



Australian Government
Department of Immigration and Citizenship

**Response to the 2010 Australian Human Rights Commission Report on
Immigration Detention on Christmas Island**

Introduction

The Department of Immigration and Citizenship (DIAC) welcomes the opportunity to respond to the Australian Human Rights Commission (the Commission) 2010 *Report on Immigration Detention on Christmas Island*.

DIAC places a high value on the work of the Commission and appreciates the Commission's substantial recognition of the hard and consistent efforts of all those staff supporting the management of Irregular Maritime Arrival (IMA) Operations on Christmas Island.

As the Commission has acknowledged throughout its report, IMA operations have expanded significantly in the previous 12 months. In the 2009 – 10 financial year, 5,327 IMA clients have been intercepted in Australian waters and taken to Christmas Island for initial processing. As at 13 October 2010, there were 2,770 IMA clients accommodated at various locations on Christmas Island.

This increase in client numbers and the management of this growing cohort in a remote and confined location such as Christmas Island has created a number of complexities in the IMA processing environment. DIAC is proud of the way its staff and service providers have responded to these inherent challenges.

The Commission has outlined a number of specific recommendations related to Immigration Detention on Christmas Island. DIAC comments in response to these recommendations are outlined below.

Recommendations

Recommendation 1

The Australian Government should stop using Christmas Island as a place in which to hold people in immigration detention. If people must be held in immigration detention facilities, they should be located in metropolitan areas.

Response

It is Government policy that all IMAs are initially processed on Christmas Island. IMAs are managed in accordance with the Government's Immigration Detention Values which ensure that all people in immigration detention are treated fairly and humanely and any claims for asylum are assessed as expeditiously as possible.

The Australian Government has a variety of flexible accommodation options available for use on Christmas Island to manage this process. Where appropriate and for

operational reasons IMA clients and crew can and have been transferred to the Australian mainland while their processing is finalised. Detention accommodation is available in both metropolitan and regional areas and sites are utilised as operationally appropriate.

As the Commission would be aware, the Prime Minister and the Minister for Immigration and Citizenship announced on 18 October the establishment of new detention accommodation on mainland Australia to relieve the strain on the detention network. Additional detention facilities will be opened at Northam in Western Australia, located about 80km north-east of Perth, which will accommodate up to 1500 single men, and Inverbrackie in South Australia, located about 37km east of Adelaide, which will accommodate up to 400 family members.

Recommendation 2

The Australian Government should repeal the provisions of the Migration Act relating to excised offshore places and abandon the policy of processing some asylum claims through a non-statutory refugee status assessment process. All unauthorised arrivals who make claims for asylum should have those claims assessed through the refugee status determination system that applies under the Migration Act.

Response

The retention of 'excised offshore places', the mandatory immigration detention of all irregular arrivals for the management of health, identity and security risks to the community and the continued use of Christmas Island for the non-statutory RSA processing of people who arrive at excised offshore places are matters of Government policy. The Government is committed to these policies as essential components of strong border control and important elements in ensuring the integrity of Australia's immigration program.

In respect of the Commission's concerns regarding the non-statutory RSA process, the Government is satisfied that the non-statutory RSA process is consistent with Australia's international obligations under the Refugees Convention, in particular, its non-refoulement obligation, and provides a fair process for the assessment of asylum claims.

DIAC also wishes to note that all non-refoulement obligations are assessed if a refugee claim is unsuccessful, to ensure that Australia acts in accordance with its international obligations. This process of assessment of an asylum seeker against our international obligations is the same whether the asylum seeker is onshore or in an excised offshore place.

The Department notes that the Commission is aware that the High Court is currently considering the validity of the Department's RSA process. The High Court is yet to make a decision and the Department is also monitoring the progress of this matter.

It would not be appropriate to comment further on Recommendation 2 until the outcome of the High Court's decision on the constitutionality of the RSA process is known.

Recommendation 3

If the Australian Government intends to continue to use Christmas Island for immigration detention purposes, it should avoid the prolonged detention of asylum seekers by:

- Ensuring full implementation of the New Directions policy under which asylum seekers should only be held in closed detention facilities while their health, identity and security checks are conducted. After this, the presumption is that they will be permitted to reside in the community unless a specific risk justifies their ongoing detention in a facility.
- Ensuring that security clearances are conducted as quickly as possible.

Response

When announcing the Government's key immigration detention values on 29 July 2008, the Minister for Immigration and Citizenship emphasised that the new detention values were intended to maintain strong border security, but also treat people with human dignity.

The Minister made clear that the values would apply on Christmas Island to the full extent possible within the Government's excision and non-statutory refugee status processing arrangements, and given the accommodation and other services that are able to be provided on the island. Substantial progress has been made in the administrative implementation of these values within the existing legislative framework.

In accordance with the Government's Immigration Detention Values minors and their families will not be held in immigration detention centres but instead be accommodated in low security alternative places of detention within the immigration detention network. All other persons are housed in appropriate accommodation in the immigration detention network.

As the Commission would be aware, the Prime Minister and Minister for Immigration and Citizenship recently announced the intention to use existing powers under the Migration Act to progressively place significant numbers of unaccompanied minors and vulnerable families in residence determination arrangements. Placement into community detention will be made by the Minister on a case by case basis.

This move is in recognition of the increasing numbers of families with children and unaccompanied minors in immigration detention and the lengthening period of time which some may have been detained during processing of their claims or finalisation of their cases.

The residence determination arrangements will be rolled out progressively in partnership with community organisations over the coming months and should go a large way to providing suitable longer term accommodation for this group of clients.

The Department notes the Commission's comments in relation to security clearance. All non-citizens seeking to enter Australia are considered on an individual basis and against legal requirements in Australia's migration legislation.

This includes requirements that people meet (where relevant) health, character and security checks which are undertaken by other agencies and can take some time. It is absolutely necessary that these legal requirements are met before people can be settled in Australia.

The timing for the completion of these checks varies, depending on individual circumstances. Because these checks are treated individually and undertaken on a case-by-case basis, there is no single timeframe within which the checks can be completed. Whether people arrive together on a boat or whether they arrive individually, their cases are still treated on a case-by-case basis depending on their individual circumstances.

In some cases, it can take some months to get the necessary health, character and national security clearances from other agencies.

While the Department cannot provide a definitive timeframe for completion of processing, it liaises regularly with other agencies to ensure checks are progressed and processing is finalised as soon as possible.

Recommendation 4

Section 494AA of the Migration Act, which bars certain legal proceedings in relation to offshore entry persons, should be repealed. The Migration Act should be amended to accord with international law by requiring that a decision to detain a person, or a decision to continue a person's detention, is subject to prompt review by a court.

Response

As noted in the response to Recommendation 2, the retention of 'excised offshore places', the mandatory immigration detention of all irregular arrivals for the management of health, identity and security risks to the community and the continued use of Christmas Island for the non-statutory RSA processing of people who arrive at excised offshore places are matters of Government policy. The Government is committed to these policies as essential components of strong border control and important elements in ensuring the integrity of Australia's immigration program.

Section 494AA of the *Migration Act* is part of the excision arrangements; the Government has no intention to repeal or amend the provisions of the Migration Act relating to excised offshore places or offshore entry persons.

DIAC notes that subsection 494AA(3) states that '[n]othing in this section is intended to affect the jurisdiction of the High Court under section 75 of the Constitution'. Clients are therefore able to seek judicial review of the lawfulness of their immigration detention under domestic law, pursuant to the High Court's original jurisdiction.

The Government is considering ways of improving the review of the appropriateness of detention in line with the Key Immigration Values. Key Immigration Detention Value 4 of the New Directions in Detention provides that:

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. (emphasis added)

As noted by the AHRC, Senior Officer and Ombudsman's reviews introduced under the Government's Key Immigration Detention Values consider the appropriateness of the person's detention, their detention arrangements and other matters relevant to their ongoing detention and case resolution.

The Government is still determining the effectiveness of these detention review arrangements before considering the appropriateness of a more expansive model of judicial review of the decision to detain.

The Department notes the AHRC's reference to the recommendations of the Joint Standing Committee on Migration (JSCM). The previous Government had been considering the three JSCM reports closely and there had been extensive consultation across affected agencies on options for response. The current Government will consider the work done to date and will respond to the Committee's reports in due course.

Recommendation 5

The Australian Government should make full use of the Community Detention system for people detained on Christmas Island. All eligible detainees should be referred for a Residence Determination on the mainland. This should be an immediate priority for vulnerable groups including families with children, unaccompanied minors, survivors of torture or trauma, and people with health or mental health concerns.

Response

It has always been the intention that where possible children and their families be referred for consideration of community detention. The facilitation of placements has however been limited by the availability of supported accommodation placements on either Christmas Island or mainland Australia. Priority is given to those with vulnerability.

As noted in the Department's response to Recommendation 3, the Prime Minister and Minister recently announced making greater use of existing powers under the Migration Act to progressively place significant numbers of unaccompanied minors and vulnerable families in residence determination arrangements.

This move is in recognition of the increasing numbers of families with children and unaccompanied minors in immigration detention and the lengthening period of time which some may have been detained during processing of their claims or finalisation of their cases.

The residence determination arrangements will be rolled out progressively in partnership with community organisations over the coming months and should go a large way to providing suitable longer term accommodation for this group of clients.

Recommendation 6

The Australian Government should implement the outstanding recommendations of the report of the National Inquiry into Children in Immigration Detention, *A last resort?* These include that 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 children must be a primary consideration
 - the preservation of family unity
 - special protection and assistance for unaccompanied children.

Response

As AHRC has noted, in 2005 the Migration Act was amended to affirm the principle that children should only be detained as a last resort.

Section 4AA currently states:

- (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].

While section 4AA affirms the principle that children should only be detained as a last resort, the principle does not limit the location and nature of any such detention. The announcement of the Government's Key Immigration Detention Values formalised arrangements already in place operationally within the Department, which ensured that minors would never be detained in an immigration detention centre.

Additionally, DIAC has implemented a notification process ensuring that minors are appropriately placed and managed in the detention environment. The procedure,

established in January 2009, ensures senior executive officer oversight in situations where the detention or removal of a child is being contemplated.

DIAC maintains that Key Immigration Value 3 which provides that '[c]hildren, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre (IDC)' broadly reflects our Article 3(1) and Article 37 obligations and is complied with in relation to children detained on Christmas Island. Although children fall under the broad mandatory detention framework, they are treated considerably differently than adults (the facilities at Construction Camp and AHRC comments in the Report attest to this fact). Furthermore detention currently is not, and will not be at an IDC under immigration value 3.

Facilities at Construction Camp are designed to ensure that children's human rights are protected. The Report also notes the steps undertaken by DIAC to preserve those rights (such as the right to education). The processing of asylum claims by children is accorded the highest priority to ensure compliance with our Article 37(b) obligations under the CROC and that children remain in facilities for the 'shortest appropriate period of time'.

DIAC notes AHRC's claim that children 'are not free to come and go' (page 27). DIAC maintains that children in Construction Camp do in fact have considerable liberties, and are free to attend school, outings and other organised activities in order to best permit them to live as unrestricted as possible while their claims (and that of their families) are assessed.

Page 28 states, '[f]urther, while the Commission has welcomed the transfer of some families with children and unaccompanied minors from Christmas Island to the mainland, the Commission regrets that the vast majority have been transferred to immigration detention facilities rather than being placed in Community Detention.' However we wish to highlight that the 'immigration detention facilities' are those which cater to children and their families, rather than standard immigration detention centres.

Policy documents relating to the treatment of children in detention are clear:

'Children can be a vulnerable group of clients, particularly in the context of compliance operations and immigration detention. The case management of children presents particular challenges and requires special consideration of the child's individual and family circumstances. Although a child will not be detained in an IDC, it is possible that a child may be subject to other detention arrangements such as community detention or immigration residential housing. If a child has been detained, whether or not this is with a parent or guardian, the child will be actively case managed. The only exceptions might be children who have been detained with their families and are on a rapid removal pathway or juvenile foreign fishers.'¹

¹ Migration > 21/8/2010 - > P. 21/8/2010 - > PAM3 - MIGRATION ACT > Compliance instructions > Compliance, case management & detention > Treatment of children - Guiding principles

DIAC takes Australia's compliance with obligations arising under the Convention on the Rights of the Child extremely seriously, particularly Article 3 (best interests of the child), Article 6 (survival and development of the child), Articles 9 (preserving the family unit) and Article 28 (education). In relation to Article 37 (detention as a last resort) we note that AHRC have identified that DIAC has already moved some families to the mainland and we consider that facilities are markedly different to that in a regular IDC.

As noted above in response to Recommendation 4, DIAC is currently examining existing review mechanisms and will consider further options for judicial review of the detention of children.

Recommendation 7

If the Australian Government intends to continue the practice of holding children in immigration detention on Christmas Island it should, as a matter of priority:

- clarify through formal Memoranda of Understanding the respective roles and responsibilities of state and federal authorities with regard to the welfare and protection of children in immigration detention on Christmas Island
- clearly communicate these roles and responsibilities to all relevant state and federal authorities
- finalise and implement clear policies and procedures regarding child welfare and protection concerns that may arise in respect of children in immigration detention on Christmas Island, and communicate these policies and procedures to all relevant staff.

Response

DIAC agrees with the Commission that the interrelationship of Commonwealth and State laws is a complex matter and accepts the need to clarify the respective roles and responsibilities of DIAC, other Commonwealth agencies and state child welfare authorities with regard to the welfare and protection of children who are in detention on Christmas Island. Policy work is being progressed within DIAC around these issues. As part of this process DIAC will examine the desirability of clarifying through formal Memoranda of Understanding the respective roles and responsibilities of State and Commonwealth authorities with regard to the welfare and protection of children who are in detention on Christmas Island.

Notwithstanding the need to clarify the interoperability of legislation relating to children on Christmas Island Territory, in the interim where DIAC staff have child welfare and protection concerns in respect of children in immigration detention, they will continue to work with the relevant child protection authorities through the WA Department for Child Protection.

Recommendation 8

The Australian Government should, as a matter of priority, implement the recommendations made by the Commission in *A last resort?* that:

- Australia's laws should be amended so that the Minister for Immigration and Citizenship is no longer the legal guardian of unaccompanied children.
- An independent guardian should be appointed for unaccompanied children and they should receive appropriate support.

Response

The *Immigration (Guardianship of Children) Act 1946* (IGOC Act) creates the Minister's guardianship obligations towards certain children. It is recognised that the IGOC Act is outdated and not designed for the purpose for which it is now used. The Government particularly acknowledges the perceived conflict of interest between the Minister's role as guardian under the IGOC Act and being the decision-maker under the Migration Act.

Independent observers from *Life Without Barriers* are available on Christmas Island to support unaccompanied minors and attend interviews and other appointments, as required. The use of independent observers is one way in which the Department has attempted to address the perceived conflict of interest issue.

Further, the Department has recently completed a detailed assessment of its current unaccompanied minor caseload including the age, family composition and current care arrangements to assess whether the current arrangements are appropriate and whether the IGOC Act can be used in a more effective way to further the best interests of children potentially within its scope.

Recommendation 9

If the Australian Government intends to continue to use the Christmas Island IDC, it should implement the recommendation of the Joint Standing Committee on Migration that all caged walkways, perspex barriers, and electrified fencing should be removed and replaced with more appropriate security infrastructure.

Response

DIAC is considering options for softening the appearance of the IDC, including removal of a number of internal fences and caged walkways. This will occur where it is possible to do so at an acceptable cost.

DIAC is not considering replacement of the Electronic Detection and Deterrent Systems (EDDS) with different fencing arrangements, as this would not be practical or cost-effective. In any case, the facility is being managed in low security mode and the EDDS is not activated. The EDDS is an accepted form of security in public places and is used in various situations (such as embassies, private businesses, etc) – it is not a security feature restricted to immigration detention centres or other higher security facilities.

Recommendation 10

If the Australian Government intends to continue to use the Christmas Island IDC, it should take immediate measures to reduce overcrowding. These should include:

- ceasing the practice of accommodating people in tents, and removing the tents as soon as possible
- ceasing use of the surge areas that have been created by converting the visitors' and induction areas into large dormitories
- ceasing the practice of accommodating people in dormitory bedrooms in Education 3 Compound, and returning the compound to its original use as space for educational and recreational activities
- refraining from transforming additional areas into accommodation.

Response

The Department agrees with the recommendation by the Commission and is working to ensure that all IMA clients are accommodated in appropriate detention accommodation with suitable client amenity. As the Commission is aware accommodation is a scarce resource on Christmas Island and with the increase in IMA numbers in the recent past, immigration facilities on Christmas Island have been pushed to capacity.

As an interim operational response the Department has, in the past, utilised some short-term accommodation strategies, such as the use of marquees and conversion of communal living areas, to manage the accommodation shortage.

As the Commission would be aware, the Prime Minister and the Minister for Immigration and Citizenship announced on 18 October the establishment of new detention accommodation on mainland Australia.

The Department will cease using short-term accommodation such as tents for immigration detention accommodation and activate these new sites as soon as possible. The Department believes that this will go a long way to helping manage the issue of overcrowding on Christmas Island and bring back suitable levels of client amenity to clients who remain in the facilities on Christmas Island.

Recommendation 11

If the Australian Government intends to continue to use the Phosphate Hill immigration detention facility, it should take immediate measures to reduce overcrowding in the facility. These should include:

- ceasing the practice of accommodating people in tents, and removing the tents as soon as possible
- ceasing the practice of accommodating any more than two people in the bedrooms in the demountables.

Response

The Department agrees with the recommendation by the Commission and is working to ensure that all IMA clients are accommodated in appropriate detention accommodation with suitable client amenity. Please refer to the response to Recommendation 10.

Recommendation 12

If the Australian Government intends to continue to use the Construction Camp immigration detention facility, it should take immediate measures to reduce overcrowding in the facility.

Response

The Department agrees with the recommendation by the Commission and is working to ensure that all IMA clients are accommodated in appropriate detention accommodation with suitable client amenity. Please refer to the response to Recommendation 10.

Recommendation 13

DIAC, Serco and other detention service providers should refer to people in immigration detention by their name. Their identification number should only be used as a secondary identifier where this is necessary for clarification purposes.

Response

The Department agrees with this recommendation and is committed to ensuring that all persons in immigration detention are treated with dignity and respect. This includes referring to all clients by name rather than identification number. Departmental Officers and Service Providers are provided with extensive pre-deployment training before they are seconded to Christmas Island and this includes an emphasis on the importance of engaging with clients in a professional, appropriate and respectful manner.

Recommendation 14

DIAC and Serco should ensure that staff training and performance management include a strong focus on treating all people in immigration detention with humanity and with respect for their inherent dignity.

Response

The training provided to DIAC staff dealing with people in immigration detention stresses the need to treat people with dignity, humanity and respect at all times. This is included in training for processing teams, detention operations staff and case managers.

Serco are required contractually to ensure that they train their staff on these values and the current performance management criteria also reflect the Government's Immigration Detention Values. A key reason that Serco was successful in winning those contracts was because of their demonstrated alignment of company values with these values.

Recommendation 15

An independent body should be charged with the function of monitoring the provision of health and mental health services in immigration detention. The Australian Government should ensure that adequate resources are allocated to that body to fulfil this function.

Response

The Detention Health Advisory Group (DeHAG) and its Mental Health Sub-Group (MHSG), provides DIAC with independent expert advice to design, develop, implement and monitor health and mental health care services and policies for people in immigration detention. The DeHAG represents the Department's commitment to working in an open and accountable manner with our key health stakeholders to improve the general and mental health of people under our care.

The DeHAG's work program includes site inspections of places of immigration detention, including the Northern IDC, Airport Lodge APOD, Leonora APOD, Christmas Island IDC, Villawood IDC, Maribyrnong IDC, Melbourne ITA, Brisbane ITA and Brisbane APOD. Following these inspections, the DeHAG has provided expert medical advice on a range of issues, including mental health, dental services, communicable disease prevention and child health issues. DIAC has also facilitated four DeHAG meetings, four Mental Health Sub-Group meetings, up to six meetings of the Community and Public Health Sub-Group. While the Department considers the DeHAG's level of funding and activity to be sufficient to meet the Terms of Reference for the group, the DeHAG is free to recommend an increase in its resourcing or to propose changes to its Terms of Reference.

Recommendation 16

If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should ensure that detainees are provided with access to appropriate health services. In particular, DIAC should ensure, as a matter of priority, that detainees on Christmas Island are provided with adequate access to dental care and specialist care.

Response

On Christmas Island, the Department has contracted International Health and Medical Services (IHMS) to provide primary health care services to people in immigration detention at the Christmas Island Immigration Detention Centre at North West Point and Alternative Places of Detention at Phosphate Hill and Construction Camp. IHMS provides primary health care services. The Indian Ocean Territories Health Service (IOTHS) (a commonwealth government agency), based at the Christmas Island hospital, provides acute care, hospital services and torture and trauma counselling to all persons in immigration detention and health care for people placed in Community Detention on Christmas Island².

² There are currently no people in Community Detention on Christmas Island.

People in immigration detention on Christmas Island are provided with the same specialist treatment, including access to dental and optical services, that is generally available to the general Christmas Island population. Under the Department's guidelines, the dental services provided to people in immigration detention are linked to the period of time spent in immigration detention. For adults, the focus within the first two years of detention is on the relief of pain and removal and reduction of disease. Minors are able to receive preventative and interceptive dentistry services that are made available to all children by the dental body in the State or Territory where they are accommodated.

Where a person in immigration detention on Christmas Island is referred to an external specialist by an IHMS GP, an appointment will be made based on the urgency of the treatment. Where clients require urgent treatment and/or where a clinically recommended service is not offered on the island (such as obstetrics or acute psychiatric services), a decision will be made to transfer the client to a place of immigration detention in the mainland city where the specialist appointment has been arranged. Where a referral is not considered to be urgent, clients are made aware of potentially lengthy waiting times before they may be seen by a visiting specialist on Christmas Island, or through a routine (non-urgent) appointment at a public hospital on the mainland.

A mobile dental unit, currently located outside the Northwest Point Immigration Detention Centre (CI IDC), will become operational following the grant of the appropriate licences by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) to operate the unit's x-ray equipment. The Department anticipates that this will be in November 2010. In addition, planning has begun on a permanent dental clinic located within the CI IDC. On completion of the permanent CI IDC dental clinic, the mobile dental unit will be relocated to the Alternative Places of Detention at Phosphate Hill Bravo/ Construction Camp. The exact timing of the dentist's ongoing visits to Christmas Island is currently being finalised, however it is anticipated that these visits will occur on a monthly basis.

Recommendation 17

If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should ensure that detainees are provided with access to appropriate mental health services. In particular, DIAC should ensure, as a matter of priority, that detainees on Christmas Island are provided with adequate access to psychiatric care.

Response

The Government has introduced three new mental health policies which reflect best practice approaches to identifying existing mental health issues, providing psychological support to people in immigration detention, and to preventing self-harm in immigration detention. The new mental health policies were developed in consultation with the Detention Health Advisory Group's (DeHAG) mental health sub-group and with reference to the Government's National Mental Health Policy and standards recommended by the Royal Australian College of General Practitioners (RACGP).

All people entering immigration detention undergo mental health screening for signs of mental illness and torture and trauma within 72 hours. Subsequent mental state examinations are offered to identify any emerging health concerns that may arise during their time in immigration detention. These occur after seven days in immigration detention, and then at intervals of six, 12 and 18 months, and then three monthly thereafter. Additional assessments will occur when triggered, for example, when concerns are raised about a person's mental health, or in conjunction with significant events such as the refusal of a visa application.

People in immigration detention also have on-going access to the Mental Health Team and can be referred for more specialised care if required. Mental health services are provided through IHMS and include mental health nurses, psychologists and psychiatrists who are registered with the appropriate professional organisations and institutions.

Decisions about the number of medical staff deployed to Christmas Island, including about the numbers of mental health staff are made by IHMS in consultation with the Department. As at 12 October 2010, the number of health professionals (that is, excluding administrative personnel) currently working on Christmas Island, is 46. This includes four psychologists, nine mental health nurses and four mental health team leaders.

The Department acknowledges that access to local psychiatric services is limited on Christmas Island. The Department and IHMS have implemented a schedule of visits by psychiatrists for people in immigration detention on Christmas Island with IHMS. As a result of this, a psychiatrist visited Christmas Island for one week in mid-September 2010 to assist with reviewing difficult cases, supervising treatment, reviewing medication use, 'triaging' cases for referral to the mainland, assisting in the development of appropriate containment strategies for severe behavioural disturbance, and providing professional support and advice to the mental health team. People in immigration detention on Christmas Island who require access to psychiatry services that are not available on Christmas Island, including those who are unable to wait for the next scheduled visit by the psychiatrist, are transferred to the mainland to access these services.

Recommendation 18

If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should ensure that detainees are provided with adequate access to torture and trauma services.

Response

The screening arrangements set out in DIAC's mental health policies ensure that survivors of torture and trauma are identified and are referred to health professionals who have experience and training in providing torture and trauma counselling. All Irregular Maritime Arrivals (IMAs) are provided with an automatic referral for assessment by a torture and trauma service given the higher likelihood that they may require counselling.

On Christmas Island, Torture and Trauma counselling is provided by the Indian Ocean Territories Health Service (IOTHS) at the Christmas Island hospital. Staffing levels for Torture and Trauma counsellors is determined by IOTHS and the Department has no direct input into these calculations. However, the Department recognises the demand pressures on IOTHS counselling services and has agreed to provide the Christmas Island hospital with a large demountable building in which to conduct Torture and Trauma counselling. Siting for the demountable is currently under discussion.

Recommendation 19

DIAC should ensure that its policy, *Identification and Support of People in Immigration Detention who are Survivors of Torture and Trauma* is implemented on Christmas Island. Under this policy, the continued detention of survivors of torture and trauma in an IDC is only to occur as a measure of absolute last resort where risk to the Australian community is considered unacceptable.

Response

The Department completed the roll-out of the *Identification and Support of People in Immigration Detention who are Survivors of Torture and Trauma* policy, on Christmas Island in March 2010. New screening arrangements implemented as part of this policy help ensure that survivors of torture and trauma are identified and are referred to health professionals with experience and training in providing torture and trauma counselling. Under these arrangements, all people entering immigration detention undergo a mental health screening within 72 hours of their arrival in immigration detention, including for signs of mental illness or torture and trauma. In addition, given the high proportion of Irregular Maritime Arrivals (IMAs) who have experienced torture and trauma, all IMAs are automatically referred for assessment by a torture and trauma service. For other people in immigration detention, the Health Induction Assessment includes screening for torture and trauma and, if this is identified, the person is referred for assessment by a torture and trauma counselling service.

All clients in immigration detention (whether on Christmas Island or the mainland) are subject to regular placement reviews to ensure that their current detention placement remains appropriate. Should clients raise issues relating to torture and/or trauma, they will be referred to appropriately qualified health professionals in line with the current mental health policies. Where medical recommendations regarding a client's placement are made to the Department by health professionals, these recommendations will inform the client placement decisions. In considering these recommendations, and balancing the risks to the Australian community, the Department will explore alternative placement options including residential housing. Where considered appropriate, the Department also refers cases to the Minister for consideration of a community detention placement in accordance with the s197AB Ministerial intervention guidelines. In line with part 4.1.4 of these guidelines, clients with identified torture and/or trauma issues are considered priority cases.

Recommendation 20

If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should:

- ensure that all detainees are provided with adequate access to telephones and that they can make and receive telephone calls in privacy
- increase the number of internet terminals in each of the detention facilities.

Response

IMA clients in immigration detention are given access to a variety of telecommunications equipment including fixed land lines and internet terminals, and in the case of family groups in community detention, mobile phones. There is no restriction on the amount of calls a client can make when in immigration detention on Christmas Island, other than the need to extend courtesy to other clients who might be wishing to make a call themselves.

Clients in the Christmas Island Immigration Detention Centre (IDC), the Construction Camp and the Phosphate Hill facility have access to dedicated client phone lines at those facilities.

Additional phones were installed in the IDC in December 2009, as follows:

- Four additional lines into client compounds;
- Two additional lines into the temporary tent accommodation; and
- Two additional lines into education block which was converted to client accommodation.

In March 2010 a further installation of phone lines was completed, with:

- Four additional lines installed in the Construction Camp; and
- Two additional lines installed in the Bravo Compound at Phosphate Hill B.

As at 1 October 2010 there were a total of:

- 34 dedicated phone lines and 23 internet terminals at the Christmas Island NWP IDC;
- Eight dedicated phone line and seven internet terminal at Aqua Compound;
- Four dedicated phone line and four internet terminal at Lilac Compound;
- Six dedicated phone lines and 12 internet terminals at the Construction Camp
- Four dedicated phone lines and seven internet terminals at the Phosphate Hill facility.

The department is currently exploring options for installing more computers with internet access at the Christmas Island IDC and at the Phosphate Hill facility and arranging for internet access to be made available on existing computers.

Recommendation 21

If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should ensure that all detainees are provided with adequate access to a range of recreational facilities and activities.

Response

Clients in immigration detention on Christmas Island are offered a range of activities including courses in Australian history, social development and gardening, yoga, sewing, cooking classes, bingo nights, trivia, movie nights, music classes, arts and crafts, badminton, volleyball, group fitness training, indoor cricket, indoor football, basketball, furniture restoration and tennis. Clients can also access library services and internet and telephone services.

The Detention Services Provider ensures that people accommodated at the Construction Camp have access to a broad range of age and gender appropriate activities whilst they are in immigration detention, including providing programs exclusively for female clients. Activities for clients accommodated at the Construction Camp include, gym, swimming, arts and crafts, and dance classes. Some other activities such as weekend sport and movie nights are offered for all clients together.

There are approximately 19 volunteers from the Australian League of Immigration Volunteers (ALIV) who conduct these courses and activities. Volunteers are flown to Christmas Island from the mainland aboard DIAC charter aircraft. The Detention Service Provider also employs a small number of staff to coordinate the activities provided to clients. Serco, through ALIV, offer at least one activity in the morning and one in the afternoon (each day) for people in detention at each site on Christmas Island.

DIAC continues to work with Serco to ensure adequate activities for clients from Construction Camp and Phosphate Hill during periods of wet weather. Generally, this is achieved by greater utilisation of the Christmas Island Recreation Centre. Indoor sports such as basketball, netball and volleyball can be played there. The centre and other rooms are used for dancing, craft and other such activities.

Recommendation 22

If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should ensure that:

- all detainees have access to appropriate educational activities, including ESL classes
- the Phosphate Hill and Construction Camp immigration detention facilities have an adequate supply of reading materials in the principal languages spoken by detainees.

Response

Daily English classes are run for clients at Construction Camp from 9-12 am each morning. Similar classes are run for clients at Phosphate Hill (Bravo) each afternoon. At Christmas Island IDC six classrooms are used each day between 9am and 4.15pm (6 days per week) to run English classes. Three classrooms are used to run basic English skills (such as alphabet and numbers) and a further three are used to run classes for people from the same language group (i.e. English classes for those who speak Hazaragi, etc). There are also some advanced English classes. At Aqua/Lilac compounds, both ALIV-run and client-lead English classes are run between 10am and 4pm.

Art classes, social development classes, Australian history and culture classes and other general skilled classes for example gardening, sewing, cooking are also run at the three facilities intermittently - dependent on the available skills of the ALIV volunteers.

Both libraries in Phosphate Hill and Construction Camp are a collection of sources, resources, and services available to clients. They are places for clients to access information in many formats and from many sources. Clients are provided with a free and open access environment to our libraries where they can read, and borrow books.

Library facilities are open seven days a week from 0900 - 1700 and upon request. The collection of books for children includes easy reading, story books, non fiction and easy educational reading. Junior to young adults have a collection of novels, comics, and magazines. For adults and advance learners there are biographies, adult novels, encyclopaedias and educational resources. As most clients are of Afghani, Iranian and Arabic origin books are demographically selected in their language to provide them a better understanding of information. Phosphate Hill library has an extended service by providing material by electronic means.

Over the past two months more than \$30 000 worth of toys were provided for Children at Construction camp and \$16 000 of audio visual materials and books for Christmas Island IDC.

Recommendation 23

If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should:

- amend the detention service provider contract applicable to the three detention facilities on Christmas Island to require that Serco provide regular external excursions for people in detention on the island
- ensure that the detention service provider is allocated sufficient resources to provide escorts for regular external excursions.

Response

A range of external activities are offered to clients each week. Aside from weekly soccer matches between clients at the soccer club and dance classes at the Recreation Centre, clients are offered two-hour excursions - which involve two escorted groups of 30 clients (one in the morning and one after lunch) - each Saturday, in two busses. Excursions include visits to local sites such as South Point, Margaret Knoll and Territory Park. Clients are selected for these escorted excursions on the basis of the length of time in detention – that is, longer term clients are given priority.

Construction Camp, Phosphate Hill and Christmas Island IDC clients can also go outside the centre regularly in the company of a Designated Person (a person authorised by the Secretary of the Department, or the Secretary's delegate). In September, there were 12 such outings, involving around 50 clients.

Phosphate Hill clients are generally able to leave the detention environment to attend the cricket oval for periods between 0600 to 1700 for sports and exercise, this includes walking groups, cricket, soccer and other recreational activities.

Around 15 clients from Phosphate Hill are also involved in the Furniture Restoration program between 0900 and 1200 each weekday morning.

Recommendation 24

If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should:

- ensure that all detainees are provided with access to regular religious services conducted by qualified religious representatives – in particular, further efforts are required to provide this for detainees who practice a religion other than Christianity
- ensure that detainees have access to religious services in the community.

Response

A range of religious services are also provided to clients by the Detention Service Provider. For Muslim clients, visiting Imams are invited into the immigration facilities to meet with clients and provide religious services. In addition, around 30 clients from Construction Camp regularly attend the Christmas Island Mosque, approximately 39 clients make weekly visits to the island's Hindu Temples per week, and around 23 clients attend the Buddhist temples. Further, the president of the Christmas Island Islamic Council visits the Christmas Island IDC on a weekly basis to pray with Muslim clients in detention. The clients are provided with washing facilities to prepare for prayers.

Each Sunday, between 15 and 20 clients from Construction Camp and Phosphate Hill join with around 30 clients from the Christmas Island IDC in going to the Christmas Island Catholic Church. Around 20 clients from the IDC also attend the Christmas Island Christian Fellowship service. A Catholic Church service is also run

in the Phosphate Hill compound each Monday afternoon. Three designated persons also regularly take clients from the IDC , Construction Camp and Phosphate Hill to the local Catholic Church.

Recommendation 25

Legislation should be enacted to set out minimum standards for conditions and treatment of detainees in all of Australia's immigration detention facilities, including those located in excised offshore places. The minimum standards should be based on relevant international human rights standards, should be enforceable and should make provision for effective remedies.

Response

DIAC does not consider it necessary to enact standards in legislation in order to meet Australia's human rights obligations. While the large numbers of irregular maritime arrivals have increased the challenges in providing detention services, DIAC and its detention services provider always endeavour to meet relevant standards.

Australia adheres to Articles 20-24 of the Refugees Convention and ensures that people seeking asylum, including those in immigration detention, have their basic needs met, including access to food, clothing, shelter and medical assistance.

Detention services and their delivery are also subject to an external scrutiny and accountability framework which includes the Parliament and a number of statutory authorities such as the Commonwealth Ombudsman, the Privacy Commissioner and the Australian Human Rights Commission.

Consistent with domestic law and international obligations, the Australian Government facilitates access by people in immigration detention to legal advice and representation.

As part of the Government's commitment to ensuring the appropriateness of the conditions of immigration detention, new contractual arrangements for detention services have a strong focus on the rights and wellbeing of people in immigration detention. These arrangements provide a comprehensive framework for ongoing quality improvement, including an effective performance management system.

Contracts with service providers are informed by the Government's New Directions in Detention policy, including the seven Key Immigration Detention Values. These new arrangements enhance oversight of service provider operations and align the needs of an individual in immigration detention with the most appropriate accommodation option.

Recommendation 26

The Australian Government should ratify the *Optional Protocol to the Convention against Torture* and establish an independent and adequately resourced National Preventive Mechanism to conduct regular inspections of all places of detention. This

should include all immigration detention facilities, including those located in excised offshore places.

Response

The Australian Government signed the Optional Protocol to the CAT in May 2009. The Australian Government, with the Attorney-General's Department as the lead agency, is currently working towards ensuring that Australia's domestic legal system complies with the Optional Protocol, prior to ratification.

DIAC recognises that immigration detention facilities will be covered by the obligations under the OPCAT and will cooperate with the relevant scrutiny mechanisms once they are in place.