other individual excursions where possible.

DIAC should ensure that the detention services provider is allocated sufficient resources to provide escorts for regular external excursions.¹⁵

A large number of excursions are facilitated for people in immigration detention, including those who have had their visas cancelled under section 501 of the

¹⁵ *Ibid*, p35.

Migration Act 1958 (the Act). People in immigration detention can request an excursion, including people who have had a visa cancelled on character grounds. DIAC policy and procedures state that the DSP and the department will ensure that evaluation of the request is progressed quickly.

Excursion requests are considered according to necessary and current risk assessments on a case-by-case basis. Generally, if the DSP is given enough lead time, there are few restrictions relating to requests for excursions.

DIAC is currently reviewing procedures for excursions to ensure they better reflect the Government's New Directions in Detention policy and the Key Immigration Detention Values. DIAC will consider the Commission's recommendations, including those concerning resources allocated to excursions, as part of this review.

There has been a progressive increase in the number and frequency of organised group external excursions from VIDC over the past twelve months. Excursions have also been progressively expanded to include people classified across the range of risk levels. Northern and Perth IDCs welcome and will facilitate home visits if requested. Both Northern and Perth IDCs already actively facilitate individual excursions.

10.7 Use of restraints

Recommendations: DIAC and GSL should review their policies and procedures regarding the use of restraints on immigration detainees during trips outside immigration detention facilities, to ensure that restraints are only used when absolutely necessary. Restraints should only be used after a thorough risk assessment has been conducted for the individual detainee for the particular trip in question. If it is deemed necessary to use restraints, they should be covered while the detainee is in public view and they should be removed for appearances in courts and tribunals.

Policies regarding use of restraints should include clear procedures for restraints to be removed in time-sensitive situations that may arise - for example, an emergency health issue or a request to use toilet facilities. Current and future GSL staff should be trained on these procedures. This training should emphasise the use of techniques which ensure that, when it is absolutely necessary to restrain a detainee, that person is restrained in dignity and with minimum use of force.¹⁶

Restraints are only used after a thorough risk assessment is conducted and following verbal approval from the DDSP's Director of Detention Services. If, as a result of that risk assessment, it is decided that restraints will be used to mitigate risks, then they are applied for the minimum period required. Officers are encouraged to continually observe any change in circumstances and adjust the mitigation strategies in accordance with DIAC's and the DSP's clear guidelines on restraints and their use.

¹⁶ *Ibid*, p36.

Presently, there are no plans to formally review these guidelines, but DIAC and the DSP continually strive to implement recognised best practice principles in all areas, and the use of restraints is no different.

The DSP's staff is required to undertake extensive training. Aspects of this training include both the use of restraints and, importantly, other methods of conflict de-escalation and behavioural management. DIAC and the DSP work together very closely to maintain and respect peoples' dignity while ensuring the safety and welfare of others.

10.8 Access to communication facilities

Recommendation: DIAC should continue to expand access to the internet for immigration detainees, particularly at the Northern IDC and the Perth IDC.¹⁷

DIAC has a scheduled program in place to install additional internet facilities into centres.

Five extra personal computers and internet facilities will be installed at the Northern IDC in early 2009.

The five internet facilities at Perth IDC are sufficient to cater for the current low numbers at the centre. These are being supplemented with additional outlets in the dining room to improve access at all hours.

DIAC will continue to monitor the level of computer and internet usage and, if the need arises, install more internet stations.

¹⁷ *Ibid*, p37.

10.9 Provision of information to detainees

(a) Client placement

Recommendations: When a person is taken into immigration detention, DIAC should promptly inform that person about the various detention arrangements available to them, including community detention, alternative detention in the community, IRH and/or immigration transit accommodation.

DIAC and GSL should ensure that each detainee is promptly and fully informed of the reasons for their placement in a particular detention facility or arrangement. This should include explaining the risk assessment process. When a detainee makes a formal request to be moved to a different section of the facility, or to a different place of detention, DIAC or GSL should respond promptly in writing and provide reasons if the request is refused.

The Commission hopes to see a new client placement model in place by the time of its 2009 annual visits. This should reflect the Government's new directions in immigration detention, in particular that detention in IDCs is to be used as a last resort and for the shortest practicable time, and that the presumption will be that persons will remain in the community while their immigration status is resolved.¹⁸

All people entering immigration detention are given an orientation and introduction to the services available to them in each facility.

Currently, people in immigration detention are informed of the reason for their detention, for example if they have overstayed their visa or their visa has been cancelled, and it is explained why they are not currently eligible for the grant of a bridging visa. On entering immigration detention, people are not generally informed of why they have been placed in a particular form of detention, but if a person is moved from one form of detention to another, they are notified in writing and encouraged to discuss this with departmental staff.

DIAC is currently reviewing the client placement model to better reflect the Government's New Directions in Detention policy. As part of this review DIAC undertakes to consider the Commission's suggestions with a view to ensuring that people in immigration detention are more clearly informed of the circumstances of their detention.

A revised client placement model is due for full implementation during 2009.

(b) Case management

Recommendation: DIAC case managers should ensure that each immigration detainee is provided with frequent updates regarding progress with their immigration case.¹⁹

¹⁸ *Ibid*, p.38.

¹⁹ *Ibid*, p.38.

Case managers are required to provide active management of the resolution of all cases of people in immigration detention. While there are no specific instructions about the frequency of contact, case managers must maintain regular contact with their clients even if there is no specific issue of progress to report. The issue of ensuring minimum contact frequency will be reviewed in light of the Commission's comments.

(c) *Induction materials*

Recommendations: DIAC and GSL should ensure that all immigration detainees, upon entering detention, are promptly provided with current and comprehensive induction materials containing information including, but not limited to, the details set out in the above section.

DIAC and GSL induction materials for immigration detainees should be translated into the main languages spoken by the detainee population. Each detainee should be provided with their own copy in a language they understand. If this is not possible, an interpreter should be provided, in person, to go through the materials with the detainee in their preferred language.²⁰

All people entering immigration detention are provided with an induction to that facility, including participating in an induction interview with the DSP. This induction includes information on accommodation, dining, access to health care, access to pastoral care, recreational activities, visitors and acceptable standards of behaviour. This induction is provided in a language that is understood by the person and qualified interpreters are used when required. As part of the induction interview, people are given an induction booklet, available in the eight most common languages. DIAC and the DSP regularly review the current booklet to ensure it contains relevant, accurate and up to date information. The booklets vary between facilities to provide local and relevant information for each site.

DIAC is also preparing material that will be translated into appropriate languages to supplement the induction process. This new material will include a handbook which details centre-based information for people accommodated in Immigration Transit Accommodation (ITA) as well as brochures explaining the Purchase Allowance Scheme which operates in certain immigration detention facilities. The Department facilitates interpreting services as required.

Additionally, people in immigration detention are actively encouraged to approach the DSP, Health Service Providers or departmental staff if they have any queries or need particular assistance. People in immigration detention are also encouraged to complain about any aspects of their detention about which they are concerned. Promotional material in several languages (including Arabic, Hindi, Mandarin and Vietnamese) is displayed informing people in immigration detention that complaints may be made to Departmental staff, DSP staff, the Ombudsman's Office, the Australian Human Rights Commission and the Australian Red Cross about any

²⁰ *Ibid*, p.39.

aspects of a person's detention and that relevant processes are in place to receive and respond to those complaints.

Information about health care

All people entering immigration detention are offered a Health Induction Assessment, and if they consent, this assessment is conducted within three days of the person entering detention. For people in an IDC, this assessment is conducted by an IHMS registered nurse or general practitioner, who tells the person about access to and the availability of health services. Where necessary, telephone interpreters are used through Translating Interpreting Services (TIS).

The department is close to finalising a *Health Handbook*, which will provide easy to understand information on health services at VIDC, as well as other relevant health information. Once finalised, this handbook will be translated into several key languages and distributed to people in immigration detention at the time of their Health Induction Assessment and on demand throughout their time in detention. A *Health Handbook* outlining health services at Perth IDC, MIDC, Northern IDC and Christmas Island IDC will be drafted following the finalisation of the new contract arrangements with the Department's preferred tenderer for health services.

People in Perth Immigration Residential Housing (PIRH) and Sydney Immigration Residential Housing (SIRH) are provided with a pamphlet at the time of their induction to the IRH by the DSP. This pamphlet has information on using health services in the IRH. This pamphlet has been translated into several frequently-used languages.

People in Brisbane Immigration Transit Accommodation (BITA) and Melbourne Immigration Transit Accommodation (MITA) are provided with a pamphlet at the time of their induction to the ITA by the DSP. This pamphlet has information on using health services in the ITA. Arrangements are currently being made to have the MITA and BITA brochures translated into several frequently-used languages.

People in Community Detention receive a pack of information from the Health Services Provider setting out the process for accessing health services. This information pack is available in several frequently-used languages.

10.10 Interpreters and translation

(a) Interpreters

Recommendations: DIAC and GSL should make greater use of onsite interpreters at immigration detention facilities. Where there is a significant group of detainees who speak the same language, DIAC should consider employing an interpreter to work onsite on a regular basis. Concerns previously expressed by GSL regarding the use of one full-time interpreter could be overcome by employing or contracting several part-time or casual interpreters to work onsite on a rostered basis.

Detainees should be offered the option of having a face-to-face interpreter present for health and mental health appointments.

Posters should be displayed in all immigration detention facilities explaining how detainees can access an interpreter. The information on the posters should be translated into the main languages spoken by the detainee population, and should include the Telephone Interpreting Service phone number.²¹

A significant proportion of the people in immigration detention population are either bilingual, speak English as a first language or have spent considerable time in the Australian community and have functional English.

However, DIAC and its service providers work with interpreters to facilitate communication with people in immigration detention who may not be proficient in English and produce and/or disseminate information about services, policies and issues regarding immigration detention in English and other relevant languages where feasible. Written information is made available in other languages as appropriate.

When required the TIS provides services to DIAC, the DSP and the Health Service Providers. Posters are displayed in all centres explaining how to use TIS. Posters are displayed in the eight most common languages. DIAC will audit the presence of these posters and take remedial action where necessary.

People in immigration detention are free to request a TIS person to translate the contents of letters or documents for them at any time. When a large proportion of the group is identified as speaking a particular language, translated forms and other material are made available in that language. For example, the ITA Handbook is currently being translated in Arabic, Cantonese, Japanese, Malaysian, Mandarin, Tamil, Thai and Vietnamese.

As the Commission has noted, translators are engaged for face-to-face services to people when required and provide support; for example, at immigration detention consultative meetings if needed.

In addition, a number of DSP staff onsite are bilingual and provide informal interpreting services.

²¹ *Ibid*, p.41.

Given the shortage of interpreters accredited by the National Accreditation Authority for Translators and Interpreters (NAATI), it would be an inappropriate use of scarce resources to maintain a standby presence throughout the network for all language groups. However, reflecting the significant Indonesian caseload at Northern IDC, the centre has one fulltime on-site Bahasa Indonesian interpreter who is employed by the DSP. Other interpreters are hired on an as-needs basis.

Although the Royal Australian College of General Practitioners' *Standards For Health Services in Australian IDCs* does not require face-to-face interpreters during health and mental health appointments, the Health Service Providers, PSS and IHMS provide face-to-face interpreting services on request from a person or when a health professional deems it necessary. In all other cases PSS and IHMS organise telephone interpreters through TIS.

(b) Translation of documents

Recommendations: Wherever possible, DIAC should ensure that official letters and documents provided to a detainee are in a language the detainee can understand. Where this is not possible, the detainee should be offered the assistance of a face-to-face or telephone interpreter to translate the contents of the letter or document. All DIAC and GSL documents provided or displayed in immigration detention facilities should be translated into the main languages spoken by the detainee population. DIAC and GSL should coordinate at a national level to ensure this takes place. This should include request and complaint forms, induction materials, the menu and the program of recreational and educational activities.²²

As part of DIAC's duty of care and natural justice obligations, people in immigration detention are provided with current, accurate and comprehensive information relevant to their detention in a language and in terms they can understand.

DIAC and its service providers work with interpreters to facilitate communication with people in immigration detention who may not be proficient in English and produce and/or disseminate information about services, policies and issues regarding immigration detention in English and other relevant languages where feasible. Written information is made available in other languages, as appropriate.

When facilitating interpreting services, care is taken to ensure where possible that the interpreter is acceptable to the person in immigration detention (particularly for gender and ethnic preference).

Interpreting services are provided in the first instance by the DIAC's TIS. Interpreters and translators are NAATI-accredited and bound by the Australian Institute of Interpreters and Translators (AUSIT) professional code of ethics.

These services are also available to visitors of people in immigration detention, as well as to external stakeholders such as the Australian Red Cross to facilitate communication with people in community detention.

²² *Ibid*, pp.41-42.

A nationally coordinated approach to the comprehensive translation of relevant detention documents and information tools between DIAC and the DSP remains to be developed. The Commission's recommendations will be taken into account on this issue.

10.11 Visitors' facilities

Recommendations: DIAC should ensure that all IDCs have appropriate facilities for detainees to meet with visitors. These should include indoor and outdoor areas. Rooms should be available for private visits. The visitors' areas should be safe, hospitable and appropriate for children. This is a particular concern at Villawood IDC and the Perth IDC.

DIAC should ensure that the interview rooms at all IDCs are private and soundproofed. This is a particular concern at Villawood IDC and Maribyrnong IDC.²³

Visits from family, friends and professional advisers are an important right for people in immigration detention and essential to their well-being. Where possible the Department seeks to provide indoor and outdoor accommodation that promotes meaningful interactions with visitors, allows for social activities and sharing of meals, and supports religious and other professional visits.

Improvement works to the visits area in Stage 1 of Villawood will be undertaken early in 2009 and will include the refurbishment and re-planning of the existing spaces to include snack making facilities and lounge areas, re-landscaping of the visits courtyard and the provision of disabled access.

The existing Stage 2 and 3 visits facility at VIDC consists of a large open sided shelter and some outdoor furniture, pergolas, play equipment and vending machines. Funding is approved for an all-weather visits facility at Stage 2 and Stage 3 and improvements to the interview rooms. These improvements will be carried out during 2009. The visits arrangements may require changes in the future due to the future redevelopment plans for Villawood and the facilities may be interim or relocatable.

Interview rooms in Villawood's Stage 2 are being redesigned as part of the interim visits improvements during 2009. An interview room is being provided at the new visits works in Stage 1. Other interview rooms will be assessed as part of the 2009 maintenance plans.

The multi-purpose room at Perth IDC serves as the visits area. The number of people detained in Perth has been low in recent years and a flexible approach is taken to make best use of the facility. Refurbishments will provide improved multi-purpose living and dining rooms and outdoor areas that will complement the centre when used by visitors.

²³ *Ibid*, p.43.

The interview rooms in Maribyrnong are constructed from masonry walls and solid doors. The sound resistance will be checked and enhanced as part of the 2009 maintenance arrangements.

10.12 Food

(a) Food variety and opportunities for self-catering

Recommendation: DIAC and GSL should continue to explore ways to provide people in IDCs with greater choice over what they eat, and more opportunities to prepare their own food if they wish to do so. This could include more cooking classes, more BBQs and occasional take-away food nights. DIAC should also consider including more self-catering facilities at the IDCs. This could include kitchenette facilities with cooking equipment in common areas, or activities kitchens (similar to the activities kitchen that previously existed at Baxter IDC).^{24 & 25}

A variety of food options and preparation methods are provided across the detention network, dependent on the number and mix of the people in the immigration detention population at each facility. People in immigration detention with special dietary needs due to either religious, cultural, disease or allergies are served appropriately.

People participating in immigration detention consultative meetings at facilities provide an opportunity to request changes to the menus. This is, nevertheless, limited by the requirement to:

- abide by food preparation regulations
- ensure food is nutritionally adequate for health and well-being and
- is dietary specific for cultural and medical reasons.

In IDCs bread and condiments are available in activities rooms so that people in immigration detention can prepare their own snacks between meals. With the introduction of IRH in Sydney and Perth, people in IRH are able to go shopping and prepare their own meals.

The ITAs at Brisbane and Melbourne allows some opportunity for people in ITA to self-cater as well as have take-away meals.

Detention Policy Section is currently drafting instructional materials for use by Departmental and DSP staff working in immigration detention facilities which will provide greater guidance on appropriate dietary requirements, also in the light of this recommendation.

²⁴ In its 2006 inspection report, the Commission noted that the introduction of an activities kitchen at Baxter had been highly successful, and recommended that other detention centres establish similar facilities.

²⁵ AHRC, *2008 Immigration Report*, p.44.

(b) Special dietary needs

Recommendation: DIAC and GSL should ensure that IDCs have appropriate facilities, and follow necessary kitchen practices, to provide meals and snacks to any detainees who wish to be provided with halal food.²⁶

Halal food is available in all facilities. The kitchens have been certified by local authorities in each state. Kitchens are also able to accommodate other dietary needs as required.

10.13 Detainees whose visas have been cancelled under section 501

Recommendations: DIAC should review the operation of section 501 of the Migration Act as a matter of priority, with the aim of excluding long-term permanent residents from the provision.

DIAC and GSL should ensure that risk assessments for the purposes of client placement and external excursions are determined on a case by case basis through an assessment of the individual's history and circumstances; they should not be based on the fact that an individual's visa has been cancelled under section 501 of the Migration Act. The reasons for the outcome of the assessment should be clearly communicated to the detainee.²⁷

DIAC is currently reviewing the policy framework applied to section 501 of the Act, including for the management of long-term residents and those who arrived in Australia as minors.

Risk assessments in immigration detention are determined on a case by case basis and taking into account by a person's previous history. People often have their risk level changed depending on their behaviour within the centres. Risk assessments are available to people on request.

A large number of excursions are facilitated for people in immigration detention, including those who have had their visas cancelled under section 501 of the Act. People in immigration detention can request an excursion, including people who have had a visa cancelled under character grounds. DIAC policy and procedures state that the DSP and the department will ensure that evaluation of the request is progressed quickly.

Excursion requests are considered in relation to necessary and current risk assessments on case-by-case basis.

²⁶ *Ibid*, p.44.

²⁷ *Ibid*, p.46.

11 Mainland Immigration Detention Centres: specific concerns

11.1 Villawood IDC

(a) Stage 1

Recommendation: A comprehensive redevelopment of the Villawood IDC should be undertaken as a matter of priority. This should include the demolition of Stage 1 as a matter of urgency, and its replacement with a new facility. This is subject to there being a continuing need for such a facility, given the Government's stated intention to detain people in IDCs only as a last resort.²⁸

The comments on VIDC infrastructure are acknowledged and the Department welcomes the Commission's continued involvement with the current and future developments. Please see comments above in response to recommendation 10.1.

(b) Other concerns

SASH observation rooms²⁹

The comments made about Suicide and Self Harm (SASH) would benefit from further dialogue with the Department. SASH observation rooms are a procedure for dealing with a particular set of behaviours. The current interim works at Villawood seek to reduce the need for SASH observation rooms and deliver more effective and humane services to people in the centre. Refurbishment works at Villawood, including those in Stage 1, are interim steps towards a better designed centre.

Management Support Unit (MSU)³⁰

The refurbishment of the current MSU facility provides for a number of semi-independent units. The design proposes to provide specialist care accommodation that will be separate from other accommodation, but may be opened and integrated as a part of redeveloped Villawood in the future. DIAC invites the Commission to inspect the plans and construction during early 2009.

External excursions³¹

There has been a progressive increase in the number and frequency of organised group external excursions from VIDC over the past twelve months. Excursions have also been progressively expanded to include people classified across the range of risk levels. Please see comments above in response to recommendation 10.6.

²⁸ *Ibid*, p.47.

²⁹ *Ibid*, p.48.

³⁰ *Ibid*, p.48.

³¹ *Ibid*, p.48.

Violent incidents³²

The VIDC continues to successfully manage a substantial number of people with very serious histories of violence. Since the Commission's visit to VIDC in June 2008, it has been noted that there has been a reduction in the number and frequency of incidents of violence between people in immigration detention at that centre.

Incidents of violence between people in immigration detention are automatically referred to the New South Wales (NSW) Police, who routinely attend the centre. The relationship between NSW Police and local DIAC staff is strong and is expected to be formalised shortly, with the signing of a Memorandum of Understanding (MOU) with both NSW Police and the Australian Federal Police (AFP) for the provision of police services at VIDC. DIAC is pleased that all parties continue to work in the spirit of the MOU in delivering policing services to Villawood.

Use of restraints³³

.Please see comments above in response to recommendation 10.7.

Drug use³⁴

DIAC takes all allegations regarding drug use within Villawood or any other detention facility seriously and does not sanction the use of illegal drugs in its immigration detention facilities. While proactive measures such as visitor screening and detainee monitoring are in place to prevent people in immigration detention accessing illegal drugs, DIAC acknowledges that detention facilities are not correctional institutions and it is not appropriate to conduct overly-intrusive searches of people in immigration detention or visitors.

It is important to note that the population of detention facilities includes people from prison who have been convicted of serious crimes. A number of those who come from these institutions may have existing drug problems. In VIDC and MIDC access is provided to a methadone treatment program supervised by trained doctors.

There have been past allegations of drug use at VIDC. In April 2006, the department was made aware of allegations in relation to the availability of illicit drugs within VIDC. An independent investigation of these allegations was immediately arranged

³² *Ibid*, p.48.

³³ *Ibid*, p.48.

³⁴ *Ibid*, p.48.

and commenced. The independent investigator reported findings to the Department on 13 June 2006.

Findings from that report included that the DSP had a range of strategies and operational procedures in place that were designed to deter and prevent the entry of illicit drugs into the facility; It also found that DSP staff were trained in the relevant operational procedures and management systems to ensure effective deterrence and prevention of entry of illicit drugs into VIDC; and that at the time of the report and on the available evidence, it could be concluded that illicit drugs were not readily available at VIDC.

Similarly, allegations regarding drug use within Villawood raised in July 2008 were promptly referred to the NSW Police. The Police have concluded their investigation into these recent allegations. No evidence was found to suggest that there was an ongoing problem with drug use at VIDC.

DIAC has recently requested the assistance of the Australian Federal Police in sourcing an appropriate body to assist in reviewing existing policies and procedures relating to the prevention of entry of illicit substances to the centre. A reviewer (from the NSW Department of Corrective Services) has been recommended, terms of reference drafted and the negotiations are ongoing with the reviewer. It is expected that the review will commence early in 2009.

Interpreters³⁵

There is a diverse group of people in the centre and at present DIAC does not consider that there is a need for an on-site interpreter to cater for a specific language group or groups.

Please see general comments above in response to recommendation 10.10.

Recreational activities³⁶

The provision of recreational activities is the responsibility of the DSP. People from all stages who are detained in Villawood have access to the soccer field located in Stage 3, including people from Stage 1. There is a wide range of recreational activities made available for people accommodated at VIDC. There is also a range of external excursions which may include swimming and access to cinema and other recreation activities.

Educational activities³⁷

³⁵ *Ibid*, p.49.

³⁶ *Ibid*, p.49

³⁷ *Ibid*, p.49.

Please see comments above in response to recommendation 10.5.

Library facilities³⁸

Please see comments above in response to recommendation 10.4(b).

Visitors' facilities³⁹

Please see comments above in response to recommendation 10.11.

Interview rooms⁴⁰

Please see comments above in response to recommendation 10.11.

Halal food⁴¹

DIAC is fully satisfied that Halal food preparation practices are being followed.
Please see general comments above in response to recommendation 10.12

11.2 Perth IDC

(a) Infrastructure and facilities

Recommendations: A comprehensive redevelopment of the Perth IDC should be undertaken as a matter of priority. This should ensure that detainees are provided with access to an outdoor grassy area for sport and recreation, dedicated classroom space for educational activities, space that can be used for religious purposes, and appropriate visitors' facilities.

In the meantime, DIAC and GSL should ensure that detainees at the Perth IDC have regular access to organised sporting activities, such as soccer, outside the detention centre.

The outdoor gym area at the Perth IDC should be enclosed to ensure adequate privacy and protection from the weather.

DIAC should continue to expand access to the internet for detainees at the Perth IDC.⁴²

Please see comments above in response to recommendations 10.1 (redevelopment), 10.4(a) (courtyard), 10.4(c) (gym), 10.8 (internet access) and 10.11 (visits).

³⁸ *Ibid*, p.49.

³⁹ *Ibid*, p.49.

⁴⁰ *Ibid*, p.49.

⁴¹ *Ibid*, p.50.

⁴² *Ibid*, p.51.

People at Perth IDC can request access to sporting activities at any time. Group activities will resume after the centre is redeveloped.

(b) *Other concerns*
External excursions⁴³

Group excursions from Perth IDC have not been organised recently because the population within the centre is quite low during the refurbishments. However, it is expected that group excursions will resume after completion of the works. Please see general comments above in response to recommendation 10.6.

Use of restraints⁴⁴

Please see comments above in response to recommendation 10.7.

Interpreters and translation⁴⁵

Please see general comments above in response to recommendation 10.10.

Posters are displayed throughout Perth IDC explaining how to use the TIS. People in Perth IDC are free to request a TIS interpreter to translate the contents of letters or documents for them at any time. When a large proportion of people in Perth IDC is identified as speaking a particular language, translated forms and other material are made available in that language.

As the Commission has noted, translators are engaged for face-to-face services when required, for example, to assist at immigration detention consultative meetings. Given the shortage of interpreters accredited by NAATI, it is not feasible to maintain a standby presence throughout for all language groups.

As the Commission also notes that people entering Perth IDC are given a small card that they can show to a detention officer to indicate they need an interpreter.

Cultural sensitivity⁴⁶

All staff members in the Perth IDC have received cultural sensitivity training. People are encouraged to bring any concerns they may have about culturally inappropriate behaviour to DIAC's attention at any time.

⁴³ *Ibid*, p.52.

⁴⁴ *Ibid*, p.52.

⁴⁵ *Ibid*, p.52.

⁴⁶ *Ibid*, p.52.

11.3 Maribyrnong IDC

(a) Infrastructure and facilities

Recommendations: DIAC should ensure that the interview rooms at Maribyrnong IDC are private and soundproofed.

DIAC and GSL should ensure that detainees at Maribyrnong IDC have access to a space which can be used for religious purposes.

DIAC should undertake necessary changes at Maribyrnong IDC so that detainees are provided with adequate access to open grassy space for sport and recreation. In the meantime, DIAC and GSL should ensure that detainees at Maribyrnong IDC have regular access to organised sporting activities, such as soccer, outside the detention centre.

The outdoor gym areas at Maribyrnong IDC should be enclosed to ensure adequate privacy and protection from the weather.⁴⁷

Please see comments above in response to 10.11 (visitor's facilities).

Areas for pastoral care including confession are available in the visits area and larger areas for larger religious services can be booked by prior arrangement. DIAC notes that people consulted at a bi-monthly client consultative meeting held in November 2008 indicated their preference to practice religion in the privacy of their own rooms. A further group consultation will be undertaken in future to assess if a need for a dedicated religious room is needed.

The centre does not have enough space to establish a large grassed area, however people have access to some sporting activities, in particular badminton and tennis, and excursions for sporting activities can be requested at any time.

Please see comments above in response to 10.4(c) (gym).

(b) Other concerns

External excursions⁴⁸

DIAC actively facilitates excursions for people in MIDC wherever possible. MIDC welcomes and will facilitate home visits if requests are made. Small groups, where people have been identified as low risk, have in the past been able to participate in external excursions. The DSP has also confirmed that on occasions, family and friends of people undertaking such excursions meet them at the venue, and there is no objection raised to this occurring.

Please see general comments above in response to recommendation 10.6.

⁴⁷ *Ibid*, p.53.

⁴⁸ *Ibid*, p.54.

Violent incidents⁴⁹

DIAC is negotiating a Memorandum of Understanding (MOU) with the Victorian Police for the provision of police services at MIDC. The negotiations are at an advanced stage and DIAC is working closely with the Victorian Police to ensure the MOU is finalised as soon as possible. Any incident that occurs at MIDC that involves assault, criminal damage or similar is automatically reported to the Victorian Police by the DSP. In the spirit of the MOU, the Victorian Police attends incidents at MIDC as required. It is then a matter for the Police to determine if charges will be laid, with DIAC monitoring the outcome of these referrals.

Halal food⁵⁰

DIAC is fully satisfied that Halal food preparation practices are being followed. Please see general comments above in response to recommendation 10.12.

Library facilities⁵¹

Please see comments above in response to recommendation 10.4(b).

⁴⁹ *Ibid*, p.54.

⁵⁰ *Ibid*, p.54.

⁵¹ *Ibid*, p.54.

11.4 Northern IDC

(a) Infrastructure and physical environment

Recommendations: DIAC should consider reducing the amount of high wire fencing at the Northern IDC. This would be in line with the principle contained in the DIAC Standards that security systems at all detention facilities should be as unobtrusive as possible.⁵²

DIAC should ensure that detainees at the Northern IDC are provided with adequate access to an open grassy space for sport and recreation. The Commission encourages DIAC to implement water mitigation measures at the Northern IDC as soon as possible.⁵³

DIAC notes that the Commission considers Northern IDC 'feels less restrictive than the other mainland detention centres...'⁵⁴ As Northern IDC is located on an Australian Defence Force base and Defence Force families reside nearby, any changes in the fencing arrangements would need to be approved by Defence. Defence has indicated that they do not wish the fences to be removed.

As noted above in response to recommendation 10.4, water mitigation works have started and once completed it will be possible to establish open grassy space.

(b) Other concerns

Educational programs⁵⁵

Please see comments above in response to recommendation 10.5.

Internet access⁵⁶

Please see comments above in response to recommendation 10.8. Usage will continue to be monitored and if additional needs are identified then more internet stations will be ordered.

Halal food⁵⁷

DIAC is fully satisfied that Halal food preparation practices are being followed. Please see general comments above in response to recommendation 10.12.

⁵² See *Standards for design and fit out of immigration detention facilities*.

⁵³ AHRC, *2008 Immigration Report*, p.55.

⁵⁴ *Ibid*, p.55.

⁵⁵ *Ibid*, p.56.

⁵⁶ *Ibid*, p.56.

⁵⁷ *Ibid*, p.56.

External excursions⁵⁸

While people are welcome to request home visits or individual excursions, as noted by the Commission home visits from Northern IDC are quite rare because very few people have family or homes in Darwin. Please see general comments above in response to recommendation 10.6.

(c) Concerns relating to 'illegal foreign fisher' detainees⁵⁹

DIAC understands that the Australian Customs Service and the Australian Fisheries Management Authority will respond to the Commission's concerns on this matter.

12 Alternatives to IDCs

The immigration detention network comprises of a range of placement options for person in immigration detention. Under the Act, the current placement options for persons detained include immigration detention centres (IDCs), immigration residential housing (IRH), immigration transit accommodation (ITA), alternative places of detention and community detention (residential determination).

While alternative detention (IRH/ITA accommodation) and community detention remain "immigration detention" in a legislative sense and still requires a level of security and restriction of liberty (as acknowledged by the Commission), it is the Department's view that these alternatives are less intrusive than other detention options. As such, DIAC considers use of these facilities always preferable to accommodation in IDCs where an evaluation of a person's needs and the risk they pose to the community deems it appropriate.

The number of persons in each facility on 12 December 2008 were:

- | | |
|-------------------------------------|-------------|
| • immigration detention centres | 243 persons |
| • immigration residential housing | 13 |
| • immigration transit accommodation | 21 |
| • alternative places of detention | 114 |
| • community detention | 59 |

Under the Government's Key Immigration Detention Values,

- children, including juvenile foreign fishers and, where possible, their families, will not be detained in an Immigration Detention Centre (IDC) (Value 3)

⁵⁸ *Ibid*, p.56.

⁵⁹ *Ibid*, p.57.

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- detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review (Value 4) and
- detention in IDCs is only to be used as a last resort and for the shortest practicable time (Value 5)

As part of the New Directions in Detention reforms, and particularly reflecting the Key Immigration Detention Values above, the framework and use of immigration detention infrastructure is currently under DIAC's active consideration. Issues in relation to preferred infrastructure options for contemporary immigration detention also form part of the Terms of Reference of the Joint Standing Committee on Migration (JSCM) and it is expected that the Committee's recommendations will further inform future directions in the usage of infrastructure usage.

In light of the New Directions in Detention reforms, and the Government's Key Immigration Detention Values, DIAC is seeking to make greater utilisation of alternatives to IDCs. In particular, DIAC is increasing the placement of people in lower risk facilities such as IRH and ITA rather than placement in IDCs.

With respect to short-term detention options, DIAC's policy remains that people should normally be accommodated in ITA for no longer than seven days. However, this policy is presently being reviewed in light of the Government's New Directions in Detention reforms, recent operational requirements which necessitated placement of up to 21 days duration, and with a view to making better use of these facilities. As part of this review, and in consideration of the potential for shifting the use of these facilities, DIAC will give active consideration to the Commission's recommendations in relation to the services provided at these facilities (such as recreation, education, meals, health, excursions) if it is decided to detain people in an ITA for longer than seven days.

As the comments below indicate DIAC has already begin to expand and improve the services provided to people in IRH facilities. DIAC will continue to consider and act on the Commission's recommendations in relation to the services provided in IRH.

Similarly, in making greater use of community detention options, DIAC is considering how best to support low-risk people in the community, who would have previously been placed in an IDC. Community Detention is a useful way of provide a less restrictive form of detention for some unlawful non citizens and while its use is growing, it is important to reflect the intention that where possible a person's immigration status should be resolved as quickly as practicable.

A further expression of such shifting infrastructure usage is that families are sometimes accommodated for short periods in IRH/ITA while community detention is being sought. In accordance with the Key Immigration Detention Value that children will not be held in immigration detention centres, placement of children and their families in community detention remains the priority. Where placement of minors in a IRH or ITA facility occurs, one of the considerations is that the environment is appropriate and family-friendly and is preferable to alternative temporary detention in

commercial establishments in the community, which require more intrusive levels of supervision.

As indicated above, in reforming the immigration detention framework to reflect the Government's New Directions in Detention policy and Key Immigration Detention Values, it is the Minister's intention to initially implement administrative and regulatory reform and then pursue possible legislative changes. DIAC undertakes to continue to consult with the Commission in progressing policy development in these areas and prior to embarking on possible legislative changes relating to the framework and use of immigration detention infrastructure.

12.1 Immigration Residential Housing

(a) Sydney Immigration Residential Housing

Recommendation: DIAC should fully utilise the Sydney IRH as an alternative to detaining people at the Villawood IDC.⁶⁰

DIAC endeavours to make the best possible use of SIRH and readily utilises this facility for all people where an evaluation of their needs and the risk they pose to the community deems it appropriate. There are at times operational needs that prevent the IRH being utilised to its maximum capacity. For example, it is necessary to maintain a contingency capacity to accommodate situations such as a family arriving at an airport and claiming protection upon arrival, being refused entry and therefore detained.

All people subject to immigration detention are evaluated for placement after consideration of health risks, gender considerations, disabilities, safety and security concerns. Whether any particular placement option is appropriate is a question that is specific to the various risk factors involved in each particular set of circumstances. Every person that is detained by the department in Sydney has a client placement assessment which considers whether they should be accommodated in SIRH, VIDC or community detention. Regular reviews of people's circumstances, needs and risk profiles often sees people transferred from VIDC to the SIRH.

External excursions⁶¹

Recommendation: Management at the Sydney IRH should increase the frequency of recreational excursions for detainees.

There has been a progressive increase in the number and frequency of organised group external excursions from SIRH over the past twelve months. Generally, if the DSP is given enough lead time there is very little restriction in relation to request for excursions. Please see comments above in response to recommendation 10.6.

⁶⁰ *Ibid*, p.60.

⁶¹ *Ibid*, p.60.

Families and children⁶²

The family referred to in the Commission's report was moved from SIRH soon after the Commission's visit. The delay in placing the family in community detention was caused by difficulties in locating appropriate accommodation that was acceptable to the family.

In line with the Government's New Directions in Detention policy, all families in the SIRH are given high priority for rapid resolution of their immigration status or referral for a residence determination (community detention) consideration.

Please also see general comments above under 12, Introductory comments.

Health services⁶³

Recommendation: Detainees at the Sydney IRH should be given the option of accessing health and mental health staff and services onsite.

The IRH health care model is community based, where people are able to access all medical services to a standard normally available to Australians living in larger cities.

New arrangements are being put in place with DIAC's Health Services Providers to facilitate a registered nurse from the Villawood IDC to provide on-site services to people at the SIRH. These arrangements are still being finalised. From November 2008, onsite psychology and counselling services became available to people at the SIRH.

Recreational and educational activities⁶⁴

Recommendation: DIAC and GSL should ensure that detainees at the Sydney IRH are provided with regular access to recreational and educational activities.

All people accommodated in IRH have access to recreational and educational activities. DIAC constantly reviews the range and scope of these activities and also takes steps to ensure that activities are appropriate to each individual's needs. Two external groups provide program assistance in the SIRH. The Baptist Church offers singing and craft activities and the Australian League of Immigration Volunteers offer language learning activities. GSL also offer computer courses, sewing activities, painting and craft activities, table tennis, board game activities, client and staff barbecues and sporting activities including cricket, soccer and basket ball. Self-paced English language-learning resources are also available.

⁶² *Ibid*, p.60.

⁶³ *Ibid*, p.60.

⁶⁴ *Ibid*, p.60.

(b) *Perth Immigration Residential Housing*

Recommendation: DIAC should fully utilise the Perth IRH as an alternative to detaining people at the Perth IDC.⁶⁵

Utilising the least restrictive place of detention is the driving factor for placement decisions. DIAC endeavours to make the best possible use of Perth IRH and readily utilises this facility for all people where an evaluation of their needs and the risk they pose to the community deems it appropriate. However, the Perth IRH has limited capacity, with the ability to house twelve clients when used to its optimal occupancy. This capacity is reduced if family groups, single females, or minors are accommodated. Therefore, at times, such as when DIAC conducts compliance field operations, the additional capacity provided by the Perth IDC is required. There are also times when Perth IDC is required to be utilised for cases where a risk assessment has shown that the Perth IRH is an unsuitable option.

All people subject to immigration detention are evaluated for placement after consideration of health risks, gender considerations, disabilities, safety and security concerns. Whether any particular placement option is appropriate is a question that is specific to the various risk factors involved in each particular set of circumstances. Every person that is detained by the department in Perth has a client placement assessment which considers whether they should be accommodated in Perth IRH, Perth IDC or community detention. Regular reviews of people's circumstances, needs and risk profile often sees people transferred from the Perth IDC to the IRH.

Interpreters⁶⁶

Interpreter services are provided on an *ad hoc* basis and are dependent on the needs of the people. The high turnover and variety of people at Perth IRH has not to date created a demand for permanent on-site interpreters. Please see general comments above in response to recommendation 10.10.

Families and children⁶⁷

DIAC notes that the Commission does not have any major issues in relation to the Perth IRH. The facility offers comfortable accommodation and has a regular activities and excursion schedule. While the Perth IRH has been used to accommodate families with children for short periods of time, in line with the Government's New Directions in Detention policy, all families in the Perth IRH are given high priority for rapid resolution of their immigration status or referral for

⁶⁵ *Ibid*, p.61.

⁶⁶ *Ibid*, p.61

⁶⁷ *Ibid*, p.62.

a residence determination (community detention) consideration. Please also see general comments above under 12, Introductory comments.

Health services

Recommendation: Detainees at the Perth IRH should be given the option of accessing health and mental health staff and services onsite.⁶⁸

As noted above, the IRH health care model is community based, where people are able to access all medical services to a standard normally available to Australians living in larger cities.

New arrangements are being put in place with DIAC's Health Services Providers to facilitate a registered nurse from the Perth IDC to provide on-site services to people at the Perth IRH. These arrangements are still being finalised. From November 2008, onsite psychology and counselling services became available to people accommodated at the Perth IRH.

12.2 Immigration transit accommodation

Recommendation: If DIAC intends to use the ITA facilities to detain people for longer than seven days, as an alternative to detaining them in an IDC, DIAC should provide detainees with access to external excursions, organised recreational and educational activities, and health and mental health services, as appropriate.⁶⁹

Please see general comments above under 12, Introductory comments.

(a) *Brisbane Immigration Transit Accommodation*
Induction materials⁷⁰

An Induction booklet for people at the ITA has been written and approved. It is currently being provided in English, and is in the process of being translated into Arabic, Cantonese, Japanese, Bahasa Malaysia, Mandarin, Tamil, Thai and Vietnamese.

Posters in a number of languages are displayed at the BITA advising how to access TIS. People entering BITA are given a small card that they can show to detention officers or anyone else to indicate they need an interpreter in their specific language.

Brisbane Immigration Transit Accommodation
Complaint and request forms⁷¹

⁶⁸ *Ibid*, p.62.

⁶⁹ *Ibid*, p.63.

⁷⁰ AHRC, 2008 *Immigration Report*, p.64.

⁷¹ *Ibid*, p.64.

Complaint and request forms are now freely available at the BITA and are provided in Arabic, English, Farsi, Indonesian, Korean, Bahasa Malaysia and Mandarin.

A complaints box is located in the common room. Additional boxes have been ordered and will be installed in each of the three accommodation blocks.

Brisbane Immigration Transit Accommodation
Food⁷²

As the Commission has noted, a Hospitality and Activities Coordinator who is a qualified chef started work at the BITA in September and freshly-cooked meals are now prepared on site. Every effort is made to accommodate peoples' dietary needs and preferences.

Brisbane Immigration Transit Accommodation
Communications⁷³

Access to landline telephones and the internet is no longer restricted for medium and high-risk clients at the BITA. DIAC is monitoring the DSP to ensure such restrictions are not re-introduced.

Brisbane Immigration Transit Accommodation
Families and children⁷⁴

The BITA is suitable for families with children for short stays. One unaccompanied 15-year-old minor stayed at the BITA from 28 October to 12 November 2008, during which time regular activities, excursions and access to the internet and telephone were arranged for the minor. After consultation with relevant welfare agencies and referral to an Immigration Advice and Application Scheme provider, the minor was placed on a Bridging Visa E pending the outcome of an application for protection, and is living with a family in Brisbane that has been assessed as suitable by the Queensland Department of Child Safety. Please see general comments above under 12, Introductory comments.

(b) Melbourne Immigration Transit Accommodation
Health services⁷⁵

⁷² *Ibid*, p.64.

⁷³ *Ibid*, p.64.

⁷⁴ *Ibid*, p.64.

⁷⁵ *Ibid*, p.65.

Health Services at the MITA are provided by a registered nurse from the MIDC, who visits the ITA between Monday and Friday when people are accommodated there. People in the MITA can also access health services through a community general practitioner, who makes any necessary referrals to external providers.

As previously advised, placement decisions are made on a case-by-case basis and physical and/or mental health concerns do not necessarily prevent a person from being accommodated at the MITA. People with significant physical and/or medical issues have been accommodated at the MITA, as it can be flexibly configured to enable the condition of these particular people to be closely monitored.

Melbourne Immigration Transit Accommodation
Recreational and educational activities⁷⁶

The MITA's outdoor area has been landscaped, is well furnished and there is a volleyball court. The outdoor area is suitable for a variety of recreational and sporting activities.

Melbourne Immigration Transit Accommodation
Families and children⁷⁷

As noted above the MITA is suitable for families with children for short stays. One family with a 16-year-old child was accommodated for two days pending removal from Australia. A mother and two children stayed in the MITA for a longer period until they were placed in community detention. Please see general comments above under 12, Introductory comments.

12.3 Community detention

(a) *Advantages of community detention*

Recommendation: The Commission urges DIAC and the Minister for Immigration and Citizenship to make greater use of community detention arrangements, rather than holding people in immigration detention facilities.⁷⁸

Please see general comments above under 12, Introductory comments.

⁷⁶ *Ibid*, p.65.

⁷⁷ *Ibid*, p.65.

⁷⁸ *Ibid*, p.67.

(b) *Eligibility criteria*

Recommendations: The eligibility criteria for referral for a Residence Determination should be broadened. In addition to the current criteria, any person who has been in an immigration detention facility for three months or more should be able to apply for, or be referred for, a Residence Determination.

In the meantime, DIAC should ensure that all immigration detainees who meet one of the current eligibility criteria are referred to the Minister without delay. In particular, any detainees with significant health or mental health issues, or with a background of torture or trauma, should be promptly considered for a Residence Determination.⁷⁹

Section 197AB of the Act, gives the Minister *for Immigration and Citizenship* a non-delegable, non-compellable power to place persons detained into community detention under a Residence Determination. The Minister is able to exercise that power if he thinks that it is in the public interest to do so. The power has been used to place children and families with children in community detention. It has also been used to place persons who may have experienced torture and trauma and persons whose medical condition cannot be properly cared for in a detention centre into community detention. The Minister has determined that it is in the public interest to exercise his powers to place people in a residence determination when the provision of bridging visas has not been appropriate, but where continued placement in a detention facility is not considered necessary or appropriate. DIAC accepts the importance of acting quickly when a community detention placement is being considered and makes every effort to facilitate the placement.

DIAC's Health Services Provider (HSP) advises DIAC of any person in detention who has, or is suspected to have, significant health concerns for which they believe their condition can be better managed outside of an IDC. With regard to people in immigration detention who are suspected to have torture and/or trauma issues, the standard process is that the HSP advises DIAC of this, and the person is subsequently referred for consideration of Community Detention as a priority. Delays associated with these referrals usually stem from delays in obtaining appointments with specialist torture and trauma providers, who assess people and provide summary reports to assist the referral process. The procedures around this have recently changed so that referrals can now be made based solely on written advice from the HSP, rather than waiting for the specialist report.

Recommendations: DIAC should adopt a formal policy, without delay, to clarify its requirement that people in community detention must obtain approval before undertaking unpaid voluntary work. The policy should be clear and transparent. It should set out: the steps required to apply for approval; the criteria to be considered in determining whether a voluntary work placement is 'suitable'; the type of insurance coverage required by the organisation; and the timeframe in which requests will be

⁷⁹ *Ibid*, p.68.

responded to. DIAC should ensure that all requests are promptly considered and responded to. Reasons should be provided if the request is denied.

DIAC should repeal its policy of prohibiting immigration detainees from undertaking courses of study that lead to a formal qualification. DIAC should allow people in community detention to enrol in substantive education courses at TAFE and other educational or vocational training institutions.⁸⁰

DIAC recognises the importance of persons in Community Detention being able to engage in meaningful activities. The Australian Red Cross, which currently delivers the Community Detention Services, works with people in community detention to assist them to participate in activities such as language tuition, community groups and volunteer work. The formal policy outlining procedures is very close to completion and the suggestions in the Commission's report about voluntary work will be included to make the procedure clear and easily understood.

While DIAC acknowledges the benefit of educational programs to people in immigration detention there are a number of impediments that generally preclude these programs being extended to tertiary courses.

Generally, the educational programs accessed by people in immigration detention are of a short duration, usually up to four months. It is impracticable for a person in immigration detention who is on a removal pathway or awaiting the outcome of a visa application or appeal to commence a longer course of study. Adults may undertake community college or adult education courses and may obtain a certificate or other accreditation for their studies.

13 Immigration detention on Christmas Island

Recommendation: People should not be held in immigration detention on Christmas Island.⁸¹

The continued use of Christmas Island for the non-statutory processing and accommodation of people who arrive unauthorised at excised offshore places is a matter of Government policy.

13.1 Excision and off-shore processing

Recommendation: The Australian Government should repeal the provisions of the Migration Act relating to excised off-shore places. All unauthorised arrivals who make claims for asylum should have those claims assessed through the refugee status determination process on the Australian mainland.⁸²

⁸⁰ *Ibid*, p.70.

⁸¹ *Ibid*, p.71.

⁸² *Ibid*, p.72.

The retention of the excision of offshore islands and the continued use of Christmas Island for the non-statutory processing of people who arrive unauthorised at excised offshore places is a matter of Government policy.

As part of the New Direction in Detention reforms, on 29 July 2008 the Minister for Immigration and Citizenship Senator Chris Evans announced that there would be a number of changes to the non-statutory refugee processing regime on Christmas Island. The non-statutory refugee processing arrangements have been substantially enhanced to improve transparency and accountability of the process and to seek to remedy deficiencies previously identified in the process. As part of these reforms, asylum seekers will receive publicly funded advice and assistance, access to independent review of unfavourable decisions and external scrutiny by the Immigration Ombudsman. These measures will build on strengthened procedural guidance for departmental decision-makers.

These new processes are supported with additional resources. The Government will provide \$4.2 million over four years (including \$0.2 million capital funding in 2008-09) for the establishment and processing of the new arrangements (particularly for independent advice and assistance and merits review), and including funding to the Office of the Commonwealth Ombudsman of \$1.0 million over four years.

Publicly-funded advice and assistance for asylum seekers is being provided on Christmas Island through the existing contract arrangements between the Australian Government and ten agencies employing professional migration agents, under the Immigration Advice and Application Assistance Scheme (IAAAS). This is the same kind and quality of independent advice and applications assistance that is afforded to protection visa applicants onshore and ensures no disadvantage to asylum seekers on Christmas Island when compared with those Protection applicants on the mainland.

As with task forces assisting asylum seekers on Christmas Island in earlier years, arrangements are made for IAAAS agents to travel to Christmas Island as a first priority, with interpreters, and in numbers that match DIAC's refugee assessment officer contingent. Agents are invited in numbers sufficient to permit thorough assistance to each client, allowing for extensive interview and other contact before lodging statements of claims. IAAAS agents are able to meet with asylum seekers as soon as possible after the initial entry and identification interviews have been conducted and after character and health screening has commenced. Only after clients have been assisted by their IAAAS agent do they proceed to having their interviews with departmental refugee assessment officers. In this way, every effort is made to ensure asylum seekers on Christmas Island have substantially the same publicly-funded professional and independent support as mainland applicants in making their refugee claims quickly and comprehensively.

DIAC has established interim arrangements for independent merits review and is currently working through the development of a longer term review model.

DIAC has been in discussions with the Commonwealth Ombudsman, who has agreed to take on an oversight role for the non-statutory refugee status assessment and review processes on Christmas Island. It is envisaged that this oversight role may include looking at the fairness and efficiency of the non-statutory process,

investigating complaints, examining the timeliness of both the primary and review processes and the management of vulnerable groups such as children and disabled asylum seekers.

DIAC continues to work with stakeholders, including IAAAS providers and representatives of the Commonwealth Ombudsman's office who have already assisted asylum seekers on Christmas Island in 2008, to improve the non-statutory refugee assessment and independent merits review procedures.

13.2 Health care for detainees on Christmas Island⁸³

The provision of health services to residents on Christmas Island is the responsibility of the Attorney-General's Department (AGD), through the Indian Ocean Territories Health Services (IOTHS). IOTHS operates a small, 12-bed Christmas Island hospital, which is staffed by two doctors, several nurses and allied health professionals.

The provision of health services to people in immigration detention on Christmas Island is the responsibility of DIAC. IOTHS may provide some health services to detainees as private patients at Christmas Island Hospital, with DIAC meeting all costs. In addition to arrangements with AGD and IOTHS, health services are also provided to detainees by DIAC's contracted health services provider, IHMS. Under the Health Care Services Agreement, IHMS employs two registered nurses at Christmas Island, 7am – 7pm, Monday to Sunday and according to demand.

Doctors, specialist health care providers and additional nurses may be flown to Christmas Island when required in line with peoples' health care requirements. These additional services are provided by IHMS within one week of notification.

Patients are treated in line with community standards. If on medical advice appropriate medical care and support requires that a patient be treated in a mainland facility, then the patient is moved to mainland Australia.

The department is currently in discussion with the AGD on developing a Memorandum of Understanding for the provision of specified health services to people in immigration detention on Christmas Island.

13.3 Mental health care for detainees on Christmas Island⁸⁴

Arrangements with DIAC's Health Services Providers, PSS and IHMS, allow scope for psychological and counselling services to be provided to people on Christmas Island when required.

⁸³ *Ibid*, p.73.

⁸⁴ *Ibid*, p.73.

As an example, with the recent unauthorised boat arrivals, a psychologist was flown to Christmas Island on two separate occasions, to provide additional support to the mental health nurse. Following each of the psychologist's departures, support continued to be provided via telephone. Additionally, two torture and trauma specialists from the Association for Services to Torture and Trauma Survivors have been provided on Christmas Island to assist people with suspected torture and/or trauma issues.

13.4 Access to communication facilities

The department is currently examining ways to improve the communications infrastructure available to people in immigration detention, their representatives and DIAC staff on Christmas Island. Once an appropriate way forward has been identified, access to communication facilities will be greatly improved.

13.5 Immigration detention facilities on Christmas Island

⁸⁵

Consistent with Government policy, all unauthorised boat arrivals are detained and processed on Christmas Island while health, identity and security checks are undertaken.

There are a number of immigration facilities on Christmas Island which provide maximum flexibility to manage groups of families or individuals with varying needs. These include:

- The North West Point
 - IDC is able to accommodate 400 people with a surge capacity of 800.
- Phosphate Hill
 - The Government moved quickly to convert the old Phosphate Hill facilities on Christmas Island to allow small groups of unauthorised arrivals to be accommodated.
- Construction camp
 - There are 300 rooms available at the construction camp that can be utilised in a variety of configurations dependent on client make-up and
- Community detention
 - There are a number of duplexes available for family groups plus a number of self contained units available for use in the community detention context.

Accommodation arrangements are determined by the number of arrivals as well as the need to separate groups for processing, public health management, gender, culture and other reasons.

⁸⁵ *Ibid*, p.76.

In line with the government's New Directions in Detention once health, identity and security checks have been successfully completed people can be placed into the community while their immigration status is resolved. While living in community detention arrangements on Christmas Island, people are supported by key service providers to access community-based services, programs and activities.

To address long-term infrastructure issues, the Government is working in close consultation with the community to identify suitable options within the Strategic Land Use Plan for Christmas Island.

13.5 Immigration detention facilities on Christmas Island

Recommendation: The new Christmas Island IDC should not be used to hold people in immigration detention.⁸⁶

The Australian Government has clearly articulated its intention to retain the new Christmas Island IDC at North West Point as part of Australia's immigration detention network.

The Government's policy was to open the new facility when numbers and separation arrangements required it. On 19 December 2008, the Minister for Immigration and Citizenship decided to open the centre to house the adult male passengers and crew from a vessel intercepted north-east of Darwin on 16 December 2008.

Ongoing use of the Christmas Island IDC will depend on the client population and arrangements required. Children, families and women will not be accommodated in the North West Point facility, consistent with the Government's policy that no child will reside in an IDC.

13.7 Community detention on Christmas Island

No recommendation but general comment⁸⁷

DIAC accepts that placing persons in community detention on Christmas Island has some unique local problems. DIAC has placed two senior officers from National Office on the island to work with the Australian Red Cross and local stakeholders to resolve issues. Buses have been purchased which will assist in transportation problems and Red Cross staff numbers have been increased, with an additional Red Cross worker going to the island over the school holiday period to organise activities. Red Cross will maintain a permanent presence on the island in the foreseeable future. Similarly, Departmental staff with specific responsibilities for community detention will be on the island.

⁸⁶ *Ibid*, p.76.

⁸⁷ *Ibid*, pp.78-79.

14 Children in immigration detention

The CRC⁸⁸ comprehensively protects the human rights of all children. Human rights of particular importance for children subject to immigration detention include the following:

14.1 Overarching principles⁸⁹

The best interests of the child should be a primary consideration in all actions concerning children.⁹⁰

The detention of a child should be used only as a measure of last resort and for the shortest appropriate period of time. Children must not be deprived of their liberty unlawfully or arbitrarily.⁹¹

No child should be subjected to torture or cruel, inhuman or degrading treatment or punishment.⁹²

Children in detention have the right to be treated with humanity and respect for their inherent dignity.⁹³

Children in detention must be able to challenge the legality of their detention before a court or other competent, independent and impartial authority.⁹⁴

Children have the right to enjoy, to the maximum extent possible, development and recovery from past trauma.⁹⁵

Asylum-seeking and refugee children are entitled to appropriate protection and assistance.⁹⁶

Children have a right to non-discrimination.⁹⁷

⁸⁸ *Convention on the Rights of the Child*

⁸⁹ AHRC, *2008 Immigration Report*, pp.79-80.

⁹⁰ *Convention on the Rights of the Child*, article 3(1)

⁹¹ *Ibid*, article 37(b)

⁹² *Ibid*, article 37(c).

⁹³ *Ibid*, article 37(a) and article 37(c).

⁹⁴ *Ibid*, article 37(d).

⁹⁵ *Ibid*, article 6(2) and article 39/

⁹⁶ *Ibid*, article 22(1).

⁹⁷ *Ibid*, article 2.

14.2 Lack of legal protections for children

Recommendation: The Australian Government should implement in full the recommendations made by the Commission in the report of its national inquiry into children in immigration detention, *A last resort?*¹ These include the following: Australia's immigration detention laws should be amended, as a matter of urgency, to comply with the *Convention on the Rights of the Child*. In particular, the new laws should incorporate the following minimum features:

- There should be a presumption against the detention of children for immigration purposes.
- A court or independent tribunal should assess whether there is a need to detain children for immigration purposes within 72 hours of any initial detention (for example for the purposes of health, identity or security checks).
- There should be prompt and periodic review by a court of the legality of continuing detention of children for immigration purposes.
- All courts and independent tribunals should be guided by the following principles:
 - detention of children must be a measure of last resort and for the shortest appropriate period of time
 - the best interests of the child must be a primary consideration
 - the preservation of family unity
 - special protection and assistance for unaccompanied children.
- Bridging visa regulations for unauthorised arrivals should be amended so as to provide a readily available mechanism for the release of children and their parents.⁹⁸

Australia, as a signatory to the *Convention on the Rights of the Child*, takes its obligations very seriously. The obligation to treat the best interests of the child as a primary consideration in all actions concerning children is reflected in Ministerial Direction 21, issued by the Minister under section 499 of the Migration Act, regarding the exercise of the power to refuse to grant or to cancel a visa under section 501 of the Act. The obligation is also reflected in other departmental policy documents guiding the exercise of key discretionary decisions, and in the guidelines for the exercise of the Minister's personal public interest powers.

DIAC has also developed policies to ensure that the rights of children are protected, including a framework which incorporates guiding principles on the treatment of children. These guidelines reflect the importance of:

- the individual circumstances of a child;
- the contextual environments of children, including family and other dynamics;
- the best interest and welfare of a child; and
- the departments need to detain only as a last resort.

In 2005, the Migration Act was amended to affirm the principle that children should only be detained as a last resort. Section 4AA states:

⁹⁸ AHRC, *2008 Immigration Report*, p.81.

- (1) The Parliament affirms as a principle that a minor shall only be detained as a measure of last resort.
- (2) For the purposes of subsection (1), the reference to a minor being detained does not include a reference to a minor residing at a place in accordance with a residence determination [Community Detention].

The overall intent of the package of amendments that introduced section 4AA into the Migration Act was to ensure that the best interests of children were taken into account and that any alternatives to the detention of children were considered in administering the relevant provisions.

In July 2008, the Minister for Immigration and Citizenship announced the Government's New Directions in Detention policy and Key Immigration Detention Values. Value 3 extends on the legislative provision in s 4AA and provides that 'Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an IDC'.

As noted above, while prompt placement of children and their families in community detention remains DIAC's priority, there will be occasions when children will be accommodated in low security facilities within the immigration detention framework, such as immigration residential housing (IRH) and immigration transit accommodation (ITA). As with other aspects of the broad reform agenda, DIAC is currently developing policies to better support these arrangements.

Other Key Immigration Detention Values serve to ensure that children are not deprived of their liberty unlawfully or arbitrarily. Specifically:

- Value 4 states: 'Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review'
- Value 6 states: 'People in immigration detention will be treated fairly and reasonably within the law' and
- Value 7 states: 'Conditions of detention will ensure the inherent dignity of the human person.'

As part of the New Direction in Detention reform agenda, DIAC is improving the transparency and accountability of immigration detention by ensuring all detention cases, including those involving children, are reviewed every three months by a senior departmental officer. Additionally, a six-monthly review of detention placements by the Commonwealth Ombudsman will be instituted.

All children and their families, or unaccompanied minors, found to be owed protection obligations by Australia are granted permanent protection visas, allowing them to live in Australia permanently. They are also entitled to the full range of government benefits and services.

Bridging visas provide an available mechanism for the release of children from detention along with their families.

14.3 Lack of legal protections for children

Recommendation: The Australian Government should implement in full the recommendations made by the Commission in the report of its national inquiry into children in immigration detention, *A last resort?*⁹⁹ These include the following: Australia's immigration detention laws should be amended, as a matter of urgency, to comply with the *Convention on the Rights of the Child*. In particular, the new laws should incorporate the following minimum features:

- There should be a presumption against the detention of children for immigration purposes.
- A court or independent tribunal should assess whether there is a need to detain children for immigration purposes within 72 hours of any initial detention (for example for the purposes of health, identity or security checks).
- There should be prompt and periodic review by a court of the legality of continuing detention of children for immigration purposes.
- All courts and independent tribunals should be guided by the following principles:
 - detention of children must be a measure of last resort and for the shortest appropriate period of time
 - the best interests of the child must be a primary consideration
 - the preservation of family unity
 - special protection and assistance for unaccompanied children.
- Bridging visa regulations for unauthorised arrivals should be amended so as to provide a readily available mechanism for the release of children and their parents.⁹⁹

As indicated above, in reforming the immigration detention framework to reflect the Government's New Directions in Detention policy and Key Immigration Detention Values, it is the Minister's intention to initially implement administrative and regulatory reform and then pursue possible legislative changes. DIAC undertakes to consider these recommendations and continue to consult with the Commission in progressing policy development in these areas and prior to embarking on possible legislative changes.

14.4 Children in IRH and immigration transit accommodation

Recommendation: Children should only be detained in an IRH or ITA facility as a measure of last resort and for the shortest appropriate period of time. DIAC should consider any less restrictive alternatives that may be available to an individual child before deciding to place that child in an IRH or ITA facility. Until the recommendation in section 14.2 of this report is implemented and a system of independent review is established, the absolute maximum time of detention in these cases should be four weeks for a child with a family member, or two weeks for an unaccompanied child.¹⁰⁰

Please see general comments above under 12, Introductory comments, and in response to recommendation 14.2 above.

⁹⁹ AHRC, *2008 Immigration Report*, p.81.

¹⁰⁰ *Ibid*, p.83.

14.5 Children in alternative places of detention

Recommendation: Children should not be held in immigration detention on Christmas Island. However, if DIAC intends to continue this practice, children should be accommodated with their family members in DIAC's community based accommodation. They should not be detained at the construction camp facility, the Phosphate Hill IDC or the new Christmas Island IDC.¹⁰¹

The continued use of Christmas Island for the non-statutory processing and accommodation of people who arrive unauthorised at excised offshore places is a matter of Government policy. Further, the Government's Key Immigration Detention Values state that all unauthorised arrivals will be subject to mandatory detention for the management of health, identity and security risks to the community.

The Immigration Detention Values also specify that 'Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an IDC. Consistent with the Government's policy, children, families and women will not be accommodated in the North West Point IDC.

Children on Christmas Island are placed on arrival in alternate places of detention, such as the construction camp, while health, security and identity checks are conducted. As soon as these checks are completed the Minister for Immigration and Citizenship is asked to consider placing the children in community detention.

DIAC is working with stakeholders on Christmas Island to ensure that children accommodated there are well cared for and have access to appropriate health, educational, recreational and support services. All school-aged children attend local schools. The Attorney-General's Department, which administers the Indian Ocean Territories, is cooperating with the department to ensure that children on Christmas Island are supported with youth workers. DIAC has also arranged for the Australian Red Cross to deliver a school holiday program of activities.

14.6 Unaccompanied minors¹⁰²

Recommendation: The Australian Government should implement the recommendation made by the Commission in *A last resort?* that an independent guardian should be appointed for unaccompanied children and they should receive appropriate support.¹⁰³

DIAC currently works under the legislation of *The Immigration (Guardianship of Children) Act 1946* (IGOC Act). The IGOC Act is the administrative mechanism by which legal guardianship for certain children entering Australia is conferred upon the

¹⁰¹ *Ibid*, p.85.

¹⁰² *Ibid*, p.86.

¹⁰³ Human Rights and Equal Opportunity Commission, *A Last Resort? A summary guide to the National Inquiry into Children in Immigration Detention*, 2004, pp. 698-701, 857and 873-877.

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Minister for Immigration and Citizenship. This means that the Minister as legal guardian of certain children has the rights and powers that can be exercised by an adult in respect of a minor.

Section 5 of the IGOC Act empowers the Minister to delegate the guardianship powers and functions to any officer or authority of the Commonwealth or of any state or territory department responsible for child welfare. These officers assume responsibility for unaccompanied minors when such children are placed in alternate places of detention or community detention.
