

Immigration Detention Oversight

REVIEW OF THE OMBUDSMAN'S ACTIVITIES IN OVERSEEING
IMMIGRATION DETENTION

January to June 2019

February 2020

Report by the Commonwealth Ombudsman,
Michael Manthorpe, PSM, under the *Ombudsman Act 1976*

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FOREWORD

This report summarises the Commonwealth Ombudsman’s oversight of immigration detention during the period from January to June 2019. It draws on observations from our inspections of immigration detention centres during the period, as well as other aspects of the Office’s oversight including handling complaints and assessing the circumstances of people in long-term detention.

This Office has conducted inspections of immigration detention facilities since 2011. Historically we have provided a summary of this work in our Annual Report, as we did in our recently published 2018–19 Annual Report¹. However consistent with the principles of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which Australia ratified in 2017 and for which my Office has implementation responsibilities I have decided to commence publishing more information on this work. This report represents what I intend to become a regular series of publicly available reports on our inspections of places of detention operated by the Commonwealth.

During this period, the Office conducted inspections of immigration detention facilities in Brisbane QLD, Adelaide SA, Perth WA, Northam WA, Villawood NSW and Melbourne VIC. These inspections were undertaken in accordance with the Ombudsman’s own motion notice to the Department of Home Affairs (the department) issued on 30 July 2018.

At the conclusion of each inspection, we communicate our observations and suggestions to the department. This means all of the issues in the body of this report have been raised previously with the department.

I recognise the considerable challenges faced by the department, the Australian Border Force (ABF) and its service providers, Serco and International Health and Medical Services (IHMS), in operating and maintaining a geographically diverse immigration detention network across Australia. These challenges have been amplified during the period by episodes of unrest in the network and the rationalisation of resources, including commissioning new facilities. While all centres have their individual challenges we see advantages in having, as far as possible, a nationally consistent approach to facility operations.

The report outlines serious concerns which we hold about the facilities within the modular high security compounds. Our concerns have been conveyed to the department and the ABF and these facilities will continue to be a focus of our inspections.

While some aspects of the operation of detention facilities have shown improvement from the previous inspection cycle, we consider there are still issues with matters such as the management of complaints, use of restraints and security risk assessments.

I provide reports to the Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs on people held in long-term detention in accordance with s 486O of the *Migration Act 1958* (the Act). We remain concerned that people continue to be held for

¹ https://www.ombudsman.gov.au/_data/assets/pdf_file/0026/107891/Commonwealth-Ombudsman-Annual-Report-2018-19.pdf

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lengthy periods with, in some instances, no probability of being released in the foreseeable future. Delays in resolving the immigration status of detainees place considerable strain both on detainees and their families. I will continue to make recommendations to the Minister in this area.

Michael Manthorpe PSM
Commonwealth Ombudsman

Part 1: INTRODUCTION

1.1 The *Migration Act 1958*, enables the detention of unlawful non-citizens, such as those who enter or remain in Australia without a valid visa. Detention has been mandatory for all unauthorised maritime arrivals since 1994² and for people whose visas have been cancelled on character grounds since 2014.³ While placement in an immigration detention facility is mandatory for certain cohorts, it is administrative in nature—that is, an individual is detained for the purpose of conducting an administrative function.

1.2 The Commonwealth Ombudsman’s oversight of immigration detention includes a combination of:

- twice-yearly inspections of Australian immigration detention facilities (IDFs)
- preparing assessments of the circumstances of people who have been detained for more than two years and making recommendations to the Minister where appropriate
- investigating complaints from detainees and/or their advocates.

1.3 This report draws on the information obtained from these three sources during the period from 1 January to 30 June 2019.

Oversight Regime

Inspections

1.4 The Office has been conducting preventive inspections of immigration detention facilities since mid-2011. Inspections of detention facilities can be either announced or unannounced. In this reporting period all inspections were announced, with facilities receiving at least six weeks’ notice of our visit.

1.5 The schedule for visits in the period from January to June 2019 was:

Immigration Detention Facility	Location	Dates
Melbourne ITA	Melbourne VIC	18—22 March 2019
Transfer Operation	Melbourne-Sydney-Brisbane-Perth-Melbourne	29 March 2019
Yongah Hill IDC	Northam WA	2—5 April 2019
Adelaide ITA	Adelaide SA	29—30 April 2019
Perth IDC	Perth WA	8—10 May 2019
Villawood IDC	Villawood NSW	20—24 May 2019
Brisbane ITA	Brisbane QLD	17—21 June 2019

² *Migration Amendment Act 1992*.

³ Direction No. 65 Migration Act 1958 Visa refusal and cancellation under s 501 and revocation of a mandatory cancellation of a visa under s 501CA dated 22 December 2014.

Statutory Reporting—Long term detainees

1.6 Under s 486O of the Act, the Ombudsman is required to assess the appropriateness of arrangements for people who have been detained for two years, and then every six months thereafter, for as long as the person remains in detention. I provides these assessments to the Minister through the department and a de-identified copy is tabled in Parliament. I may make recommendations to the Minister. A copy of my assessment is published on the Office website.

Complaints

1.7 The Ombudsman’s Office investigates complaints from detainees, their legal representatives or their advocates. Detainees can also complain to inspection team staff during inspections of detention facilities about any aspect of their detention. Outcomes for complainants can include an apology, a better explanation of a decision, an update on their case progression, or a practical outcome such as relocation within a facility or the detention network.

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

1.8 The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)⁴ is an international agreement aimed at preventing torture and mistreatment, with a proactive inspection regime in places where people are deprived of their liberty. Compliance with OPCAT involves establishing a preventive inspection regime of all places of detention including immigration detention facilities, defence detention facilities, police cells, prisons, juvenile detention centres and closed psychiatric facilities.

1.9 On 21 December 2017, Australia ratified OPCAT. On 1 July 2018, this Office was appointed as the National Preventive Mechanism (NPM) body for Commonwealth places of detention. This includes immigration detention facilities, Australian Federal Police cells and military detention facilities.

1.10 The purpose of an OPCAT compliant inspection is to identify processes, procedures, actions and activities within the operations of a detention facility that impact or have the potential to impact on the rights and wellbeing of detainees. The process is preventive in nature and does not rely on complaints or other prompts to initiate an inspection.

1.11 In June 2019, staff from this Office, supported by inspectors from the New Zealand Ombudsman, undertook an inspection of the Brisbane Immigration Transit Accommodation using OPCAT compliant methodology based on the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT)⁵. We will continue to trial our OPCAT compliant inspection methodology over the coming year.

⁴ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx> .

⁵ <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>.

Part 2: LEGISLATIVE AND ADMINISTRATIVE FRAMEWORK

Legislative Framework

Authority to detain

2.1 The Act enables the detention of unlawful non-citizens. The enactment of the *Migration Legislation Amendment Act 1989* (the Amendment Act) effectively introduced a policy of 'administrative detention' for all people entering Australia without a valid visa, or any others present in the country unlawfully while their immigration status was resolved.⁶

Legislative framework

2.2 While placement in an immigration detention facility (IDF) is mandatory for certain cohorts, it is administrative in nature. While the Act provides the legislative authority to detain unlawful non-citizens,⁷ it provides no direction on how an IDF should operate.

Recommendation 1

We recommend that the department seek ministerial authority to bring forward a Bill, which would establish a legislative framework to support all internal operations of the immigration detention network.

Mandatory detention of certain cohorts

2.3 Since 1992, Australian Government policy has determined that detention is mandatory for all unauthorised maritime arrivals⁸ and since 2014 for people whose visas were cancelled on character grounds.⁹ We are also aware that a policy and operational framework is in place whereby the Department of Home Affairs, through its status resolution function, regularly reviews a detainee's circumstances and progress of their immigration case. In some cases, this enables the duration of a person's detention to be brief, either because they are granted a substantive visa, or some form of bridging visa or because they return to their home country as a result of being denied a visa.

2.4 However, in many cases the processes involved in resolving a person's immigration status are very prolonged. This Office continues to assess the circumstances of each case where a person is detained for longer than two years. While each case is different, and

⁶ Phillips, J and Spinks H, *Immigration Detention in Australia*, 20 March 2013 Parliamentary Library http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/Detention#_Toc351535438.

⁷ Section 189 of the *Migration Act 1958*

⁸ Joint Standing Committee on Migration, *Immigration detention in Australia: a new beginning: criteria for release from detention*, First report of the inquiry into immigration detention, House of Representatives, Canberra, December 2008.

https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/Detention#_ftn1.

⁹ Direction No. 65 Migration Act 1958 Visa refusal and cancellation under s 501 and revocation of a mandatory cancellation of a visa under s 501CA dated 22 December 2014 and Direction No. 79 Migration Act 1958 Visa refusal and cancellation under s 501 and revocation of a mandatory cancellation of a visa under s 501CA dated 28 February 2019.

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many complex factors can be at play, in general terms I am concerned about the effects on the mental and physical wellbeing of long-term detainees. In some cases, it is difficult to see what public policy purpose is being served by ongoing detention. Further information about our role in relation to long-term detainees is contained in Part 3, below.

Review rights and legal support

2.5 Detainees have access to a series of external independent administrative and judicial review options. However, we remain concerned that detainees may not be aware of their right to access these services. While the Act requires the department to facilitate access to legal support if requested,¹⁰ it does not require that detainees are advised of the options open to them.

2.6 We did not note any signage in the IDFs that would alert detainees to their rights of review. While service provider staff advised information about review is provided during the induction process, there do not appear to be practices in place to reinforce this information following the initial induction.

2.7 It is important to note, though, there was no evidence to suggest that detainees were discouraged from seeking legal support or that lawyers seeking to consult with their clients were denied access to any immigration detention facility.

ADMINISTRATIVE FRAMEWORK

Policy framework

2.8 The policy framework that supports immigration detention is reasonably robust with policy and procedural guidelines in place across both the ABF and contracted service providers. These include the Detention Standard Operating Procedures (DSOPs), Detention Service Provider Policy and Procedure Manuals (PPMs), Officer Station guidelines and various local directives and guidelines.

Part 3: DURATION OF DETENTION

3.1. The Office provides assessments to the Minister on the circumstances of people in immigration detention for more than two years. Between January and June 2019, our Office sent 470 assessments to the Minister all of which have been tabled in Parliament.¹¹

3.2. In the 470 assessments, I made 171 recommendations including 103 recommendations related to arrangements for Off Shore Transitory visa holders who were transferred to Australia from a regional processing country for medical treatment or to support a person receiving medical treatment. During the period, I also made 33 recommendations regarding the long-term detention of Irregular Maritime Arrivals. With both of these cohorts, the recommendations primarily relate to exploring all available options to resolve the current detention of these individuals.

¹⁰ Section 256 of the *Migration Act, 1958*

¹¹ Under s 486P of the *Migration Act 1958* the Minister is required to table assessments within 15 sitting days of receiving them.

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3.3 People in held immigration detention are not serving a criminal sentence; nor are they able to apply for parole. We are aware, through our assessments, of the length of time it is taking to resolve the immigration status of some people in held detention. We encourage the department to continue to consider the appropriateness or otherwise of these people’s continued held detention while their status is being resolved.

3.4 This being so, I will continue to look to identify cases where, having regard to all the circumstances, an administrative solution might be available for detainees to be released from held detention, and make recommendations accordingly.

Part 4: IMMIGRATION DETENTION COMPLAINTS

4.1 Between January and June 2019 the Office received 148 complaints about the operations of immigration detention facilities. Of these, 72 were referred back to the ABF for resolution and 48 were resolved on site by the inspection team. The Office progressed the remainder for assessment and possible investigation.

4.2 The subjects of these complaints have not varied significantly from previous inspection cycles. The top five areas of complaint remain health services (24), conditions of detention (12), loss of or access to property (12), alleged assaults (10), placement in the network and facility (8).

4.3 As the case below illustrates, sometimes this Office can achieve resolution of complaints, at least in part, during the inspection process about services or other operational issues. We can, and do, look for opportunities to help detainees with concerns they hold about aspects of their detention experience. However, the reality is that the principle goal of almost all detainees is a visa to remain in Australia, or to otherwise be released from detention.

4.4 The reality of current policy settings dictates that recommendations made by the Ombudsman about this outcome might sometimes achieve a positive outcome, but often this is not, or is not likely to be so. It is also the case that this Office has the capacity to visit only briefly and periodically. It is therefore critical that complaint handling processes within each facility are working well. Further commentary on this issue is at Part 5 below.

Case Study – onsite resolution

Detainee X spoke to the Office staff when they were onsite and advised that he:

- was waiting too long to see a dentist and he had pus in his tooth,
- did not wish to share a room with other detainees,
- kept missing his medication as this occurred during meal times and he could not attend meals and get his medication within the allocated time
- wished to be placed in the community and not be removed to his country of origin.

The inspecting staff raised these concerns with the respective stakeholders who advised that:

- the detainee had an abscessed tooth and was booked into see the dentist in two days’ time, an appointment was made with the doctor to review his pain medication and pre dental appointment antibiotics
- Meal times would be reviewed to prevent further timing conflicts with medication rounds.
- The detainee’s placement in the facility was scheduled for review that day and would be considered for relocation if bed space was available.
- As the detainee was on a removal pathway, he was not eligible for a community placement or temporary visa.

4.5 As the case study shows, we are able to assist in resolving some issues raised with the inspection team that relate to the operations of the facility. These issues range from complaints about the quality or quantity of the food through to access to health services, provision of welfare support to resolve issues with family or suitable access to activities and use of restrictive detention practices such as mechanical restraints. Primarily the issues raised with the Office during the period of this report centred on a detainee’s placement in the facility or network, use of restraints when transporting or escorting a detainee, access to health services and duration of detention.

4.6 During the final inspection of this period, we introduced a survey that provides detainees with the opportunity to provide anonymous feedback on the services provided to them in immigration detention. We intend to utilise these responses to inform our inspection outcomes and recommendations as appropriate.

Part 5: IMMIGRATION DETENTION OBSERVATIONS

Operational Model

5.1 The controlled movement model is in place in all or parts of the IDFs except the Adelaide ITA. Where this operational model is in place, detainees are not permitted to move outside their accommodation compound unless escorted by security staff. Periods of access to communal areas rotates through the accommodation compounds and no two compounds are permitted into the communal areas at the same time.

5.2 Traditionally this operational model is in place where contact between detainees needs to be limited for a variety of reasons, ranging from the welfare of certain detainees following unrest through to security considerations for particular detainee cohorts.

5.3 The controlled movement model is restrictive and limits detainees’ freedom of movement within an IDF. We remain of the view that this model should only be applied for the minimum period appropriate to the circumstances and, where possible, low and medium security detainees should not be subject to the practice at all.

Recommendation 2

We recommend that, as far as possible, the department:

- a. permit detainees maximum freedom of movement within an IDF
- b. limit the use of the controlled movement model to circumstances where the use of this model is consistent with not only the ongoing safety and security of the facility but also the wellbeing of detainees.

Facilities

5.4 No purpose-built IDFs were opened or closed during this period, but we note the department established an increased number of Alternative Places of Detention (APODs). APODs can be established in locations including hospitals, mental health facilities, age care facilities and hotels, and used for various reasons and lengths of time across the network. In addition to the 'pop-up' APODs, there are two semi-permanent facilities in Cairns and Darwin and a third was established in Brisbane in the latter part of this inspection cycle.

Immigration Detention Centres/Transit Accommodation

5.5 In considering the residential facilities against standards such as the Mandela Rules¹² and the Standard Guidelines for Corrections in Australia¹³ we consider that the standards of detainee accommodation is appropriate with the exception of the Blaxland High Security compound. Blaxland High Security Compound has been scheduled for decommissioning for a number of years and expenditure has been limited to basic maintenance. In our opinion, the facilities are unsuitable for continued use, being over crowded with ongoing issues with vermin, poor plumbing, structural defects and limited privacy, ventilation and access to outdoor recreation space.

Recommendation 3

We recommend that, as a priority, the Blaxland High Security Compound be decommissioned.

5.6 More generally we noted that across the network:

- a. Residential rooms have an occupancy level ranging from one to four people per room, depending on size and the individual needs and circumstances of the occupants. The exception to this is the dormitory-style accommodation at Blaxland High Security Compound and Melbourne Immigration Transit Accommodation. The size of the dormitories is variable and may accommodate between four or 16 depending on the configuration of the beds.
- b. All rooms have either an ensuite or easy access to communal shower and toilet facilities that provide for privacy while showering or going to the toilet.

¹² <https://undocs.org/A/RES/70/175>

¹³ https://www.corrections.vic.gov.au/sites/default/files/embridge_cache/emshare/original/public/2019/04/7f/88fc42ada/guiding_principles_correctionsaustrevised2018.pdf

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- c. Each facility has a number of rooms designed to support mobility-impaired detainees; however, these rooms are not always compatible with the security risk of the detainee.
- d. All compounds have laundry facilities including washing machines, dryers and clotheslines, and a common area with a kitchenette, lounge-type furniture and a television.
- e. All rooms are ventilated with heating and air conditioning. Natural light is provided through windows in every room.
- f. The medical clinics are well lit with natural light and suitable specialist lighting, with discrete entries and access for emergency transport such as ambulance.
- g. Outdoor recreational space is available to detainees in all IDFs but is restricted in most APODs depending on their location and size.

APODs

5.7 During this reporting period, we continued to highlight our concern about the facilities provided in the non-medical APODs. These include shortfalls in daily access to outdoor recreation areas, dining areas also being used as multi-purpose rooms, and medical and mental health clinics that do not support the detainees' right to private consultations.

5.8 We acknowledge that the department is limited by local supply and demand and the provision of one large hotel-based APOD is operationally preferable to multiple smaller locations. However, the department has a duty of care to detainees to ensure they can access facilities that are fit-for-purpose and meet their fundamental human rights.

5.9 In Brisbane we were particularly concerned that adult family groups who are being held for longer periods of time pending Ministerial determination:

- a. Do not have adequate access to open areas for sports and recreation for a minimum of 60 minutes per day¹⁴.
- b. Room occupancy levels exceed the stated operating model. We observed up to four adults (parents with adult male and female siblings) occupying a one bedroom apartment. On another occasion, three unrelated males were sharing a one bedroom apartment.
- c. The multipurpose room on the first floor is small and unable to seat all detainees at meal times. This room is used as a common room, dining facility and activities area. All detainees are expected to eat lunch and dinner in this room. It is also co-located with the one area detainees are permitted to smoke (a balcony accessed through the common room). We noted that, if a detainee is smoking during meal times, the smoke enters the dining area.

¹⁴ Resolution adopted by the General Assembly on 17 December 2015 [on the report of the Third Committee (A/70/490)] 70/175. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 23

Recommendation 4

We recommend that, wherever practicable, the department sources APODs that cater to the longer-term needs of detainees through the provision of appropriate and accessible facilities.

High Security Compounds

5.10 While the high security compounds meet the international standards¹⁵ for adequate ventilation, natural light and space per person, we remain concerned about the significant shortfalls in the construction of the accommodation. Of particular note are the shortfalls in the facilities within the detainee accommodation and common areas, including:

- a. Inadequate privacy in ablutions areas.¹⁶ The showers have a plastic curtain but there is no privacy for the toilet. The shower water encroaches into the toilet area and there is nowhere to keep a bath mat, towel or clothing dry while showering.
- b. The wash basins are behind the toilet cistern, requiring detainees to lean across the open toilet to wash their hands or clean their teeth. It should be noted that the toilets are programmed to flush a maximum of four times in a set period to conserve water. This may result in waste being present in the toilet bowl when teeth or hands are being cleaned.
- c. In both Melbourne and Yongah Hill there is no cabling to enable free to air TVs or other entertainment in rooms. There is only one TV in the common room area shared by 20—40 detainees. We acknowledge that DVD players and DVDs have been provided in some facilities; however this does not address the shortfall in access to free to air television programs. The absence of options to view individual program preferences is a known catalyst for non-compliant behaviour.
- d. There is no secure storage for a detainee's in-possession property.
- e. The mushroom stools in the computer room and detainee rooms are uncomfortable and not suitable for extended periods of sitting.
- f. The moulded benches in common areas have no padding or cushioning and are not suitable for extended periods of sitting.
- g. The indoor common areas are small and are unable to accommodate all of the detainees at the same time, especially when used for programs and activities, eating meals and similar activities.
- h. Gym areas are small and have limited or no equipment.
- i. Outdoor seating is insufficient for all compound residents to sit outside at the same time.

¹⁵ Resolution adopted by the General Assembly on 17 December 2015 [on the report of the Third Committee (A/70/490)] 70/175. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rules 12 – 18, 21 and 23

¹⁶ Areas within the accommodation where a detainee may use showers and toilets, wash hands and clean teeth

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- j. The outdoor areas are not suitable for conducting education and cultural programs and activities, especially in poor weather conditions.
- k. There are limited covered outdoor areas including the walkways.

5.11 At Melbourne ITA we are particularly concerned that:

- a. New compounds do not appear to meet the Disability (Access to Premises – Buildings) Standards 2010, in that there are no ramps to assist mobility impaired detainees to enter and exit buildings.
- b. There is no privacy screen around the toilet in High Care Accommodation (HCA), meaning it is in the direct view of CCTV coverage and staff.
- c. There are several CCTV blind spots in HCA, especially at the bed head.
- d. The induction waiting area door opens directly onto a semi-screened toilet and the moulded bench seats are unsuitable for sitting for extended processing times.
- e. The placement of security light poles in the access walkway from reception to the compounds are a safety hazard.

5.12 We acknowledge that steps have been taken onsite to mitigate the risks posed by some of these shortfalls. Unfortunately, permanent rectification of most, if not all, are capital works projects and immediate action is limited to what is either available onsite, or within the financial delegation of the ABF Superintendent to approve.

5.13 The Office has serious concerns about the facilities in the high security compounds and has expressed these to the department and ABF, both in our post-visit observations and at high-level liaison meetings. The department’s response to these concerns will be monitored during the next inspection cycle.

Recommendation 5

We recommend that the department:

- a. addresses concerns with the design and fit out of the modular high security compounds, in particular by:
 - i. ensuring suitable access to facilities for mobility impaired detainees, including building access
 - ii. providing privacy in all ablution areas and toilets
 - iii. cabling individual accommodation rooms to enable access to free to air television programs
 - iv. providing suitable in-room secure storage for in possession property.
- b. ensures that all future use of the modularised compounds are designed and fitted out to support the ongoing health and welfare needs of detainees, in addition to the good order and safety of the centre.

Property

5.14 While the facilities used for property management and storage at most facilities were generally appropriate for purpose, we noted that the issues previously raised in relation to the safety deposit room at Villawood IDC have yet to be addressed. Specifically, Villawood IDC’s property facility continues to have significant CCTV blind spots, broken storage facilities, and cash and valuables stored in unsecured plastic tubs.

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5.15 Since our previous inspections, the property area at the Brisbane ITA has relocated to an established reception building. This has gone some way to addressing our concerns about the privacy of detainees on induction and reception. The biometrics area is scheduled to relocate to this building and this will further reduce the available space to process detainee property.

Recommendation 6

We recommend that:

- a. the department address the shortfalls identified in the property storage facilities at Villawood.
- b. Serco ensure that all money and valuables held in trust for a detainee are stored securely.

Recreational space

5.16 With the exception of the purpose-built High Security Compounds at Villawood and the in-compound recreation facilities at Christmas Island IDF that were factored into the original planning, there is a lack of established recreation and activity space in most accommodation compounds. Where the controlled movement model is in place, this makes it challenging for staff to provide suitable and appropriate programs and activities for detainees during the extended periods they are required to remain in their accommodation compounds.

5.17 In older facilities, such as the Blaxland High Security Compound, this shortfall is understandable. However, in those facilities where new compounds have been built or the facility rebuilt, the absence of suitable in-compound program and activity facilities is a significant planning shortfall. This was particularly apparent in compounds initially intended to house medium and low security detainees that now house high security detainees. These compounds are not fitted out with purpose-built gymnasiums or activity rooms, leading to the adaption of common rooms or similar areas that, in turn, take that amenity away from the detainees.

Recommendation 7

We recommend that the department:

- a. ensures all detainees have appropriate access to programs and recreational facilities within accommodation compounds
- b. ensures equitable access to communal recreation and activity facilities for all detainees.

Welfare support to detainees

5.18 Welfare and engagement services monitor the wellbeing of detainees and provide practical support and activities to assist detainees in managing personal issues and vulnerabilities¹⁷ while in detention. The provision of welfare services to immigration detainees is not only pivotal to the good order of a detention facility but is inherent to the duty of care owed by the Commonwealth to detainees.¹⁸

5.19 Welfare and engagement services include the provision of direct welfare support to detainees and the provision of various activities including self-development, sporting, arts and crafts, education programs and religious observances.

5.20 During the period we observed that the quality of the management of detainee welfare and their engagement in meaningful activity varies across the network. In our experience where detainee welfare and engagement is poor, there is a risk that deterioration or changes in a detainee's mental and physical health may be missed. Furthermore, the information that is obtained by welfare staff is a key factor in informing operational considerations including transfer and movement of detainees, intelligence assessments, detainee placement decisions and other operational functions.

Welfare

5.21 Overall, there has been an improvement in welfare officer staffing levels with a commensurate improvement in detainee engagement. However, we note the Adelaide ITA accommodates a high percentage of vulnerable detainees but there is not a dedicated welfare officer on staff. This increases the risk that information essential to the ongoing support of those detainees will be overlooked. Not only is this detrimental to the ongoing health and welfare of the detainee, it may also affect the safety and security of the facility.

5.22 The intent of the Personal Officer Scheme (POS) is for the POS officer to develop rapport and a detailed knowledge of the detainee's welfare and general needs. We acknowledge that, in a number of facilities, the traditional POS model is in place.

5.23 However, we are concerned that in some facilities POS officers continue to be allocated to detainees depending on who is on shift when the Individual Management Plan (IMP) review is due, rather than assigning an allocated POS officer who is responsible on an ongoing basis for monitoring and reporting on the day-to-day welfare needs of that detainee. It is difficult for a Detention Services Officer and a detainee to develop a strong, trusting relationship when the POS officer is constantly changing.

¹⁷ AHRC, *Human Rights standards for immigration detention*, 2013, p.49.

¹⁸ *Behrooz v Secretary of the Department of Immigration and Multicultural and Indigenous Affairs* [2004] HCA 36; 219 CLR 486; 208 ALR 271; 78 ALJR 1056 (6 August 2004) Gleeson CJ at para [21]. See also [49-53] (McHugh, Gummow and Heydon JJ), [174] (Hayne J), 219 (Callinan J). 83 *S v Secretary, Department of Immigration & Multicultural & Indigenous Affairs* [2005] FCA 549 at [209-211], citing *Kondis v State Transport Authority* [1984] HCA 61, *Burnie Port Authority v General Jones Pty Ltd* [1994] HCA 13; (1994) 179 CLR 520.

Recommendation 8

We recommend that the department:

- a. reinstates the traditional POS model in all IDFs
- b. ensures each detainee has an allocated POS officer who is responsible for monitoring and reporting on his or her day-to-day welfare needs.

Programs and Activities

5.24 To be effective in offering support to the mental health and general wellbeing of detainees, an effective program of activities including educational, recreational, sporting and cultural activities is essential. For the purposes of our assessment, we consider meaningful activities to be those activities that a person would reasonably expect an adult to participate in if they were residing in the community.

5.25 In turn, the programs on offer in immigration detention should reflect the needs of the detainees, including women, older people, children and people with a disability.

5.26 During this inspection cycle, we noted a continued improvement in the provision of age-appropriate adult education activities across the network. Some centres also offer vocational educational programs. However, we identified there has been limited expansion of self-development activities such as anger management, parenting, and alcoholics and narcotics anonymous programs.

5.27 Where the controlled movement operational model is in place, access to educational and recreational facilities is often adversely impacted. While some facilities have equitable detainee access to programs, others do not. Where access to communal programs and activities is limited due to security and safety considerations, in-compound activities that are relevant, meaningful and likely to support maximum detainee participation are essential.

5.28 The ABF continues to impose a ban on external recreational and religious excursions. We understand the ban was implemented following a number of escapes that occurred during recreational and religious excursions. However, we remain concerned that the current blanket ban on these activities impacts all detainees and does not take into account individual needs or security risk ratings.

Recommendation 9

We recommend that the department removes the restriction on external recreational and religious excursions for all detainees with an established low behavioural and/or flight risk.

Alternative Places of Detention

5.29 During this period, we observed that detainees in the majority of semi-permanent non-medical APODs were receiving the appropriate level of welfare support, access to programs and activities, or daily access to outdoor areas.

5.30 However, we also identified a number of inconsistent practices in the provision of welfare support to detainees held in an APOD. We noted APODs where the welfare officer allocated to the local detention facility did not interact with detainees, and others where all welfare issues were referred to the local welfare staff.

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5.31 Where welfare staff were not directly engaged with detainees, Transport & Escort (T&E) staff were responsible for the day-to-day management of detainee needs. This included the compilation of daily reports in lieu of an Individual Management Plan (IMP), and IMP reviews at committee meetings. The daily reports do not contain the depth of information found in an IMP. This generates a significant risk that information relevant to the detainee's wellbeing may be overlooked in the absence of formal assessment and review processes.

5.32 In some cases, detainees held in an APOD did not have access to outdoor recreational activities, and only limited access to educational, cultural and religious activities. This is particularly concerning where age-appropriate physical, recreational and educational activities are not available to support the developmental needs of children held in immigration detention.

Recommendation 10

We recommend the department ensures that all detainees placed in an APOD have access to welfare support and age-appropriate educational, recreational, sporting and religious programs and activities, including access to outdoor recreational activities.

Operational security

Security and risk assessments

5.33 The ABF has directed that:

When being transported adult detainees who meet the following criteria will be restrained using mechanical restraints:

- *Are without physical impairment and/or dependent children who has been in immigration for 28 days or less where there is insufficient information for an informed risk assessment to be made*
- *Have been in detention longer than 28 days with an established risk rating of High or Extreme.*¹⁹

5.34 In our view, it should not take 28 days to undertake a preliminary assessment of a detainee's security risk so that where possible, people are not treated as a high security risk where the rating is not necessary. Ideally, the risk assessment should commence from an assumption of providing more freedom of movement, rather than assuming all detainees are a high security risk until proven otherwise.

5.35 Detainee security risk assessments (SRA) are reviewed every 28 days and may be subject to a trigger review. Our observations indicate that the initial assessment of High is not being proactively reviewed within the initial 28 days unless there is an incident of sufficient significance to warrant escalating the rating to Extreme. On the other hand, information readily available within the initial 28 days of detention that might lower a detainee's risk rating is not considered.

¹⁹ ABF Directive Restraints and Use of Force dated 16 January 2016.

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5.36 We note that the Detention Services Manual – Safety and Security Management – Use of Force contains references to a *presumption against use of force* and that restraints should *only be used as a measure of last resort*.

5.37 We are concerned that the algorithm underpinning the Security Risk Assessment Tool (SRAT) does not account for established sociological and psychological assessments of violent behaviours, or the likelihood of reoffending. Detainees with a violent criminal history are assessed as posing a high risk regardless of the nature of the offence, the passage of time since the offence was committed, their behaviour since the offence, or the programs or other mitigation they have since completed.

5.38 The SRAT is structured in such a way that an inexperienced analyst is unlikely to identify some of the idiosyncrasies that generate an automatic (and, at times, unwarranted) escalation. For example, a person convicted of being in possession of a trafficable amount of an illegal substance is automatically linked to organised crime, which in turn automatically raises the risk of violence. Therefore, a person may be assessed as having links to organised crime and an associated higher risk rating without any material facts to support that rating.

5.39 Our assessment of the information underlying the SRAT revealed a tendency for analysts to include inaccurate information. For example, listing an incident report in the SRAT where the detainee was a witness rather than the alleged offender. This has the potential to generate inaccurate SRAs, which in turn cause an unnecessary escalation of a detainee’s risk assessment and a commensurate increase in the use of mechanical restraints and other restrictions.

5.40 SRAs have a significant bearing on the placement of a detainee within the network. Where the risk assessment is inaccurate, or is applied without consideration of individual circumstances, there is a significant risk of detainees being placed in inappropriate locations within facilities and across the network.

Recommendation 11

We recommend that the department, in conjunction with its service providers:

- a. review the Security Risk Assessment Tool and associated algorithm to ensure that, as far as possible, it does not unfairly skew the risk rating of detainees
- b. ensure intelligence analysts are empowered to make recommendations relating to the reduction or escalation of the initial risk assessment of a detainee within their initial 28 days in detention
- c. ensure a quality assurance program of the information (both historical and current) used to inform the Security Risk Assessments is undertaken prior to any risk assessment being applied to a detainee
- d. ensure a security, flight or behaviour risk rating of High or Extreme is only applied where there is substantiated evidence to support such a rating
- e. review and substantiate High or Extreme security risk assessments prior to the rating being used to: (i) support the use of mechanical restraints; or (ii) inform any other activity where a detainee will be placed in restraints, where such placement will cause public embarrassment, or cause the detainee to decline to participate in medical or mental health treatment.

Placement

5.41 Placing detainees across the network requires the department to balance numerous competing priorities, including available bed space, court appearances, specialist medical treatment and family considerations. We acknowledge that family linkages are weighted against legal, security and medical considerations when the department considers the placement of detainees. In our view family linkages in the community are an important factor affecting detainee well-being and should be given a similar weighting as legal or medical factors when placing a detainee in the network.

5.42 The placement of detainees continues to be a significant issue in the Ombudsman's assessments of persons detained for more than two years. In this reporting period, I made 26 placement recommendations in assessments, including for detainees who wished to be moved to another IDF to be closer to their family, legal representatives or support network. In response, the Minister advised that in seven cases the detainee had been moved as recommended and in 16 cases, the recommended move was not supported as it was considered the detainee's current placement was appropriate. Of the remaining three, one was removed from Australia and two were granted visas.

Incident reports

5.43 During each inspection, the management of critical and major incidents that occurred during the preceding six weeks is reviewed. This includes assessing Incident Reports, Officer/Use of Force Reports, Post Incident Reports, and viewing relevant video footage.²⁰

5.44 We reviewed the operational responses to the two deaths in immigration detention (January and March 2019). Both are the subject of a coronial inquiry and it would be inappropriate for this Office to make any further comment in relation to the management of these incidents.

5.45 In this inspection cycle, we have noted a general improvement in the standard of Incident Reports. However, we continue to observe the same issues that we have raised previously with the ABF:

- a. Incident Reports did not include reports from all officers who had attended the incident. It was a common occurrence across all facilities for the incident reporting to include only one Officer's Report or Use of Force Report when it was apparent that three or more officers had attended the incident.
- b. Procedural fairness is not being applied to incident reporting. The Incident Reports contain information from the staff involved, however information from the detainees involved in the incident as either a person of interest or witness is not included. Procedural fairness is essential in the detention environment and incident reporting should be balanced and provide the clearest possible picture of the circumstances, including the view of the detainees involved.

5.46 The review of camera footage showed an increased willingness for staff to attempt to de-escalate a situation prior to applying force. While social media reports during this period may indicate otherwise it is apparent from our viewing of CCTV, body and hand held footage that most Serco staff are actively engaging with detainees as the first step in managing

²⁰ Relevant footage may include CCTV, body camera and handheld camera footage as appropriate.

non-compliance. Applying force, especially mechanical restraints generally appears to be the last rather than the first choice.

Recommendation 12

We recommend that the department in consultation with their service providers ensure that:

- a. all officers who attend an incident produce reports for inclusion in the Incident Report
- b. ABF and Serco procedures be updated to reflect the need for procedural fairness to be provided to detainees named as a person of interest, prior to the Incident Report being used in any administrative decision-making process.

Identifying restraint types

5.47 The department has 11 instruments of restraint currently approved for use in the immigration detention network. Each restraint is intended for a different purpose and must be used appropriately.²¹

5.48 While there has been some improvement in recording the type of mechanical restraint used, the use of terms such as ‘mechanical restraints’ or ‘MR’ are still being used in Use of Force and Incident Reports. This does not allow adequate oversight of the type of restraint applied.

5.49 It is essential that the department have an accurate record of the type of restraint used in each incident to ensure that the restraints are being used in accordance with standard procedures, and that they are of the same type for which approval has been granted.

5.50 We note with concern that, while the department agreed to recommendations made in the Ombudsman’s reports covering the previous inspection cycles regarding identifying the type of restraints used in Use of Force Reports or Incident Reports, this is still not being consistently applied across the network.

Behaviour Management

Dynamic Security

5.51 Dynamic security is defined as an operational model that prioritises engagement with and understanding of a detainee’s needs and motivations as the primary tool to maintain the good order, discipline and welfare of an immigration detention environment.

5.52 We have noted that where the dynamic security model fails to be fully engaged, compound staff are more likely to have difficulty de-escalating abusive or aggressive incidents, with a subsequent increase in unplanned use of force or behaviour management

²¹ PI-DM-623 Use of Force (10.10.2018)

regimes. This lends itself to an increased risk of punitive behaviours and excessive use of restraints.

Use of High Care Accommodation

5.53 When used as part of a behaviour management regime, High Care Accommodation (HCA) is intended to provide a secure, low stimulus environment in which a detainee can deescalate at their own pace following a period of heightened aggressive non-compliant behaviour. The use of HCA should be for the shortest possible time and never used as punishment or as part of a disciplinary process.

5.54 Our reviews of the use of HCA for managing non-compliant behaviour noted that:

- a. placement of detainees in this environment was reasonable in each of the circumstances
- b. the appropriate approvals and reviews had been conducted
- c. the various tactical holds and restraints used to move non-compliant detainees to HCA were reasonable under the circumstances.

5.55 Our inspections did not generally indicate that HCA was being used inappropriately, including for punitive purposes. However, we did note that in some facilities a small number of Serco staff were using the threat of HCA as a tool to influence detainee compliance which, in our view, is a poor reflection on the quality of dynamic security practices within the facility.

Behaviour Management Plans

5.56 Placement on a Behaviour Management Plan (BMP) is one of a number of tools staff use as an intervention to manage and monitor the behaviour of detainees and to maintain the safety and security of IDFs for other detainees, workers and visitors.²²

5.57 A review of BMPs found that while placement on one was generally appropriate, the processes and content of plans were often poor.

5.58 Our review of the BMPs identified the following shortfalls across most facilities:

- a. the issues or behaviours generating the BMP were a “catch all” of previous incidents, with the behaviour to be addressed not clearly identified
- b. background about how similar past behaviours were addressed contained information that was irrelevant to the matter at hand
- c. there was a seeming lack of procedural fairness in a large number of BMPs, with little evidence to suggest the detainee had been given the opportunity to discuss the circumstances surrounding the incident, or to put forward reasons why a BMP should not be imposed
- d. protective factors for individual detainees were not discussed in any detail, with little or no information about the resources available to staff and detainees to provide support, or programs that will assist the detainee in modifying their behaviour

²² PI-DM-5027 (23.08.2018).

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- e. the BMP template identifies that the objectives should be *Specific, Measurable, Achievable, Relevant, Time bound and specify the review dates for these objectives*. In most BMPs we reviewed, the listed objectives were generic statements with little or no information on when a review would be undertaken, who would be involved in the review, or the standards the detainee was expected to achieve
- f. while it is reasonable for a BMP to state what the consequences of failing to comply with the BMP will be, in the plans we reviewed these were not sufficiently specific to the detainee’s individual circumstances
- g. IHMS input into a BMP is essential to inform the ABF and Serco of any clinical or other considerations that are relevant to the detainee. At a minimum, IHMS should confirm that the detainee’s non-compliant behaviour is not reflective of an underlying mental health or other issue that the detainee cannot reasonably be held accountable for. In some BMPs we reviewed there was a generic statement that a representative of IHMS was present at the review meeting, or had input into the drafting of the BMP; in our view this does not provide sufficient detail or assurance of IHMS staff’s views on the detainee’s behaviour.

5.59 BMPs should be reviewed regularly and the outcomes clearly recorded within the plan. In the majority of the BMPs we reviewed, the quality and detail of the record of the review were poor. In particular, in many BMPs the review records were undated and did not reflect which stakeholders were present or consulted, or identify the final decision-maker.

5.60 The review process is intended to be consultative and fulsome in its function. From our observations it was apparent that in a number of facilities:

- a. the BMP reviews were not undertaken at structured meetings with all relevant stakeholders in attendance, but rather appeared to be a “quick chat” between an ABF officer and a Serco manager
- b. review decisions were not adequately documented and the information used to inform decisions was often missing
- c. decisions to retain or remove a detainee appeared to be arbitrary in nature, with little evidence to suggest detainee’s individual circumstances were considered.

Recommendation 13

We recommend that the department:

- a. ensures all BMPs are reviewed in a structured, minuted meeting with representatives from all relevant stakeholders in attendance
- b. introduces a robust quality assurance program for the development of BMPs to ensure content is relevant, fair, and applicable to the detainee’s individual circumstances.

Use of force

5.61 We acknowledge that there are various circumstances where the use of force is both necessary and appropriate to ensure the safety of an individual or others. When used, force must be a measured response that is proportionate to the situation. Where restraints are applied they should:

- a. be used for the shortest period of time necessary to support the operational requirement
- b. never be used for punitive purposes.

5.62 During this inspection cycle, our review of incident management did not identify any cases of excessive use of force. That being said, we remain concerned that current policies and risk assessment processes support a decision to automatically apply mechanical restraints to a detainee during Transport and Escort (T&E) activities rather than considering alternative mitigation strategies, such as an increased number of escorting staff or closer escorting practices.

5.63 During the reporting period, we finalised two complaints about use of force. In our investigation of the first complaint, we found there was no video footage of the incident. In response we suggested that, when renegotiating its contract with Serco, the department consider including a requirement to record the transport of high-risk detainees within a detention facility. In the second complaint, we were not able to be satisfied from the available evidence that the level of force used was inappropriate and, in turn, determined that further investigation of the complaint was not warranted.

Recommendation 14

We recommend that the department ensure that mechanical restraints are:

- a. only applied for the shortest time necessary
- b. never used for punitive purposes
- c. only applied when all other forms of mitigation have been exhausted.

Emergency Response Team (ERT)

5.64 During this inspection cycle, we conducted a limited review of the operations of the ERT and noted that, in those centres with this asset, they are generally employed in a variety of tasks across the facility aligned to their training and expertise.

5.65 Our review of ERT responses identified a small number of issues, which we raised directly with managers at the time of the relevant inspections. However, there was no evidence to suggest that ERT staff subjected detainees to excessive or inappropriate force or search activity.

Transport and Escort

High security vehicles

5.66 During this inspection period we noted that the ABF had directed the Serco high security vehicle—which had been introduced into service during the previous inspection

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cycle—be withdrawn from service. The vehicle is a Volkswagen Transit variant with one internal and two rear pods, and based on those used in custodial settings to transport convicted criminals between facilities or court.

5.67 The internal pod has the capacity to hold two detainees and two staff. There are two “extreme risk” pods at the rear of the van, which can hold a single detainee in each. The van is windowless and the driver and co-driver (if assigned) can observe occupants by hard-wired camera. The driver controls air conditioning and lighting for the pods.

5.68 If the department considers reintroducing this, or a similar vehicle to support transport operations, it is essential the issues previously raised with the department are addressed prior to deployment. This includes, at a minimum, the development of detailed guidelines and procedures to ensure that the vehicle is fit for purpose.

5.69 During this reporting cycle, we reviewed the circumstances of a number of uses for this vehicle. It was not clear to us that there was an operational need for a high security vehicle fitted with rear pods. Specifically, there was no evidence in the documents we reviewed to suggest that any detainee had demonstrated sufficiently extreme behaviour or posed an appropriately high escape risk as to warrant their use. Further, only one facility had made use of the rear pods in the four to six weeks prior to the vehicles’ withdrawal.

5.70 We were concerned to note one facility’s advice that, as a matter of course where two detainees were collected from corrective services facilities, they would be automatically transported in the rear pods, regardless of operational need and in the absence of an assessment of the detainees’ physical or mental health or other vulnerabilities. We have raised this separately with the department.

5.71 In our view, where there is such an extreme behavioural or escape risk, a detainee should either be retained in an APOD within a corrective services facility or corrective services or police should be engaged to provide transport.

Transfer operations

5.72 In addition to inspecting detention facilities, we undertake detailed assessments of transfers of detainees between IDFs within Australia. Transfer operations include both road and air elements. The inspection team attended and assessed the Melbourne–Sydney–Brisbane–Perth–Melbourne transfer in March 2019.

5.73 A detainee’s security risk rating determines whether a detainee is to be placed in mechanical restraints for the duration, or part of a transfer. The *Aviation Transport Security Regulations 2005* (ATSR) do not specifically require that all “dangerous”²³ persons be mechanically restrained when being transferred by air. Rather, this approach appears to have evolved over time and become accepted transfer practice. However, discussions with operating flight crew and the operations managers of the respective charter flights²⁴ indicated that the charter flight crew consider the placement of high-risk detainees within the aircraft, and the provision of escorting officers to be sufficient mitigation against any risk a detainee may pose to the security of the aircraft.

²³ As defined in the ATSR, 2005.

²⁴ Air Nauru and Sky Traders.

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5.74 The mechanical restraints (handcuffs) currently used by T&E staff are the SAF-LOK MK 5 Maximum Security Hinged Handcuff. These handcuffs weigh approximately 800 grams and are less flexible than the chain linked SAF-LOK MK 4 Handcuffs. Detainees placed in these restraints have difficulty eating, toileting or sitting comfortably for extended periods.

5.75 We observed that, when needing to use the inflight toilet, detainees are transferred into the SureLock Humane restraint (body belt), which provides them with the opportunity to toilet themselves without staff assistance. The transfer from handcuffs to body belt is undertaken in the galley of the aircraft and impedes crew movements. We have previously recommended²⁵ and remain of the view that the SAF-LOK MK 5 Handcuff is an unsuitable mechanical restraint for use for extended periods of time, such as a transfer from Melbourne to Yongah Hill via Sydney, Brisbane and Perth.

5.76 Mechanical restraints continue to be exchanged “at the steps” of the aircraft. That is, the losing or receiving facility swaps the National T&E team’s restraints for their own. This practice is not only a cumbersome operational practice (especially when undertaken after dark); it also poses an increased safety and security risk and increases the risk of public attention being drawn to the operation. We suggest it would be reasonable to expect that, once a detainee is placed in mechanical restraints at the losing facility, the same restraints will remain in place until they arrive at their receiving facility (excluding any medical or flight emergency).

5.77 Detainees who are being transferred are not permitted to carry any reading material or similar that would keep them occupied during the flight. Current practice sees detainees seated for the duration of the flight with the only options being to look out the window, sleep, or engage escorting staff in conversation. Discussions with the charter flight operations manager(s)²⁶ indicated they would not consider the carriage of books, magazines or newspapers by detainees to be a threat to the security of the flight. Discussions with detainees who have participated in a transfer operation suggest that the opportunity to access suitable reading material would be welcomed and would reduce the stress imposed by the transfer.

5.78 Following the Federal Court ruling on 22 June 2018²⁷ that detainees could keep mobile telephones in their possession while detained, air charter companies have banned the carriage of all electronic devices on transfer flights. While we acknowledge the circumstances that led carriers to make this decision (i.e. concerns about staff harassment and privacy), it has created an operational impediment for ABF, Serco, IHMS and our inspection staff, all of whom have an operational need to access electronic equipment during the transfer operation.

5.79 During the transfer operation we observed the flight was diverted due to a detainee falling ill and another on-board incident took place. We noted that all staff involved managed both events in a professional manner.

²⁵ Commonwealth Ombudsman, *Department of Immigration and Border Protection: Use of Restrictive Practices in Immigration Detention*, 28 June 2017.

²⁶ Air Nauru and Sky Traders

²⁷ *ARJ17 v Minister for Immigration and Border Protection* [2018] FCAFC 98

Recommendation 15

We recommend that the department:

- a. ensures that all risk/threat assessments for transfer operations are relevant to the operational task
- b. notes that the Aviation Transport Security Regulations restrict the use of mechanical restraints to circumstances where there is a genuine risk to the safety of the aircraft that cannot be mitigated by any other option
- c. direct that, wherever possible, the SureLock Humane restraint (body belt) is the preferred mechanical restraint for all transfer operations.

Complaint Management

5.80 The standard of complaints management is inconsistent across the network, including significant variation in record keeping practices. Most centres continue to use a “complaints investigation report” to record the actions taken to resolve a complaint. This provides a central, standardised running sheet of the information sourced, documents or footage viewed and people spoken with to reach the outcomes reflected in the resolution process.

5.81 A significant proportion of the complaint records we viewed were incomplete and did not provide adequate information to support the resolution, the weighting provided to the information, or a clear understanding of what was considered. As a minimum, the records of a complaint investigation should include details of:

- a. interviews with staff, detainees and other witnesses
- b. analysis of closed circuit television (CCTV) or body camera footage
- c. documents viewed, such as officer reports and incident reports
- d. policies and procedures that are relevant to the circumstances of the complaint.

5.82 It is essential that resolution letters provide closure to a complaint. We found that the quality of response letters was variable. Good quality responses are written in plain language, address all the issues raised, and provide an explanation of the steps taken to resolve the complaint and the outcome and conclusions drawn. Many of the response letters we reviewed were incomplete, did not address all the issues raised, failed to adequately explain the outcome or used overly legalistic language.

5.83 It is apparent that insufficient quality assurance occurs before complaints are finalised to ensure the complaint records are complete and the response is clear and addresses all issues.

5.84 The Serco Complaints Management Policy and Procedure Manual (PPM) was introduced during this inspection cycle. We will continue to monitor the implementation of this policy throughout 2019.

Recommendation 16

We recommend that the department ensures that:

- a. all staff, including service providers tasked with complaint investigations, are provided with complaint investigation and management training
- b. it introduces a network-wide comprehensive quality assurance process for handling complaints
- c. Serco includes complaint investigation and complaint management training in its Facility Operations Manager training.²⁸

Management of property

5.85 We continue to receive complaints about the management of detainee property. During this period, eight per cent of the complaints (12 complaints) we received about immigration detention related to property.

5.86 We have previously reported on the shortfalls in this area. During this cycle we noted the following improvements:

- a. the roll out of the new Property Management Policy and Procedure Manual (PPM) has been completed and we were advised that all property staff have received training in the new procedures
- b. changes have been made to the Serco Care Management database to address the work-arounds put in place by individual facilities to adequately record the specific details of detainee intrust property. These included variations of a paper record that duplicated the electronic records that would be later loaded to the database.

5.87 We also noted some improvement in the processing and handling of property when detainees are transferred between facilities. This included a significant increase in the number of detainees allowed to pack their own belongings before a transfer, which in turn negated the issues of lost or misappropriated in-possession property. Where detainees are not able to pack their own property we continue to see:

- a. inconsistencies in how property is recorded on room clearance forms
- b. failure to pack all items belonging to a detainee
- c. failure to make appropriate audio visual recordings of the room clearance process
- d. failure to document items that are disposed of during the room clearance process, including perishable food items and opened toiletries.

²⁸ This Office is available to provide complaint-handling training when on site and/or to assist in the provision of this training during the Facility Operations Manager courses.

ACCESS TO HEALTH SERVICES

5.88 Although this Office is not resourced or qualified to assess the quality of medical and mental health treatment plans we do consider access to these services, including the provision of offsite medical and mental health specialist consultations and clinical tests.

5.89 Access to health services remains the most prevalent category of complaint we receive about immigration detention. In the period 1 January to 30 June 2019, 16 per cent of all immigration detention complaints (24 complaints) related to health services. The majority of these complaints appeared to relate to matters such as delays in receiving specialist treatments or consultation, rather than on site medical services.

5.90 During this inspection period, we did not identify any shortfalls in access to on site medical or mental health services. In most cases, detainees seeking medical appointments were seen by a medical or mental health nurse within 24 hours of making the request. Appointments with on-site doctors were generally within seven days.

5.91 We did not note any significant shortfalls in the administration of referrals to specialists or clinical tests. We acknowledge that the receiving specialist triages specialist referrals, with immigration detainees assessed in the same manner as any member of the Australian public. We did note that each Health Services Manager has a different method and timeframe for following up on referrals, but this did not appear to adversely impact on the process.

Brisbane ITA

5.92 During this reporting period, we completed a trial OPCAT inspection. This included our first detailed assessment of the provision of health services to detainees. We were supported in this assessment by New Zealand Ombudsman OPCAT staff who are medical professionals.

5.93 Overall, we found the provision of medical and mental health services to detainees to be reasonable, and in line with or higher than Australian community standards. The inspectors' general view was that the Health Service Provider was well-led and provided timely access to health services. The general observations arising from this assessment were:

- a. All detainees have access to onsite clinical and mental health practitioners through a confidential appointment system. Detainees may request health care appointments by completing the 'Detainee Medical Request Form'. The request forms are placed in a locked container and cleared daily by the Health Services Manager. Requests for medical appointments are triaged based on standard community medical and mental health practices.
- b. Waiting times to see the nurse and/or doctor is generally one to two days; however, this can be arranged for the same day if required. Referrals to specialist treatment or diagnostic tests are provided as required, with waiting times in line with community standards.
- c. When necessary, professional telephone interpreting was used for health care consultations.

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- d. Governance arrangements were in place and appropriate.
- e. We did not identify any anomalies in the assessment of primary health care functions including the provision of onsite medical and mental health services, pharmacy or dental services.

CONCLUSION

6.1 In December 2019, we provided the department with the opportunity to comment on our draft report and recommendations. The department’s response dated 17 January 2020, is included in full at Appendix A.

6.2 We are pleased that the department has accepted all our recommendations in full or part. Our Office will continue to monitor the operations of immigration detention facilities.

6.3 As our approach to implementing OPCAT compliant inspections evolves, our Office is planning to move to a multidisciplinary approach. We intend to involve medical and mental health professionals, as well as human rights and other professional experts, as either members of or advisors to the inspection team.

APPENDIX A

Department response

The Department of Home Affairs (the Department) welcomes the Commonwealth Ombudsman's Report *Immigration Detention Oversight – Review of the Ombudsman's activities in overseeing immigration detention from January to June 2019* (the Report), and the recognition of the considerable challenges faced by the Department and its service providers, in operating and maintaining the immigration detention network.

The Department values the Commonwealth Ombudsman's oversight of immigration detention, and observations made in this report that the operational and administrative functionality of the immigration detention network has improved since the previous inspection cycle in 2018.

Overall, the Department agrees with the majority of the recommendations.

The Report found that the policy framework supporting immigration detention is reasonably robust with policy and procedural guidelines in place across the Australian Border Force (ABF) and contracted service providers. The Department agrees with recommendation one and continues to work with Government to ensure the ongoing safe and secure operation of the network.

Operational model

The Department agrees with recommendation two and notes that the operating models at each Immigration Detention Facility (IDF) are designed to provide optimal rights and privileges while maintaining requisite safety and security provisions. The Department, in conjunction with the service provider, regularly review the operating models at each IDF. The use of the controlled movement model is limited to circumstances where the use of the model is consistent with the ongoing safety and security of the facility and the wellbeing of detainees.

Facilities

The Department agrees with recommendations three to seven.

The Department acknowledges the Ombudsman's serious concerns about the facilities in high security compounds. The decommissioning of Blaxland high security compound (BHSC) is scheduled to begin in quarter one of 2020. In preparation, the Department reduced the number of detainees in BHSC and is working with service providers to plan for the orderly transition of this infrastructure.

High security compounds at each of the redeveloped detention centres are designed and fitted out to support the ongoing health and welfare needs of detainees, whilst maintaining the good order and safety of the centre. Each redeveloped centre incorporates facilities for mobility impaired detainees, privacy in ablution areas and toilets has been improved, and all rooms have storage space for personal items. Free to air TV services and pay TV services are available in common areas to provide residents with a range of viewing choices. As accommodation rooms are generally dual occupancy, installation of TV services in accommodation rooms may be disruptive to some detainees, however the Department will consider where this might be achievable.

The Report found facilities used for property management and storage at most facilities were generally appropriate for purpose. Every immigration detention facility has secure storage managed by the service provider where personal items can be held and accessed on a daily basis. At the time of the inspections, temporary storage arrangements were in place at Villawood Immigration Detention Centre (IDC) because some of the secure storage units were in need of repair. These storage units have been repaired, and there is now appropriate secure storage at Villawood IDC.

Alternate Places of Detention (APODs) are usually used for short periods of time. The Department agrees that wherever practical, APODs that are used for longer periods of time should cater to the needs of detainees through the provision of appropriate and accessible facilities. The Report acknowledges that the Department is limited by local supply and demand and the provision of one large hotel-based APOD is operationally preferable to multiple smaller locations. The Department is working with service providers to ensure that a range of services are provided to detainees in longer term APODs in Brisbane and Melbourne, including access to outside activity.

Infrastructure throughout the immigration detention network has been designed to ensure equitable access to recreational programs and activities for all detainees. The service provider is required to provide meaningful programs and activities to the detainee cohort including structured and unstructured social, welfare, and educational events. The monthly schedule takes a range of factors relating to the detainee cohort into consideration, including age, gender, religious beliefs, as well as safety and security.

Welfare support to detainees

The Department notes the Report finding that overall there has been an improvement in welfare officer staffing levels with a commensurate improvement in detainee engagement, and acknowledges the value of the Personal Officer Schemes that operate across the network. The Department agrees in principle with recommendation eight, although at Adelaide Immigration Transit Accommodation (ITA), the Report notes there is no dedicated welfare officer. This is because smaller detainee numbers allow closer oversight of detainees' health and wellbeing by the service provider. At Adelaide ITA, a robust personal officer scheme is embedded, involving a small number of appropriately qualified staff who provide welfare and engagement services, averaging one welfare officer to four detainees. Across other immigration detention facilities, each detainee is usually allocated up to two Personal Officers to ensure that at least one Personal Officer is available to the detainee on most days.

The Department agrees with recommendations nine and ten. The program and activity policy settings including the availability and eligibility of excursions, was recently reviewed and the current policy settings allow, subject to risk management processes, consideration for detainees to participate in external recreational and religious excursions. All facilities also have a comprehensive range of external providers who conduct religious services onsite to meet the spiritual needs of detainees from many religious backgrounds. Welfare and engagement staff are also deployed to longer term APODs and detainees at these APODs are provided access to welfare support together with appropriate programs and activities, including daily outdoor activities.

Operational security

The Department agrees in part with recommendation 11, and had already engaged an external consultant to undertake an independent review of the Security Risk Assessment Tool (SRAT). The review has now been completed and the Department is considering the findings. It is anticipated the outcomes may allow for assessments to be more nuanced, including for detainees who have been in detention for less than 28 days.

The service provider manages a quality assurance program ensuring information contained in security risk assessments is accurate and appropriate to the detainee. The assessment for each detainee is reviewed at least monthly to ensure intelligence and additional information is substantiated and contemporary. Additional reviews are also conducted following any incident involving a detainee which includes their placement at a different IDF and trend analysis on incident patterns within the network to ensure that incident categories and weighting are correct and relevant. The Department considers these review points to be appropriate.

Oversight of all transport and escort (T&E) tasks is undertaken by the Department, and the Facility Superintendent approves all planned T&E tasks, including use of restraints, on a case-by-case basis. In this inspection cycle, the Report noted a general improvement in the standard of incident reports, and notes increased willingness for staff to attempt to de-escalate a situation prior to use of force. The Report notes service provider staff are actively engaging with detainees as a first step in managing non-compliance.

The Department agrees with recommendation 12a, and the importance of timely, comprehensive and factually accurate incident reporting has been reiterated in refresher training provided to staff. With regard to recommendation 12b, the Department agrees in part, as existing incident reporting mechanisms balance the need for procedural fairness with the safety and good order of detainees, staff, visitors and the IDF. In this context, the Department notes the Ombudsman's previous view that there are existing avenues to afford procedural fairness in the incident reports, post incident reviews and behaviour management plans.

Behaviour Management

The Department agrees with recommendations 13 and 14, and notes the Report found that for those reviewed, placement on a Behaviour Management Plan (BMP) was generally appropriate. Detainee BMPs are reviewed in weekly meetings held between the facility detention service provider, health services provider and the Department. A robust quality assurance program exists for the development of BMPs, to ensure content is relevant, fair and applicable to the detainee's individual circumstances. While in draft, stakeholders, including the residential manager and security manager, review the proposed BMP to provide further updates on individual circumstances, endorsement of actions/consequences and input on objectives and protective factors.

The use of mechanical restraints in immigration detention will continue to be conducted in line with current departmental policy settings below, including the requirement for Facility Superintendents to approve all planned use of force on a case-by-case basis:

- there is a presumption against the use of force, including application of restraints, during movements within an IDF, transfers between IDFs, and during transport and escort activities outside of IDFs
- conflict resolution through negotiation and de-escalation, where practicable, must be considered before the use of force and/or restraint is used
- use of force and/or restraint should only be used as a measure of last resort
- the amount of force used and the application of restraints must be reasonable
- use of force and/or restraint may be used to prevent the detainee inflicting self-injury, injury to others, escaping or destruction of property
- use of force and/or restraint may only be used for the shortest amount of time possible to the extent that it is both lawfully and reasonably necessary – if the management of a detainee can be achieved by other means, force must not be used
- use of force and/or physical restraint must not include cruel, inhumane or degrading treatments
- use of force and/or restraint must not be used for the purposes of punishment
- the excessive use of force and/or restraint is unlawful and must not occur in any circumstances, excessive force on a detainee may constitute an assault, and
- all instances where use of force and/or restraint are applied (including any follow-up action), must be reported in accordance with the relevant operational procedures.

Transport and Escort

The Department agrees with recommendations 15a and 15b. The decision for application of restraints during transport operations is commensurate to the aviation risk presented by an individual based on prior escort, behavioural and criminal history in accordance with the Aviation Transport Security Regulations, and the Airline's Transport Security Procedures.

With regard to recommendation 15c, the Department agrees to notify the service provider of the Ombudsman's preference that wherever possible the SureLock Humane restraint be used. Each request for the application of mechanical restraints is individually assessed and the duration of the escort is considered. An appropriate restraint is selected that balances safety and security concerns and wellbeing of detainees.

Complaint Management

The Department agrees with recommendations 16a and 16b. The service provider manages complaints and incorporates complaint handling in its staff training. All investigations into complaints raised by detainees or other third parties have a detailed single record of how the complaint was investigated and the evidence

considered. This may include records of conversations and audio-visual records (including CCTV footage). All written complaints must be responded to in writing and the complainant informed of the outcome of any investigation undertaken into their complaint within contractual timeframes. The Department is satisfied that the Complaints Management Standard Operating Procedure (SOP) provides appropriate complaint handling guidance to departmental officers working in immigration detention.

The Department undertakes a network-wide comprehensive quality assurance process of complaint handling, as well as providing oversight of all responses, including timeliness. Where required, the Department works with the service provider to improve the quality of response letters to detainees.

The Department provided guidance through the Complaint Management SOP and worked with the service provider to ensure complaints are dealt with in a timely manner, and responded to appropriately. While the Department disagrees with recommendation 16c at this time, service provider performance will continue to be reviewed, and if required, the Department will consider further remediation.