



Australian
Human Rights
Commission

Risk management in immigration detention

2019



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Edward Santow

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Commissioner's foreword

People held in immigration detention, as well as staff working in detention facilities, face genuine risks to their health, safety, security and their human rights more broadly.

International human rights law requires that the Australian Government identify these risks. The Government must then work diligently to eliminate, and in some cases mitigate, those risks.

In this report, the Australian Human Rights Commission assesses how the Australian Government identifies and manages those risks. While identifying some positive practices and developments, the Commission expresses strong concern about a number of issues related to risk management.

No-one held in immigration detention has forfeited their human rights, and immigration detention must never be imposed as punishment. Australian law allows a person to be held in an immigration detention centre *only* for certain administrative purposes, such as to facilitate their removal from Australia when they do not have a legal right to be here.

It is therefore imperative that Australia adopts a risk management approach that protects the human rights of all people held in immigration detention.

Recent changes to the immigration detention population

The Commission has been conducting inspections of immigration detention facilities for well over two decades. Changes in law, policy and the external environment colour the human rights risks that arise in those facilities at any moment in time.

In recent years, the most marked change relates to the composition of Australia's immigration detention population. The total number of people detained by Australia has decreased significantly in recent years, and this is to be commended.

However, the average length of immigration detention in Australia is currently close to 500 days—a period that is many orders of magnitude greater than almost any other developed country. In general, the risks to human rights increase the longer a person is held in immigration detention.

For much of the period since the mid-1990s, the majority of people in immigration detention were asylum seekers who arrived by boat. However, this has been changing significantly. In particular, there has been an increase in the number and proportion of people detained due to having their visa cancelled on character grounds (often due to their criminal history).

In turn, this has led to a significant shift in how the human rights risks that arise in immigration detention are assessed and managed.

Focus of this report and key observations

This report examines the human rights implications of current risk management practices in immigration detention. It is based on information gathered during inspections of four immigration detention facilities conducted in the latter part of 2018.

The Commission appreciates that the changing detention population has created significant risk management challenges.

However, the Commission considers that the strategies currently being used to manage these risks can limit the enjoyment of human rights, in a manner that is not necessary, reasonable and proportionate.

The Commission is especially concerned about the following issues:

- Inaccurate risk assessments may result in people in detention being subject to restrictions that are not warranted in their individual circumstances.
- The use of restraints during escort outside detention facilities has become routine, and may in some cases be disproportionate to the risk of absconding.
- Conditions in high-security accommodation compounds and single separation units are typically harsh, restrictive and prison-like.
- Restrictions relating to excursions, personal items and external visits are applied on a blanket basis, regardless of whether they are necessary in a person's individual circumstances.
- Australia's system of mandatory immigration detention—combined with Ministerial guidelines that preclude the consideration of community alternatives to detention for certain groups—continues to result in people being detained when there is no valid justification for their ongoing detention under international law.

As previously noted, immigration detention is administrative, not punitive. Any risk management practices used in this context should be the least restrictive possible and be properly tailored to individual circumstances.

The recommendations in this report are designed to assist in effectively managing genuine risks to safety and security, while also protecting the basic human rights of all people held in immigration detention.



Edward Santow
Human Rights Commissioner

May 2019

1 Introduction

This report examines risk management practices in immigration detention to determine whether they are compliant with Australia's international human rights obligations.

It is based on information gathered during inspections of immigration detention facilities conducted during 2018. The report also draws on the Commission's previous work in monitoring conditions and treatment in immigration detention.

Changes in the composition of the immigration detention population in recent years—specifically the increase in the number of people in detention who have had visas cancelled on character grounds—have led to a significant shift in how the risks that arise in immigration detention are assessed and managed.

Detention, by its very nature, limits the human rights of those detained. In addition, some risk management practices can themselves further limit the enjoyment of human rights in a manner that is not necessary, reasonable or proportionate in the circumstances.

The Commission acknowledges the assistance provided by the Department of Home Affairs (Home Affairs) and the Australian Border Force (ABF) in facilitating the Commission's detention inspections. The Commission is grateful to the staff of Home Affairs, the ABF and detention service providers who assisted the Commission team during the inspections.

A draft of this report was shared with Home Affairs in advance of its publication, to provide an opportunity for Home Affairs to respond to the identified issues.

2 Background

2.1 Immigration detention in Australia

Under s 189 of the *Migration Act 1958* (Cth) (the Migration Act), immigration detention is mandatory for all 'unlawful non-citizens' (that is, non-citizens within Australia who do not hold a valid visa), regardless of circumstances. Once detained, unlawful non-citizens must remain in detention until they are either granted a visa or removed from Australia.¹

The detention of an unlawful non-citizen is not based on an individual assessment of the need for detention. All unlawful non-citizens must be detained, regardless of whether they individually pose an unacceptable risk to the community.

People who are detained cannot seek judicial review of whether or not their detention is arbitrary within the meaning of this term at international law. There is no limit on the length of time a person can be held in immigration detention.

The Migration Act does not require that unlawful non-citizens be detained in purpose-built immigration detention facilities.²

In some circumstances, people in detention can be released from closed facilities into alternative, community-based arrangements. Community alternatives to detention include:

- release onto short-term visas, such as Bridging Visas
- residence determinations (also known as community detention or community placement), whereby the Minister makes a determination under s 197AB of the Migration Act that a person is to reside in a specified place rather than being held in a detention facility.³

Both of these options involve the Minister exercising a personal, non-compellable, discretionary power under the Migration Act.

2.2 The Commission's detention monitoring role

The Commission has conducted inspections of immigration detention facilities in Australia since the mid-1990s. This has included periodic monitoring of detention facilities across the country⁴ and inspections carried out in the course of three national inquiries into immigration detention.⁵

The purpose of the Commission's detention monitoring inspections is to ensure that Australia's immigration detention system is compliant with our obligations under international human rights law. For many years, the Commission has expressed a range of concerns about aspects of the detention system, which may lead to breaches of international human rights law.⁶

The Commission can also inquire into and, where appropriate, try to resolve through conciliation, complaints it receives from people in immigration detention regarding alleged breaches of human rights.

2.3 2017 inspections

During 2017, the Commission conducted inspections of all purpose-built immigration detention facilities in Australian territory.⁷ The findings of these inspections revealed a significant shift in risk management practices in immigration detention.

This shift has emerged largely as a result of the changing composition of the immigration detention population, specifically the increase in the number and proportion of people in detention who have had visas cancelled on character grounds.

Some of the key changes identified by the Commission in 2017 included:

- the introduction of a new 'universal' risk assessment process for people in detention
- increased use of mechanical restraints during escort outside and between detention facilities
- the conduct of transfers between detention facilities, with people in detention typically given little notice of transfers and limited time to pack their belongings and notify their family members, friends and legal representatives
- the introduction of new restrictions on internal freedom of movement (beyond exercise), personal property, food and access to excursions
- limited consideration of community alternatives to detention for certain groups.

The Commission identified numerous examples of risk management measures being applied when they may not be necessary, potentially resulting in arbitrary and disproportionate restrictions on human rights; or not being applied when they are in fact necessary, which may expose people in detention to significant risks.

Based on these findings, the Commission undertook to examine risk management practices in immigration detention in greater detail through a series of thematic inspections of immigration detention facilities.

2.4 Methodology

Between September and November 2018, the Commission conducted inspections of four immigration detention facilities:

- Villawood Immigration Detention Centre (VIDC)
- Brisbane Immigration Transit Accommodation (BITA)
- Melbourne Immigration Transit Accommodation (MITA)
- Yongah Hill Immigration Detention Centre (YHIDC).⁸

The Commission also inspected several 'alternative places of detention' (APODs) in Brisbane and Melbourne (see Section 2.8 below).

During the inspections, the Commission met with representatives from Home Affairs, ABF and contracted detention service providers (Serco and International Health and Medical Services); conducted inspections of the physical conditions of detention in each facility; and held over 130 interviews with people detained across the four facilities and in APODs.

In conducting the inspections, the Commission focused specifically on gathering information about risk management. This included information about strategies used to manage risks, and factors that may influence risk levels. Within an immigration detention context, relevant risks include: self-harm; harm to others; negative impacts on health and wellbeing; escape or absconding; illegal activity (such as the use of illicit drugs); significant disturbances; and non-compliance with internal rules and standards.

The Commission considered the evidence gathered during the inspection against international human rights standards that are relevant to immigration detention, as outlined below.

The Commission's methodology reflects international guidelines for the conduct of detention inspections, including a core focus on prevention of harm.⁹ This preventative approach necessitates consideration of root causes and risk factors for possible breaches of international human rights standards.

2.5 Relevant human rights standards

There are nine core international human rights instruments, of which seven have been ratified by Australia.¹⁰ Several of these treaties contain obligations that are relevant to the situation of people in immigration detention generally, and to the issue of risk management practices specifically. These include:

- the International Covenant on Civil and Political Rights (ICCPR)
- the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- the Convention on the Rights of the Child (CRC).

Relevant obligations include those relating to security of person; humane treatment in detention; freedom from arbitrary detention; freedom from torture and other cruel, inhuman or degrading treatment or punishment; privacy; freedom of religion; freedom of expression and association; education; an adequate standard of living; health, participation in cultural life; protection of the family; and consideration of the best interests of the child.

Risk management practices may in some cases limit the human rights of people in detention. In order for a limitation to be compatible with Australia's international human rights obligations, it must be necessary, reasonable and proportionate in the circumstances.¹¹

Further information about relevant standards can be found in the Appendix to this report, as well as in the Commission publication, *Human rights standards for immigration detention*.¹²

2.6 Visa refusals and cancellations under s 501

Under s 501 of the Migration Act, a non-citizen may have an application for a visa refused or have their visa cancelled if they do not pass the 'character test'.¹³ A person will not pass the character test if:

- they have a 'substantial criminal record', defined as having been sentenced to death, imprisonment for life or imprisonment for 12 months or more (including multiple terms of imprisonment totalling 12 months or more)
- they are convicted of any offence while in immigration detention or during an escape from detention
- the Minister reasonably suspects that they have an association with people involved in criminal conduct
- the Minister reasonably suspects that they have been involved in people smuggling, trafficking in persons, or crimes of serious international concern
- they are regarded as being 'not of good character', based on their past and present criminal and/or general conduct
- there is a risk that, should they be allowed to enter or remain in Australia, they would engage in criminal or other dangerous conduct in the future
- they have been convicted in Australia or a foreign country of sexually based offences involving a child
- they have been charged or indicted in Australia or a foreign country with crimes of serious international concern
- they have been assessed by the Australian Security Intelligence Organisation to be directly or indirectly a risk to security
- they are the subject of an Interpol notice, from which it would be reasonable to infer that the person would present a risk to the Australian community.¹⁴

The *Migration Amendment (Character and General Visa Cancellation) Act 2014* (Cth), which came into effect in December 2014, significantly broadened the scope of s 501. The Act also introduced mandatory visa cancellations for people who have a ‘substantial criminal record’ or have committed a sexually based offence involving a child, and are serving a full-time term of imprisonment for an offence against Australian law.¹⁵

These changes led to a substantial increase in visa refusals and cancellations under s 501.¹⁶ Consequently, the number of people in immigration detention due to character-related visa decisions also increased.¹⁷

2.7 Key statistics

Beginning in 2013, there was a significant reduction in the number of people in immigration detention.¹⁸

This reduction was largely due to the release of large numbers of asylum seekers from closed detention into alternative community arrangements; and a decrease in the number of people entering detention following a significant decline in boat arrivals to Australia.

As a result, twelve mainland detention facilities and two APODs on Christmas Island have been closed;¹⁹ Sydney Immigration Residential Housing is no longer operating as a closed detention facility;²⁰ and three detention facilities on Christmas Island have been placed into contingency.²¹

In more recent years, however, the number of people in detention has stabilised, with the population remaining between 1,200 and 1,500 since mid-2016.

Figure 1: Number of people in closed immigration detention, July 2013 to December 2018²²

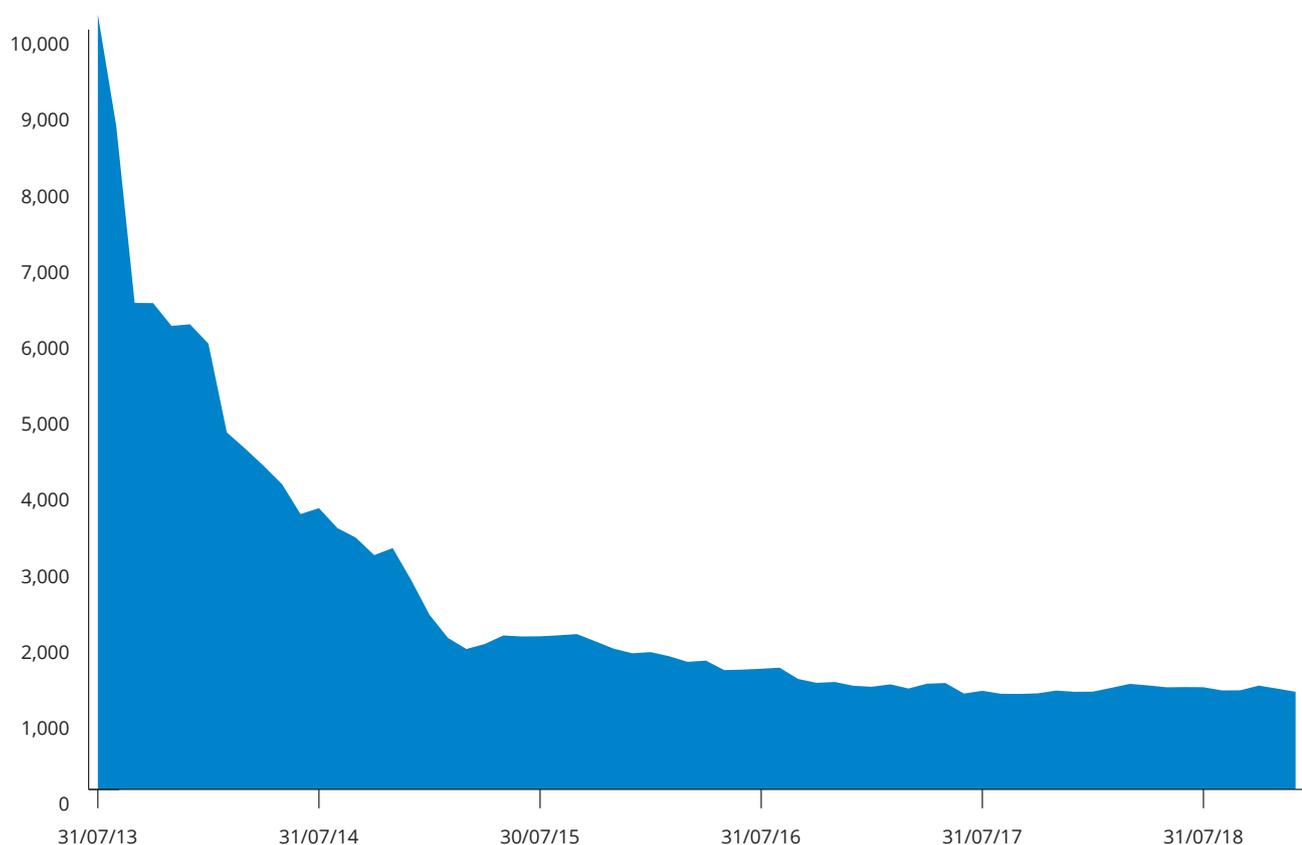
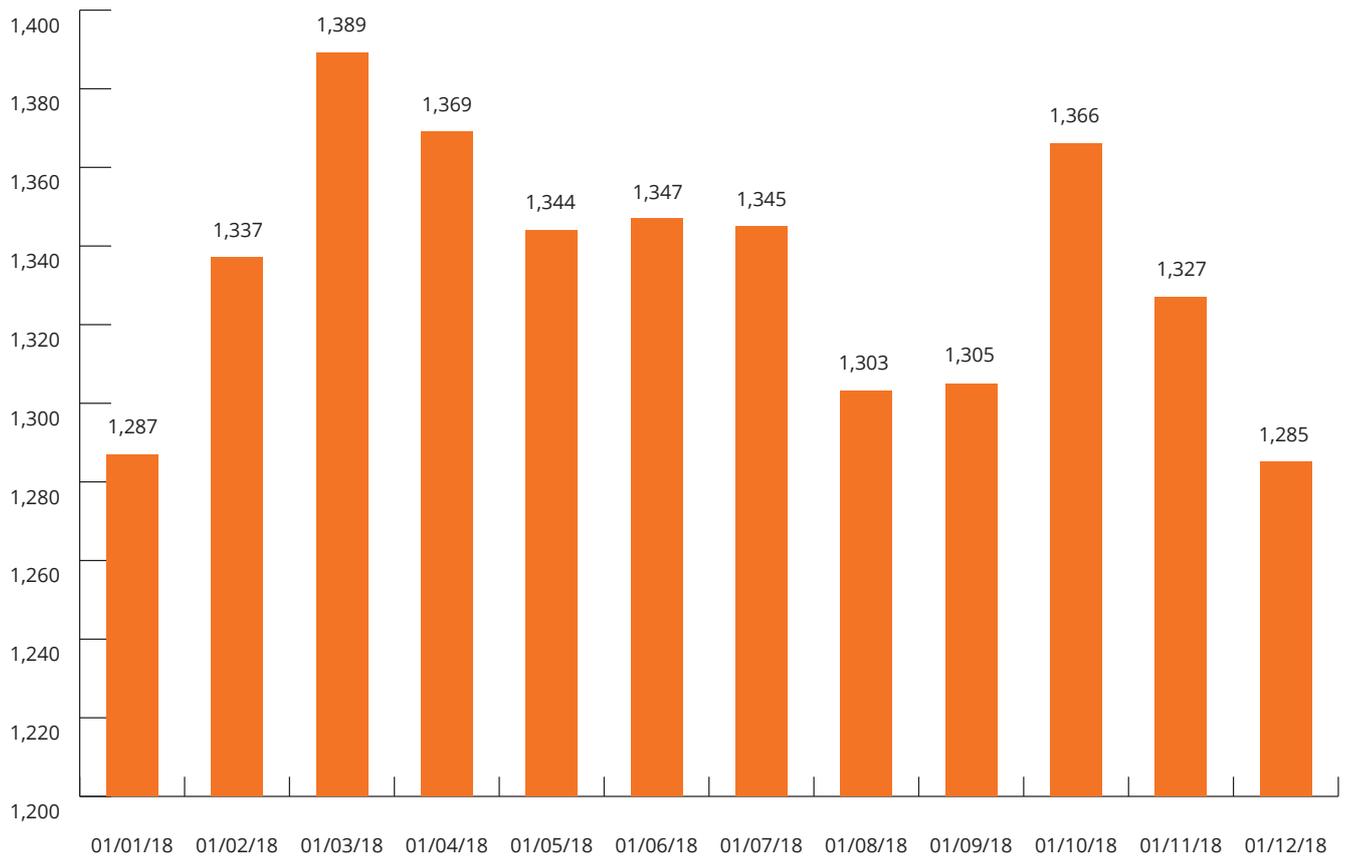


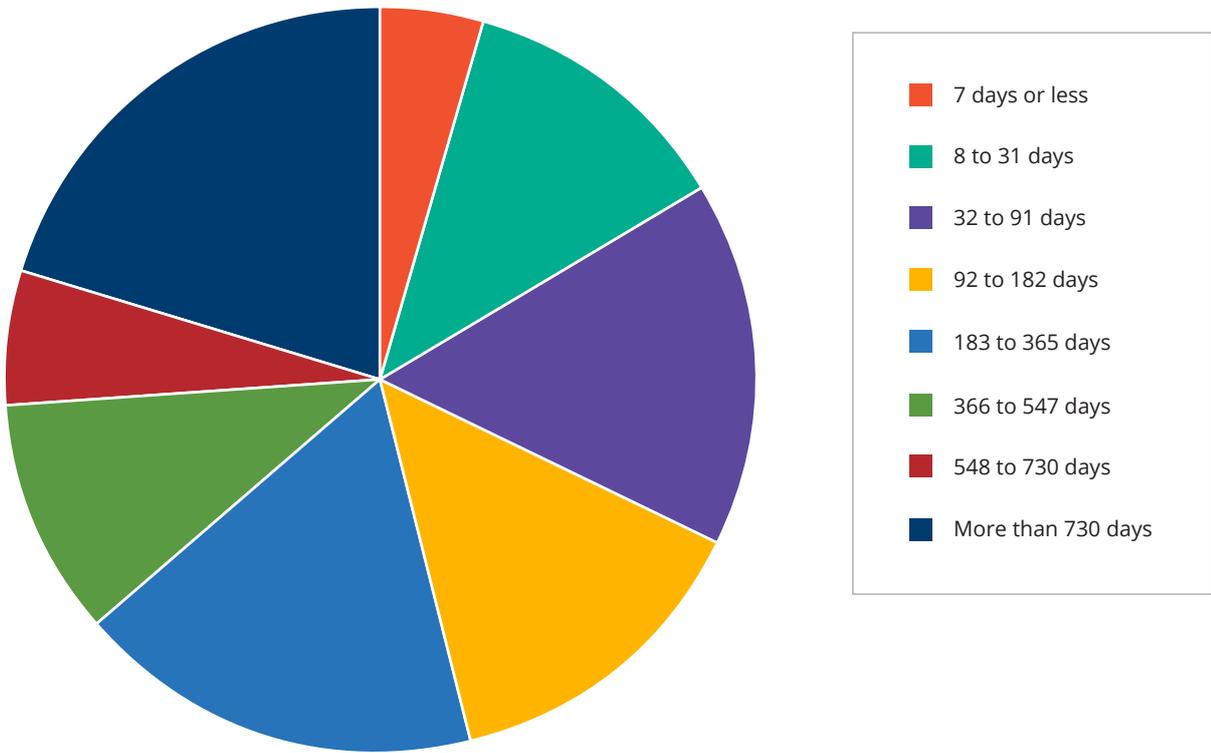
Figure 2: Number of people in closed immigration detention, 2018²³



The average length of detention has similarly stabilised, remaining at over 400 days since mid-2015. The average did not drop below 416 days throughout the course of 2018, and exceeded 500 days for the first time on public record by the end of the year. On average, the number of people in very long-term detention (two years or longer) comprised around 20% of the detention population during 2018.²⁴

The average length of detention in Australia is far higher than in comparable jurisdictions. In Canada, for example, the annual average length of closed immigration detention did not exceed one month between 2012-13 and 2017-18.²⁵ In the United Kingdom, around 80% of the people leaving detention between 2012 and 2017 had been detained for two months or less.²⁶

Figure 3: Percentage of people in detention by duration, averages over 2018²⁷



As noted above, legislative amendments introduced in late 2014 led to a significant increase in the number of people detained due to character-related visa decisions.

Figure 4: Visa cancellations under s 501, 2011-12 to 2017-18²⁸

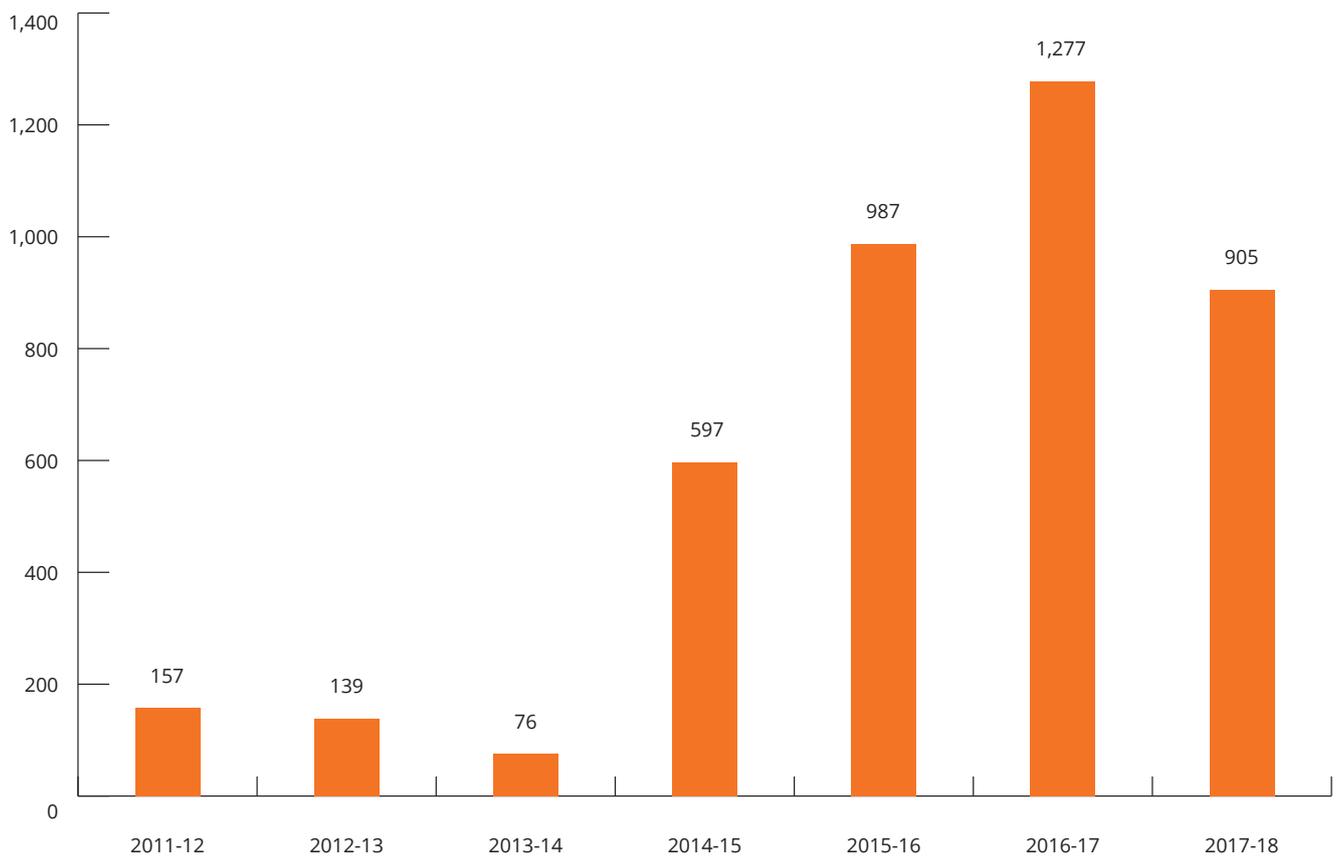
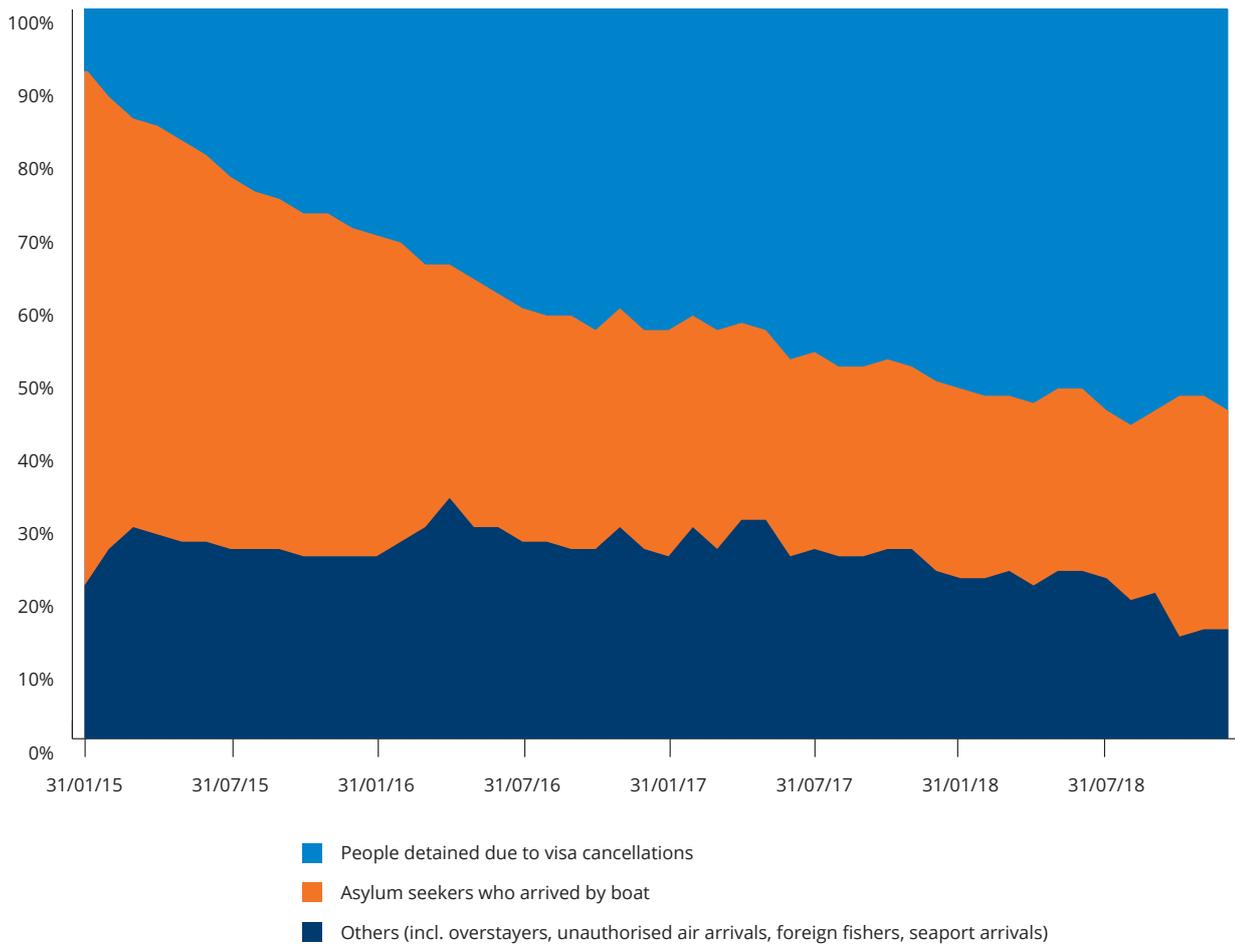


Figure 5: People in immigration detention by reason for detention, January 2015 to December 2018²⁹



Throughout 2018, people detained due to having their visa cancelled under s 501 consistently comprised around a third of the overall detention population (although the proportion in individual facilities may be higher or lower than this average).³⁰

2.8 Facility information

(a) Villawood Immigration Detention Centre

The VIDC is a large, high-security detention facility located in the western suburbs of Sydney. It is used to accommodate adult men and women across several compounds.

La Trobe and Lachlan are lower-security compounds that accommodate adult men. Lima, also a lower-security compound, is used to accommodate adult women. These three compounds are adjacent to a large central common area (referred to as the 'community' area) with various recreational facilities.

Hotham, Mackenzie and Mitchell are self-contained, medium-security compounds that accommodate adult men. The Hotham compound, located closest to the VIDC's medical facilities, typically accommodates people with significant health conditions. The Hotham compound also contains twelve 'high-care accommodation' rooms used for single separation.

The Villawood IDC has undergone extensive refurbishment since 2011, with much of the previous infrastructure having been demolished and replaced with new accommodation and facilities. The only compound that has not yet undergone refurbishment is Blaxland, a high-security compound that is separate from the main facility and accommodates adult men. New high-security accommodation to replace the Blaxland compound was under construction at the time of the Commission's inspection.

(b) Brisbane Immigration Transit Accommodation

BITA opened in 2007. It is a small detention facility adjacent to Brisbane airport.

BITA was originally a low-security detention facility that was intended to be used for the short-term detention of people who were due to be removed rapidly from Australia. It was later used for vulnerable groups such as families, unaccompanied children and adults with significant health issues. While it continues to be used for these purposes in some cases, BITA now accommodates a variety of groups with a range of risk profiles (as assessed by Home Affairs and facility staff).

BITA has two main accommodation areas. The 'residential' area of the facility contains four accommodation compounds (Bedarra, Carlisle, Daintree and Eucalyptus). People in the 'residential' area share access to a range of recreational facilities.

The 'residential' area is typically used to accommodate people who are considered to present a low to medium risk, including vulnerable adults and families with children. At the time of the Commission's inspection, however, the residential area was being used exclusively to detain adult men, including those deemed to present a 'high risk'.

Facility staff informed the Commission that the change in the detention population at BITA was a flow-on effect of the recent closure of the Christmas Island Immigration Detention Centre (CIIDC), and was expected to be temporary. Indeed, as at the end of October 2018, the facility was again being used to accommodate adult women and children.³¹

The Fraser and Moreton compounds are newly-constructed, high-security compounds set apart from the 'residential' area. They are used to detain adult men. The Hamilton compound, located adjacent to Fraser and Moreton, is a 'high-care accommodation' unit used for single separation.

(c) Melbourne Immigration Transit Accommodation

MITA was built in 2008. It is located close to Tullamarine airport in the northern suburbs of Melbourne.

Like BITA, MITA was originally a low-security detention facility designed for short-term transitory detention, but now operates as a general-purpose facility. Also like BITA, it has typically been used for vulnerable groups but is now used to detain people with a range of risk profiles (as assessed by Home Affairs and facility staff).

Following significant infrastructure works, the site of the original MITA facility has been split into two main complexes. MITA North is a new high-security complex that is used to detain adult men. The complex is divided into four main accommodation compounds (Dargo, Erskine, Ford and Glenelg). The complex also contains the Shaw compound, a 'high-care accommodation' unit used for single separation.

MITA South is a lower-security complex that is divided into three accommodation compounds. The Avon compound accommodates adult men. At the time of the Commission's inspection, there was one child being detained alone in an annex to the Avon compound. The Bass 1 and Bass 2 compounds accommodate adult men and adult women respectively.

(d) Yongah Hill Immigration Detention Centre

The YHIDC is a high-security detention facility located in the town of Northam in Western Australia, approximately 100km from Perth. It accommodates adult men.

At the time of the Commission's inspection, there were two main accommodation compounds in use at the YHIDC: Falcon and Hawk. Four new high-security accommodation compounds—Cassowary, Eagle, Kingfisher and Swan—had recently been constructed, but were not yet in use.

The YHIDC also has several smaller accommodation compounds for people with particular needs. The 'Health Care' compounds, located close to the YHIDC's medical facilities, are used for people who have significant health care needs, or who may be at risk of harm from other people in detention. The YHIDC also has a 'high-care accommodation' unit used for single separation.

(e) Alternative Places of Detention

APODs are closed detention facilities designed for people whose needs cannot be adequately met in other facilities. Some APODs are purpose-built facilities, while others are general facilities that have been temporarily designated as places of detention for the purposes of the Migration Act (such as correctional facilities, hospitals and hotels).

During its inspection of BITA detention facility, the Commission had the opportunity to visit several APODs in Brisbane and speak with a number of people detained at these locations. These APODs were hospitals and hotels that had been temporarily designated as places of detention.

As part of its inspection of MITA, the Commission conducted an inspection of the Broadmeadows Residential Precinct (BRP). The BRP is a small, purpose-built APOD adjacent to MITA. It is a low-security facility that provides residential-style accommodation.

At the time of the Commission's inspections, both the Brisbane APODs and the BRP were being used to detain vulnerable adults and families with children. A significant number of the people detained in these APODs were subject to third country processing and had been transferred to Australia for medical treatment.

(f) Summary of inspections

Facility	Dates of inspection	Official capacity (approx.)	Population at time of inspection
VIDC	24-26 September	600	504
BITA	16-17 October	140	124
Brisbane APODs	16-17 October	Variable	35
MITA	29-31 October	300	184
BRP	1 November	29 ³²	43
YHIDC	13-15 November	420	228

3 Risk management practices

3.1 General safety and security

(a) Risk assessments

People in immigration detention undergo a risk assessment process and are assigned risk 'ratings', which are used to determine the types of risk management measures that will be applied to them while in immigration detention (such as placements in certain facilities and compounds, and use of restraints during escort). Serco has contractual responsibility to conduct risk assessments for people in detention.

According to information provided by facility staff, risk assessments are developed using an algorithm (referred to as the Security Risk Assessment Tool) that determines a person's risk rating based on inputs from staff. The assessment process takes into account a range of factors, including behaviour in detention, criminal history, risk of self-harm, community safety, safety of staff and treating practitioners, and opportunities to escape or offend.

Risk ratings are reviewed at least monthly to determine whether they are still appropriate. Ratings can also be amended by the facility's Superintendent based on consideration of individual circumstances.

The Commission has previously expressed concern that the risk rating system may not be sufficiently nuanced to prevent unnecessary use of restrictive measures, or ensure the safety of people in detention.³³ The Commission therefore sought further information about the risk assessment process during its thematic detention inspections.

During detention facility inspections conducted in both 2017 and 2018, the Commission identified a number of trends that appear to undermine the effectiveness and accuracy of the current risk assessment process:

- ***The risk assessment process appears to be disproportionately influenced by a person's offending history.*** Information provided to the Commission by facility staff and people in detention suggests that a person who has committed a crime would generally be considered 'high risk', even if the crime was relatively minor and/or non-violent, or was committed some time ago. In addition, criminal history does not appear to be sufficiently balanced against potential mitigating factors, such as lack of reoffending or genuine efforts at rehabilitation.
- ***The risk assessment process may not adequately take into account the severity of relevant incidents.*** For example, a number of people interviewed by the Commission indicated that they had been involved in incidents in detention categorised as 'abusive and aggressive behaviour'. This broad category appears to encompass a range of behaviours, from swearing or shouting through to threats of violence. The Commission does not suggest that such behaviour should be condoned. However, the use of broad categories may lead to some individuals who have been involved in incidents on the more minor end of the scale receiving a disproportionately high risk rating.

- **Facility staff conducting risk assessments may not consider or have access to all information relevant to a person's risk profile.**

For example, staff indicated that they may face challenges in obtaining information from state-based correctional facilities about a person's risk profile or behaviour in prison, due to a lack of effective information-sharing protocols. The challenge further contributes to a disproportionate reliance on offending history. A number of people in detention expressed concern that factors such as good behaviour in prison did not appear to be adequately taken into account in the risk assessment process. It is also unclear whether other relevant information—such as sentencing remarks and the risk assessments conducted for bail or parole decisions—is considered as part of the risk assessment process for immigration detention.

- **Positive behaviour may not lead to a person's risk rating being downgraded.**

Based on discussions with facility staff and people in detention, the Commission understands that a person's offending history and involvement in incidents in detention will continue to be taken into account as part of the risk assessment process, even if the relevant incidents occurred some time ago. A person may therefore continue to be treated as 'high risk' even if their more recent behaviour suggests that they do not pose a significant risk to themselves or others. This may also reduce incentives to comply with standards of behaviour (see Section 3.6).

As a consequence of these trends, many people in immigration detention may have received risk assessments that do not accurately reflect any objective risk they may pose. In particular, there appears to be considerable variation in the severity of the risk presented by people in the 'high risk' category.

Inaccurate risk assessments may result in people being subject to restrictive measures that are not necessary, reasonable or proportionate in their individual circumstances. They may also hamper efforts to identify and manage individuals who do pose a genuine risk to the safety of others, potentially placing other people in detention at risk of harm.

The Commission has previously recommended that Home Affairs review the risk assessment and rating process to ensure that people in detention are not subject to more restrictive measures than are necessary in their individual circumstances.³⁴ Home Affairs informed the Commission that an external consultant has been commissioned to conduct an independent review of the Security Risk Assessment Tool. This review was expected to commence in late 2018.³⁵

The Commission looks forward to the outcome of the review. The Commission also suggests that the review could provide a useful opportunity to consider options for revising risk assessments downwards over time in response to positive behaviour.

Recommendation 1

The Department of Home Affairs should request that the external consultant commissioned to review the Security Risk Assessment Tool consider options for revising risk assessments downwards over time in response to positive behaviour.

The Commission further notes that people in immigration detention appear to have a limited understanding of the risk assessment process. Some people interviewed by the Commission made assumptions about their own likely risk rating, based on factors such as the facility or compound in which they had been placed, and whether they were mechanically restrained during escort.

However, those interviewed by the Commission typically reported that they had not been given information about the risk assessment process and were not formally made aware of their risk ratings.

The Commission appreciates that it may not be appropriate in some cases to provide people with all information relevant to their risk ratings. However, the Commission is concerned that the lack of clarity about the risk assessment process can be a significant source of confusion and frustration for people in immigration detention, as the reasons for the use of certain risk management measures may not be apparent.

The Commission considers that, where possible, people in detention should be informed of their risk rating and the reasons for their risk rating.

Recommendation 2

The Department of Home Affairs and facility staff should ensure that people in immigration detention are informed of their risk rating and of the reasons for this rating, unless doing so would present an unacceptable risk.

(b) Physical safety

Many of the people in immigration detention interviewed by the Commission reported that they felt safe. Others, however, indicated that they did not.

Some people raised concerns about safety that did not necessarily relate to a specific incident, but arose from general impressions of the detention environment. A number of people, for example, described the atmosphere in detention as tense or volatile. Some also nominated the co-location of people whose visas had been cancelled on character grounds with other groups in detention (such as asylum seekers) as a factor affecting their perceptions of safety. For instance, one person stated that they did not feel safe in detention 'because there are high security people here'.

Others reported having been involved in or witnessing incidents that made them feel unsafe. These incidents included: assaults; fights between people in detention; threats, intimidation or harassment; use of illicit drugs; and distressing behaviour exhibited by people with significant mental health issues.

In relation to staff, a number of people interviewed by the Commission claimed that some staff members acted in an aggressive, provocative or intimidating manner towards people in detention. Some related incidents in which staff had allegedly assaulted or used disproportionate force on people in detention. Others indicated that they did not have concerns about the conduct of staff, or (more commonly) that their experiences with staff had been mixed.

Overall, the Commission did not identify systemic concerns about physical safety across the immigration detention network. However, a significant number of people in detention were clearly apprehensive about their safety and perceived that they may be at risk of harm from others. The Commission considers that Home Affairs should continue to monitor closely concerns about physical safety and relationships between staff and people in detention across the network.

(c) Planning for significant disturbances

In early September 2018, there was a significant disturbance at the YHIDC during which parts of the Falcon compound were set alight. The incident was triggered by the attempted suicide of a person detained at the YHIDC, who later died in hospital. There were no reported injuries to staff or people in detention during the disturbance.³⁶

A number of people interviewed by the Commission were present at the time of the disturbance. They provided consistent accounts of the initial response to and aftermath of the incident.



Part of the 'Green Heart', YHIDC

The fire in the Falcon compound started late at night. It was reported during interviews that the fire did not lead to an immediate evacuation of the people detained there. Instead, the turnstiles at the entrance to the accommodation areas were reportedly locked, and people in detention were not permitted to leave. It was unclear from the accounts provided whether people locked inside the accommodation compounds were in any immediate danger. However, some of those interviewed by the Commission indicated that they felt fearful for their safety.

It was reported during interviews that at around 2:00am, after the fire had been extinguished, people in detention were pat searched and had their hands restrained using plastic zip-ties. They were then escorted into the 'Green Heart' (the central outdoor recreation area at the YHIDC), where they remained for several hours. Those interviewed by the Commission claimed that they were not provided with blankets despite the cold weather, although one person stated that blankets were provided later in the morning.

It was reported that people were then escorted to the mess hall, where they were confined for several days. It was claimed that people were not provided with adequate bedding or access to showers during this time.

The Commission appreciates that a disturbance of this kind presents a particularly significant challenge for facility staff. The resolution of the incident without injury to staff or people in detention is a commendable outcome. The Commission also acknowledges that providing alternative accommodation in the aftermath of the incident would have been more difficult than usual due to infrastructure works taking place at the time.

Nonetheless, the accounts provided to the Commission suggest that some aspects of the response to the disturbance could have been improved. In particular, the Commission considers that there should have been plans in place for providing access to blankets, bedding and temporary shelter in the event of a significant disturbance.

The Commission suggests that it would be beneficial to review the response to the disturbance at the YHIDC, with a view to improving responses to any similar incidents in the future. This review should include consideration of strategies for ensuring that people in detention are provided with a reasonable standard of accommodation in the aftermath of major incidents.

Recommendation 3

The Department of Home Affairs should commission an independent review of the response to the September 2018 incident at the Yongah Hill Immigration Detention Centre, with a view to improving responses to similar incidents in the future.

3.2 Placements and escort

(a) Placements

Decisions about placements across the immigration detention network are made at a national level by Home Affairs.

Home Affairs has previously informed the Commission that placement decisions are 'part of a process of assessing and minimising risk to other detainees, service providers, visitors and staff'.³⁷ Home Affairs has further indicated that factors such as medical needs (considered as a priority), family and community links, and the need for balance across the network are also considered.³⁸

Decisions about placements within detention facilities are made by facility staff. Factors taken into account in these decisions include risk management, health care and accessibility needs, and availability of accommodation.

During interviews with people in detention, the Commission sought to understand whether people were aware of the reasons for their placement in a particular detention facility and accommodation compound. A significant number of people confirmed that they had received an explanation from facility staff, or had been able to deduce the reasons themselves (for example, some reported that they had been moved to other facilities because CIIDC was due to close).

More commonly, however, people reported that they were unaware of the reasons for their placement and/or had not received an explanation of the reasons from facility staff. Some expressed confusion about their placement; for example, a number of people claimed that they had demonstrated positive behaviour in detention but had subsequently been placed in a more restrictive compound.

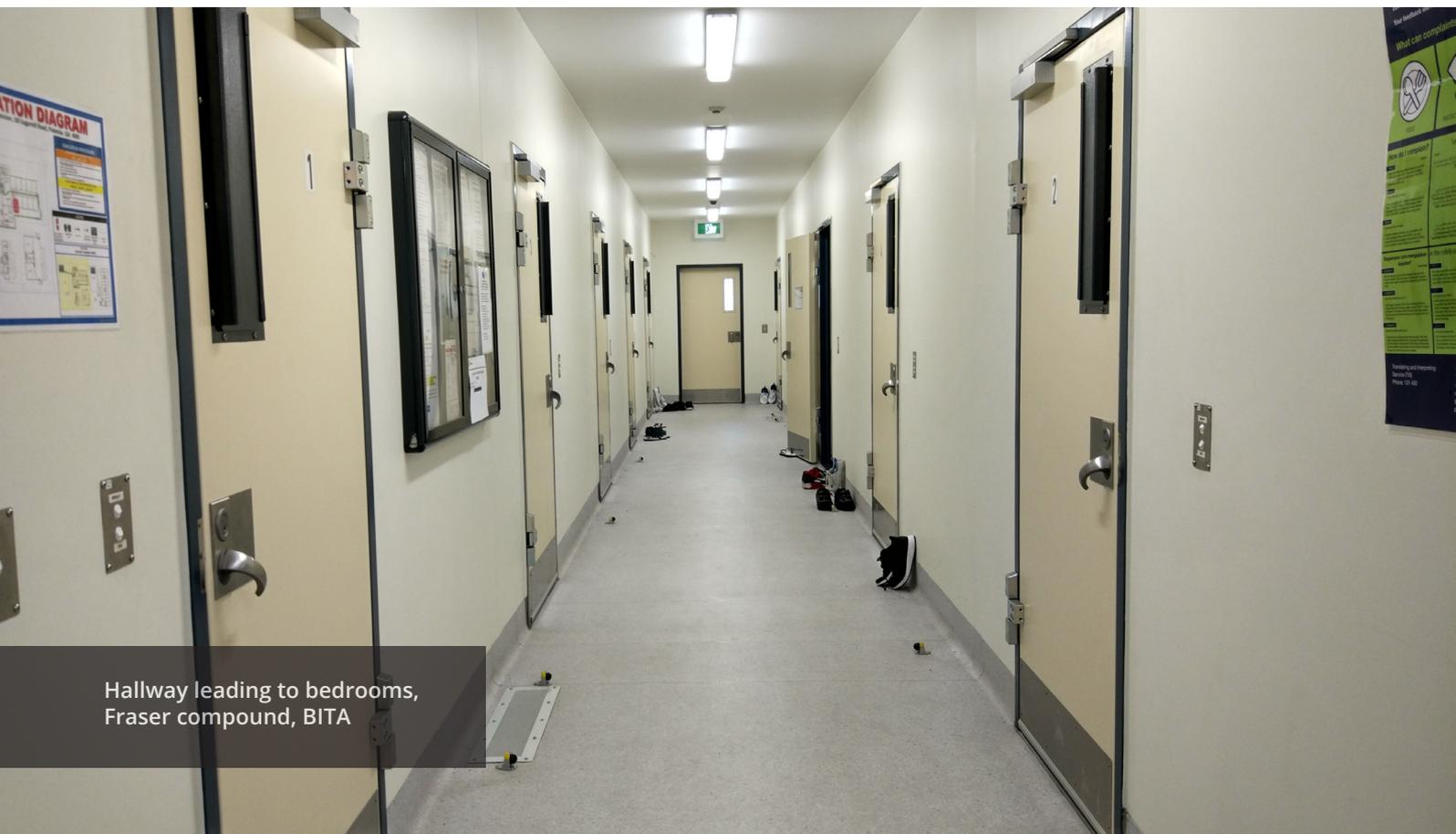
Several people made comments suggesting that they viewed their placement as a punitive measure, such as when they had been moved to a facility or compound with less favourable conditions, or moved to a location at considerable distance from their family (see Section 3.6 for further discussion of this issue).

As outlined elsewhere in this report, several factors had placed significant pressure on the immigration detention network at the time of the Commission's 2018 inspections. The Commission appreciates that this pressure created challenges for Home Affairs and facility staff in terms of managing risks and identifying appropriate placements for people in detention.

However, the Commission notes that placements can have significant negative impacts on people in detention, particularly when placements result in separation from family. The Commission considers that family links should be considered as a priority in decision-making regarding placements.

Recommendation 4

The Department of Home Affairs should consider family links as a priority when making decisions about placements across the detention network.



Hallway leading to bedrooms, Fraser compound, BITA

The Commission is also concerned that some people in detention appeared to view their placement as a form of punishment, when the actual reason may simply have been capacity issues. As recommended above, the Commission considers that people in detention should routinely be provided with explanations of decisions that affect them, including those relating to placements.

(b) Transfers between detention facilities

In its reports of inspections of immigration detention facilities conducted during 2017, the Commission repeatedly expressed concern about the way in which transfers between detention facilities are conducted.³⁹ During the 2018 inspections, people interviewed by the Commission continued to raise concerns about transfers.

The accounts of the transfer process provided by people in immigration detention were consistent across facilities, and similar to accounts received in 2017. They indicate that people being transferred between detention facilities:

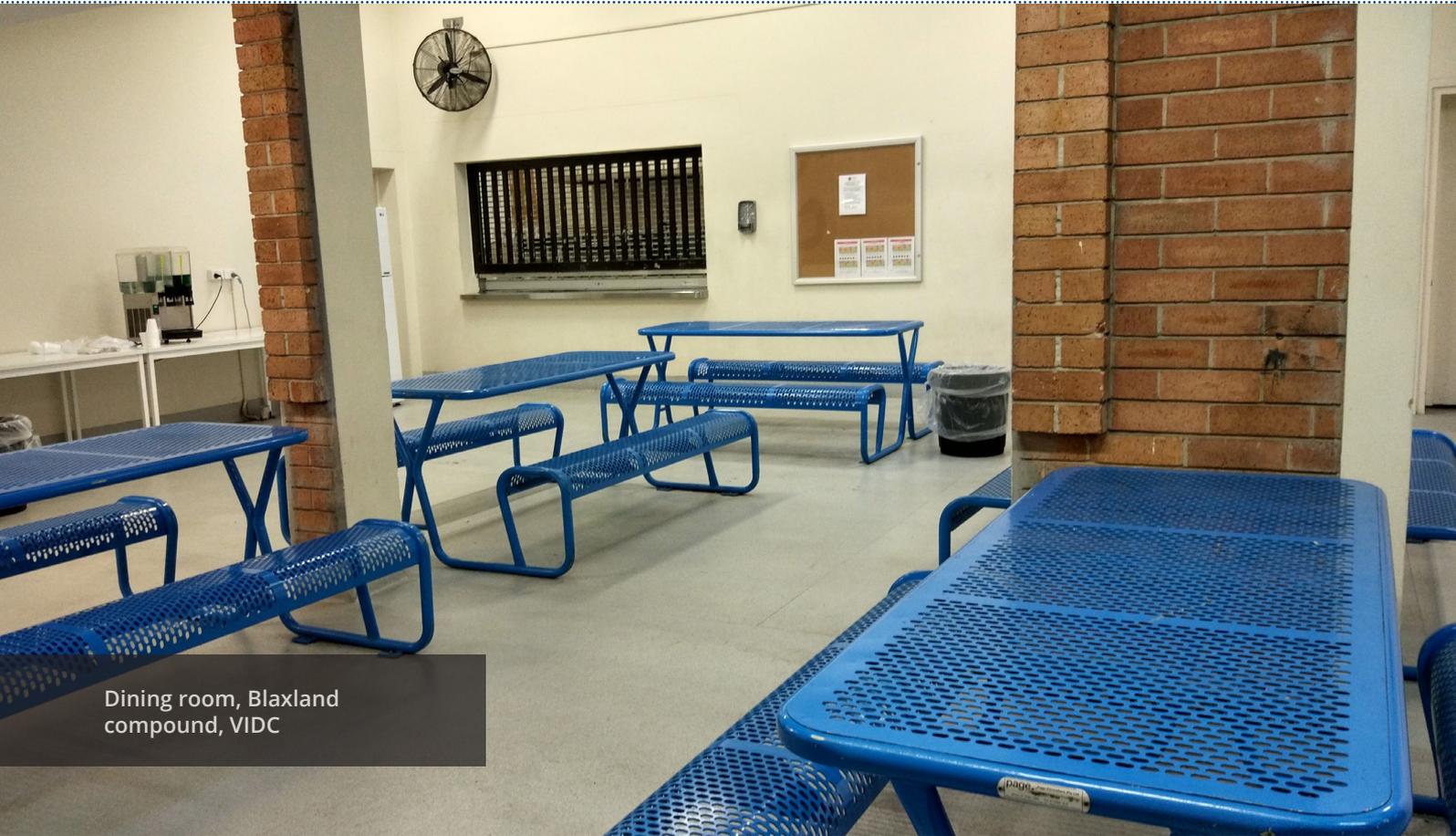
- may have received very little notice of the transfer (for example, they may not have been told until the morning of the day on which the transfer was due to take place)
- were often woken in the early hours of the morning to be informed of the transfer
- had limited time to pack their belongings, shower and dress, and notify family members, friends and legal representatives, before they were escorted from their accommodation
- may have spent hours waiting in the orientation area of the detention facility and/or at the airport before the transfer commenced
- may not have been informed of their destination until the transfer was underway or until they had arrived.

The conduct of transfers is influenced by risk management considerations. In relation to the amount of notice given in advance of transfers, for example, Home Affairs has stated that:

Where appropriate, detainees should be advised of a decision to transfer them within the Immigration Detention Network during business hours, no later than the day prior to the day of intended transfer. Where there are operational concerns about the safety and security of the detainee, staff or detention centre, the detainee may be given reduced notification of a transfer based on a security risk assessment.⁴⁰

Some people interviewed by the Commission reported that they had been notified of a transfer the day prior, but these accounts were relatively uncommon. Based on the information gathered by the Commission during both the 2017 and 2018 inspections, it appears that ‘reduced notifications’ occurred regularly, if not routinely.

A number of people also reported that they had been transferred between facilities several times within a short period. During the 2018 inspections—which were completed within the space of two months—the Commission encountered several individuals more than once, in different facilities. This included some individuals who had been recently transferred from another facility when they first met with the Commission.



Dining room, Blaxland compound, VIDC

The Commission appreciates that the transfer process involves significant risk management considerations, and there may be some (exceptional) circumstances in which the practices listed above are warranted. However, the fact that these practices may be used with such regularity suggests that the risk assessments informing the transfer process are not sufficiently tailored to individual circumstances. These practices therefore may not be appropriately justified in all cases.

The Commission suggests that the risk assessments used to inform transfers should be guided by the following principles:

- People should be notified of a transfer at least one day in advance, and should be informed of their destination. Shorter periods of notice should only be given in circumstances where there is a specific, identifiable risk that necessitates 'reduced notification' in a person's individual circumstances.
- People being transferred should not be woken in the early hours of the morning unless this is unavoidable due to transport scheduling and notice of the departure time is given in advance.

- People being transferred should be given adequate time to shower, dress and pack their belongings before being escorted from their accommodation area; and should be provided with adequate time and facilities to notify family members, friends and legal representatives in advance of the transfer.
- Waiting times during transfers should be reduced to the extent possible, particularly where the departure time is known in advance (such as for transfers involving scheduled flights).
- Transfers between detention facilities should be minimised, particularly for people who have recently been subject to a transfer, and for people who have family members or other significant connections in the location where they are currently detained.

Noting the concerns documented in Section 3.4 of this report in relation to ‘controlled movement’ policies, the Commission further suggests that it would be beneficial for Home Affairs to consult more closely with facility staff in advance of any significant transfers, particularly at times when there are other pressures on the detention network. Closer consultation may assist in identifying and minimising possible negative impacts of transfers on conditions of detention.

Recommendation 5

In consultation with facility staff, the Department of Home Affairs should review the risk assessment process used to inform transfers between detention facilities, with a view to minimising disruption for people subject to transfer.

Recommendation 6

The Department of Home Affairs should develop a protocol for consulting with facility staff in advance of significant transfers, with a view to minimising possible negative impacts of transfers on conditions of detention.

(c) Use of restraints during escort

During inspections of immigration detention facilities conducted in 2017, the Commission gathered consistent information across facilities indicating that handcuffs or other similar restraints were routinely used on many people in detention during transfers between detention facilities, and during escort to external appointments (such as medical appointments and court hearings).⁴¹

During its 2018 inspections, people interviewed by the Commission continued to raise the same concerns about the use of restraints. Indeed, the use of restraints appeared to have become more routine than in the previous year.

Particular concerns identified by the Commission included the following:

- The use of restraints is informed by the risk assessment process, which (as noted in Section 3.1(a)) may produce outcomes that do not accurately reflect a person’s risk profile, leading to unnecessary use of restraints.
- The use of restraints on aircraft is determined by the air service operator and is therefore not within the direct control of Home Affairs or facility staff. However, the decisions of air service operators are informed by risk assessments provided by Home Affairs, which again may not be fully accurate.

- Restraints are typically left on for the duration of escort outside a detention facility, which in some cases (such as during lengthy transfers) may result in people being restrained for many hours or most of the day.
- Restraints may be left on in circumstances where their use is inappropriate or causes discomfort or distress, such as during medical consultations and while a person is attempting to eat or use the toilet.
- The use of restraints can cause significant embarrassment and distress for people in immigration detention, with some reporting that they would refuse to attend external appointments due to concerns that they may be restrained.

At the same time, the Commission received reports that the use of restraints had been limited or reduced for certain individuals. For example, a number of people reported that they had not been restrained while in immigration detention; that they had been restrained during transfers but the restraints were removed during flights; or that they were restrained during escort to external medical appointments but had the restraints removed while seeing the doctor or receiving treatment.

The Commission welcomes efforts to reduce the use of restraints where possible. Overall, however, the feedback gathered during the 2018 inspections has reinforced the Commission's concerns that the use of restraints on people in immigration detention may not be necessary, reasonable and proportionate in all circumstances.

The Commission has recommended on numerous occasions that Home Affairs review policies and practices relating to the use of mechanical restraints, to ensure people in detention are not subject to more restrictive measures than are necessary in their individual circumstances.⁴² Home Affairs has indicated that its 'position in relation to its use of force settings remains unchanged'.⁴³

While acknowledging the position of Home Affairs, the Commission nevertheless considers that there is an ongoing need for the previously-recommended review. The Commission suggests that the current review of the Security Risk Assessment Tool (described in Section 3.1(a)) should be expanded to include specific consideration of policies and practices relating to the use of restraints.

Recommendation 7

The Department of Home Affairs should expand the terms of reference for the current review of the Security Risk Assessment Tool to include specific consideration of policies and practices regarding the use of restraints.

(d) Excursions

Facility staff informed the Commission that, due to a change in policy across the network in late 2017, there is no longer a regular schedule of excursions from any closed immigration detention facilities (with the exception of certain APODs, as outlined in Section 3.4). This change reportedly occurred to address the risk of people in detention—especially those considered to be 'high risk'—absconding while on excursions.

None of the people in detention interviewed by the Commission indicated that they had participated in excursions in recent times.

Excursions can play a key role in promoting the wellbeing of people in immigration detention, particularly those who have been detained for prolonged periods of time. Excursions can also provide important opportunities for religious observance through allowing people in detention to attend places of worship and practice their religion in community with others.



The Commission’s human rights standards for immigration detention state that restrictions on excursions should be imposed on an individual basis and only if they are necessary and proportionate for the purpose of managing a particular risk.⁴⁴

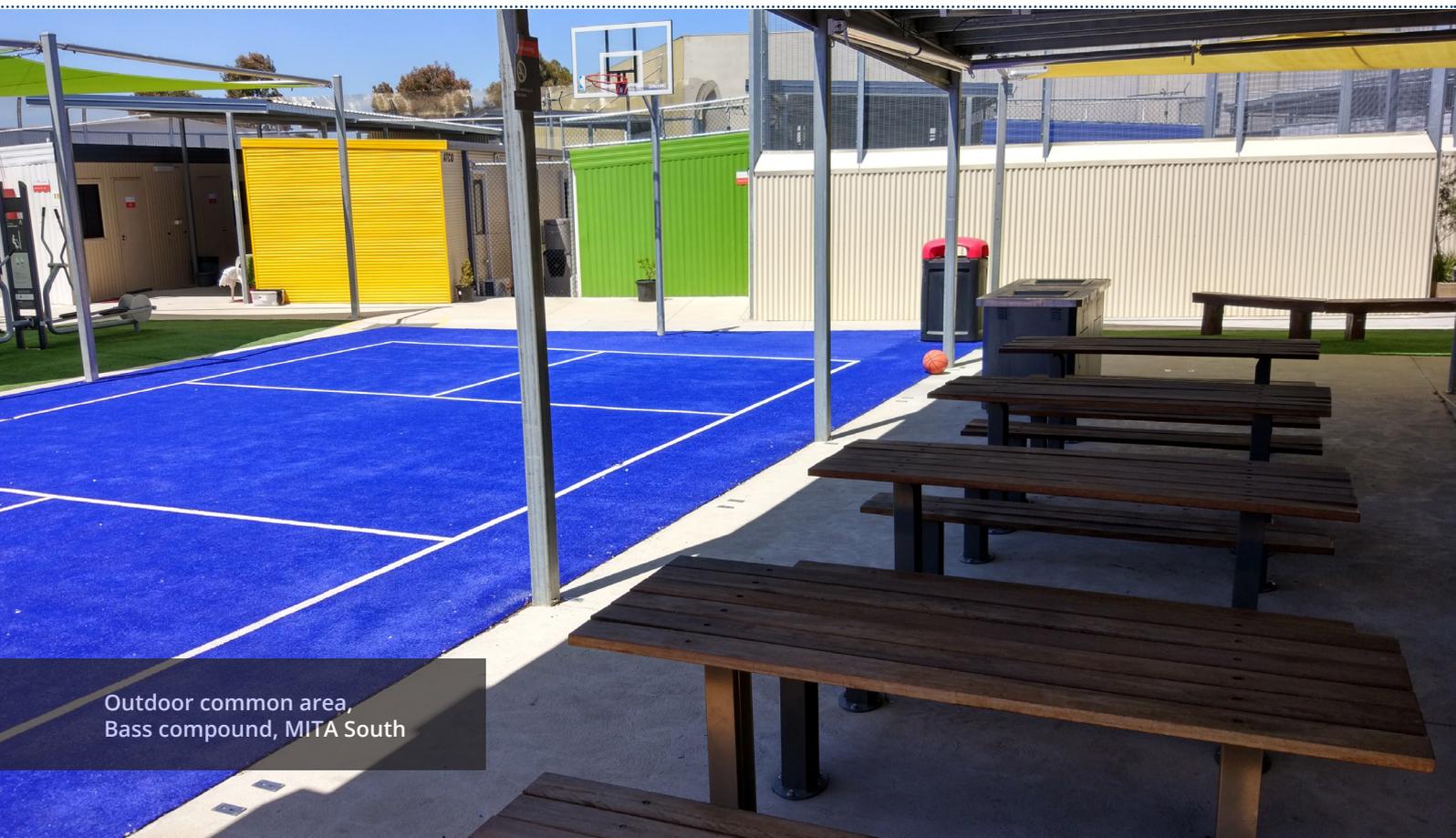
The Commission appreciates that restrictions on excursions may be reasonable in some circumstances, such as where a person presents a significant risk to the safety of others, or is likely to abscond. However, applying a blanket restriction on excursions to all people in immigration detention, without an assessment of the risks in their individual circumstances, is unlikely to be necessary or proportionate.

The Commission notes that the immigration detention population—while its composition has changed significantly in recent years—still includes people with a range of risk profiles, including many people for whom restrictions on excursions would not be necessary. Indeed, a number of people interviewed by the Commission reported that they had participated in excursions in the past without incident.

The Commission therefore considers that the network-wide restrictions on excursions should be reconsidered.

Recommendation 8

The Department of Home Affairs should only restrict access to excursions when it is necessary and proportionate in an individual’s circumstances.



Outdoor common area,
Bass compound, MITA South

3.3 Physical conditions of detention

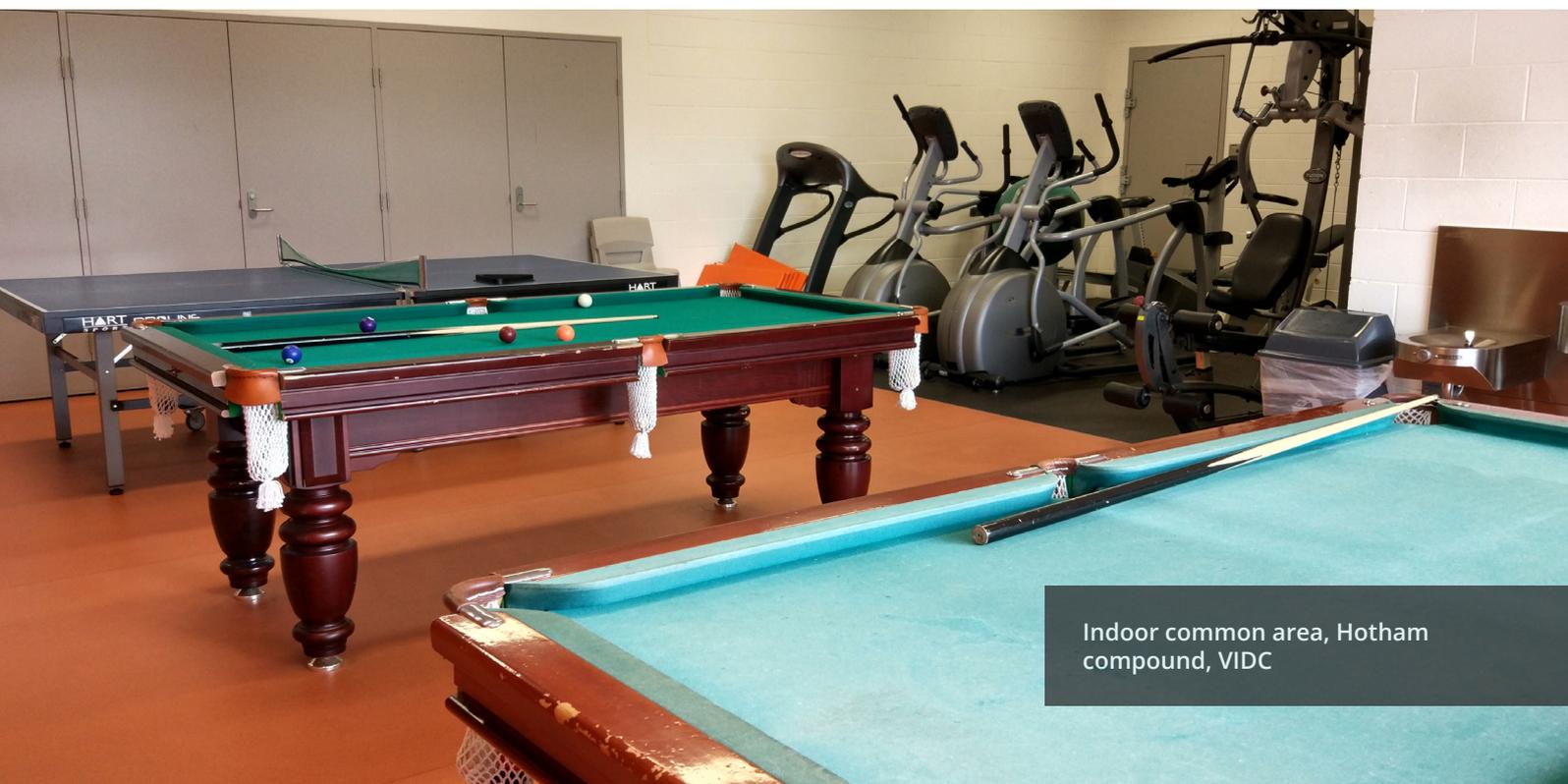
(a) Medium-security compounds

The Bass 1 and 2 compounds at MITA, and the Hotham, Mackenzie and Mitchell compounds at the VIDC, are self-contained compounds designed to provide medium-security accommodation. These compounds include accommodation areas, indoor and outdoor common areas, and a range of facilities for exercise, activities and recreation.

These compounds generally provide satisfactory conditions of detention and access to facilities. However, these compounds are typically smaller in size and more cramped than lower-security compounds that operate on a more 'open' model.

Following its 2017 inspection of the VIDC, for example, the Commission noted that the self-contained medium-security compounds in the main complex 'are inherently more restrictive given their smaller size, which may become an issue of concern if people are detained in these compounds for prolonged periods'.⁴⁵

To address this concern, the Commission recommended that facility staff implement strategies to provide increased access to outdoor space for people detained in higher-security compounds (such as through providing rostered access to the 'community' area).⁴⁶ This recommendation remains relevant, including for the lower-security compounds at the VIDC that are being used temporarily as higher-security accommodation.



Indoor common area, Hotham compound, VIDC



Gym, Avon compound, MITA South

Such strategies were already in place for people detained in the Bass compounds at MITA. For example, facility staff informed the Commission that people detained in the Bass compounds had rostered access to the larger gym in the adjacent Avon compound. The Commission suggests that a similar approach could be used to provide access to the outdoor areas and playing fields in the Avon compound.

These strategies could have benefits for people detained in the new high-security compounds discussed below, in which access to outdoor space and facilities for exercise, activities and recreation is similarly more limited.

Recommendation 9

The Department of Home Affairs and facility staff should implement strategies to provide increased access to outdoor space and facilities for exercise, activities and recreation for people detained in medium- and high-security compounds (such as rostered access to facilities in adjacent lower-security compounds).

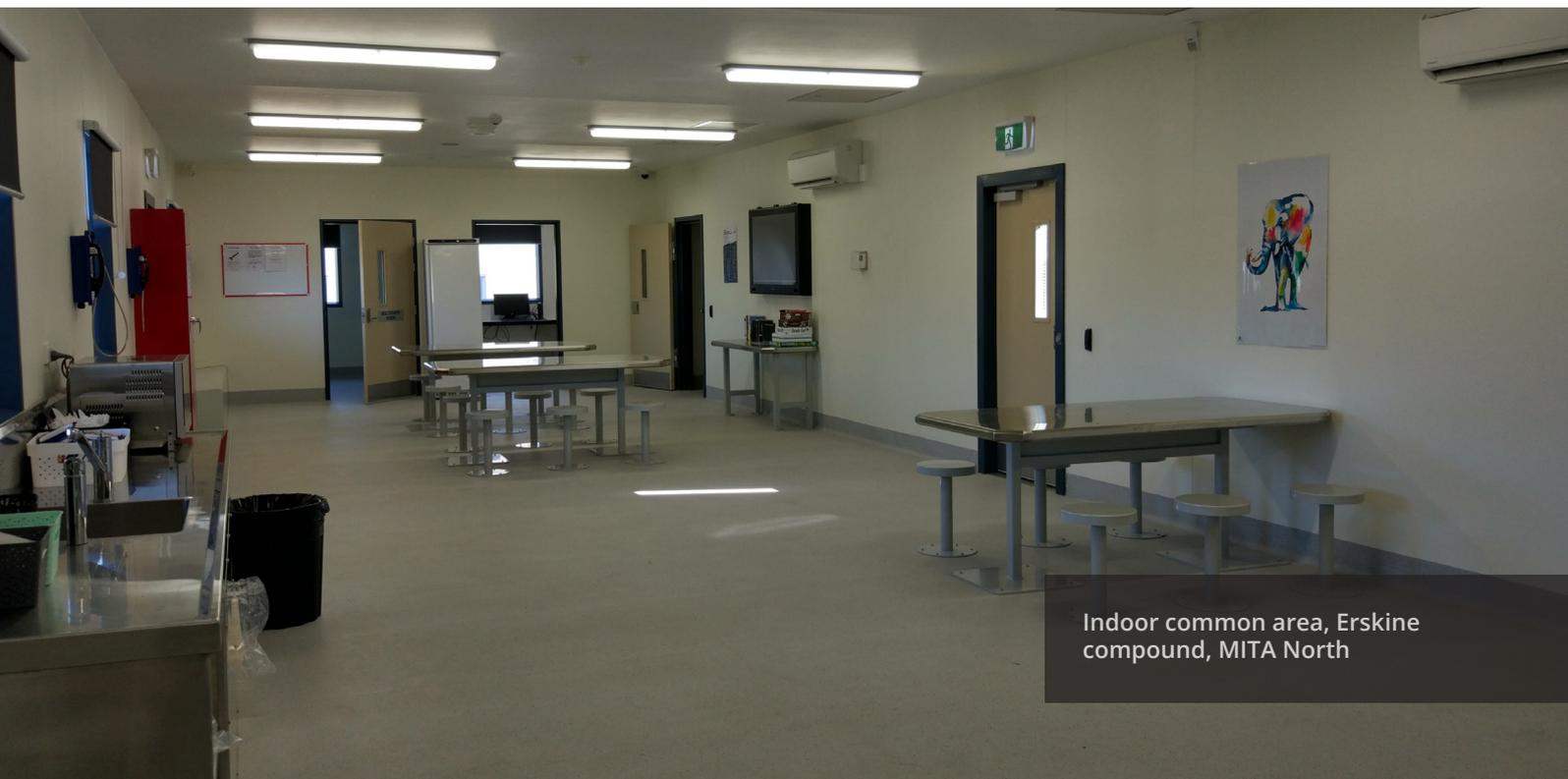
(b) New high-security compounds

Since the Commission's 2017 inspections, significant infrastructure works have been undertaken at several facilities to establish new high-security accommodation compounds, intended to be used for people in detention who are considered to be 'high risk'.

The new compounds included:

- the Moreton and Fraser compounds at BITA
- the Dargo, Erskine, Ford and Glenelg compounds in MITA North complex
- the Cassowary, Eagle, Kingfisher and Swan compounds at the YHIDC.

The Commission considers that the conditions of detention in these new compounds are generally harsh and restrictive. All of the furniture within the compounds is made of hard materials (often metal) and fixed in place. Most of the seating was comprised of metal or wooden stools and benches without backs.



Indoor common area, Erskine compound, MITA North



Bedroom, showing location of bathroom and combined toilet and sink unit, Swan compound, YHDC

Bedrooms are generally shared between two or three people and are equipped with ensuite bathrooms; however, there is no door or partition between the bathroom and bedroom. Bathroom fittings are stainless steel and fixed in place. Compounds are separated by high internal fences with anti-climb mesh. At BITA, some balcony areas were enclosed by security grilles.

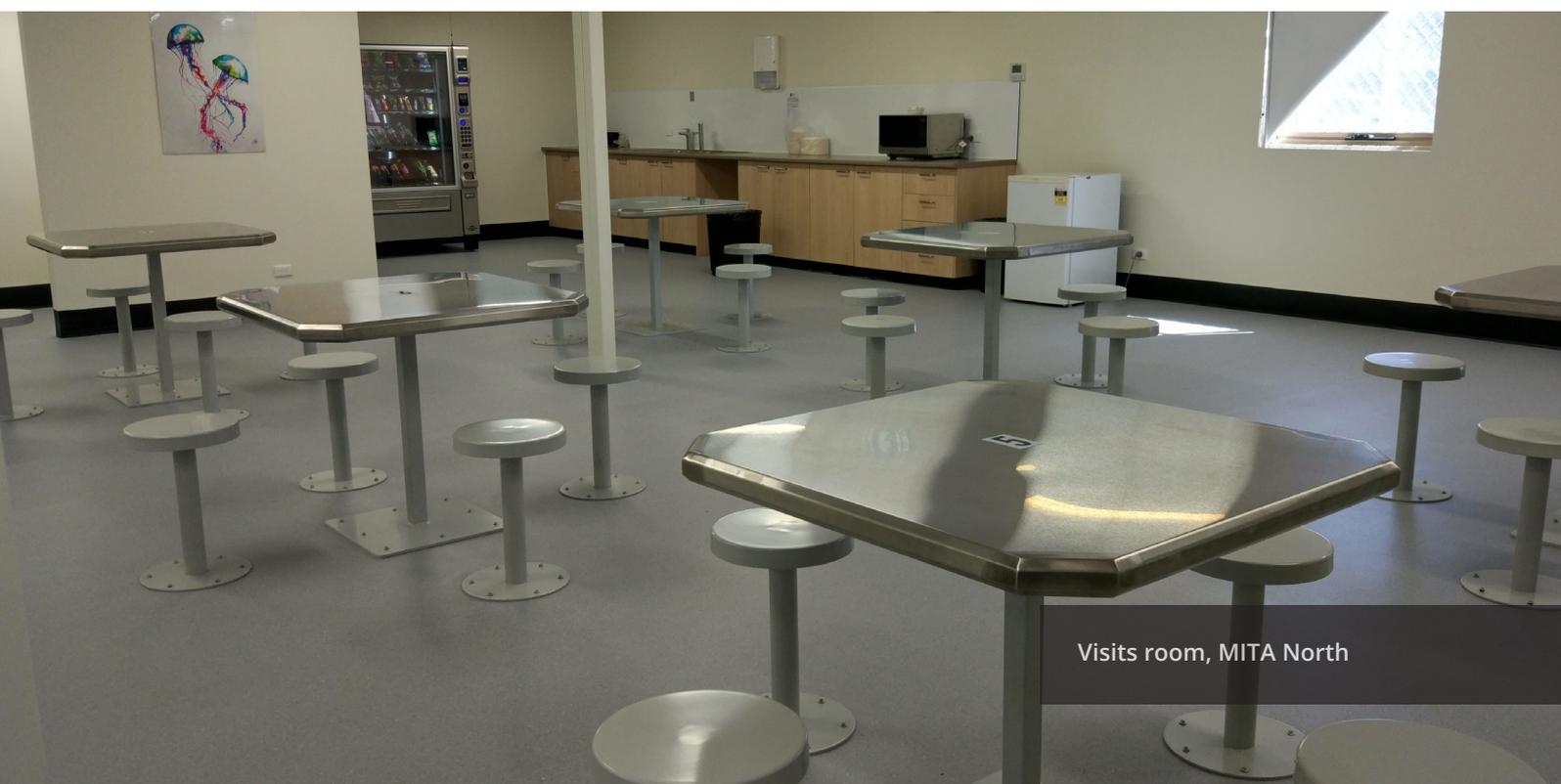
During its inspections, the Commission had the opportunity to speak with a significant number of people detained in the Fraser and Moreton compounds at BITA and in MITA North complex. Those interviewed raised a range of concerns about conditions in the high-security compounds.

These concerns included: limited privacy due to the lack of doors on the ensuite bathrooms; hygiene issues, particularly in relation to the combined toilet and sink units in some compounds (which are used for toileting, washing and shaving; see photo above); limited facilities for meaningful activities; the inadequate size of shared laundry and kitchen facilities; lack of comfortable seating; safety issues arising from the lack of guard rails on bunk beds; the prison-like nature of the infrastructure; and accessibility issues for people with disability.

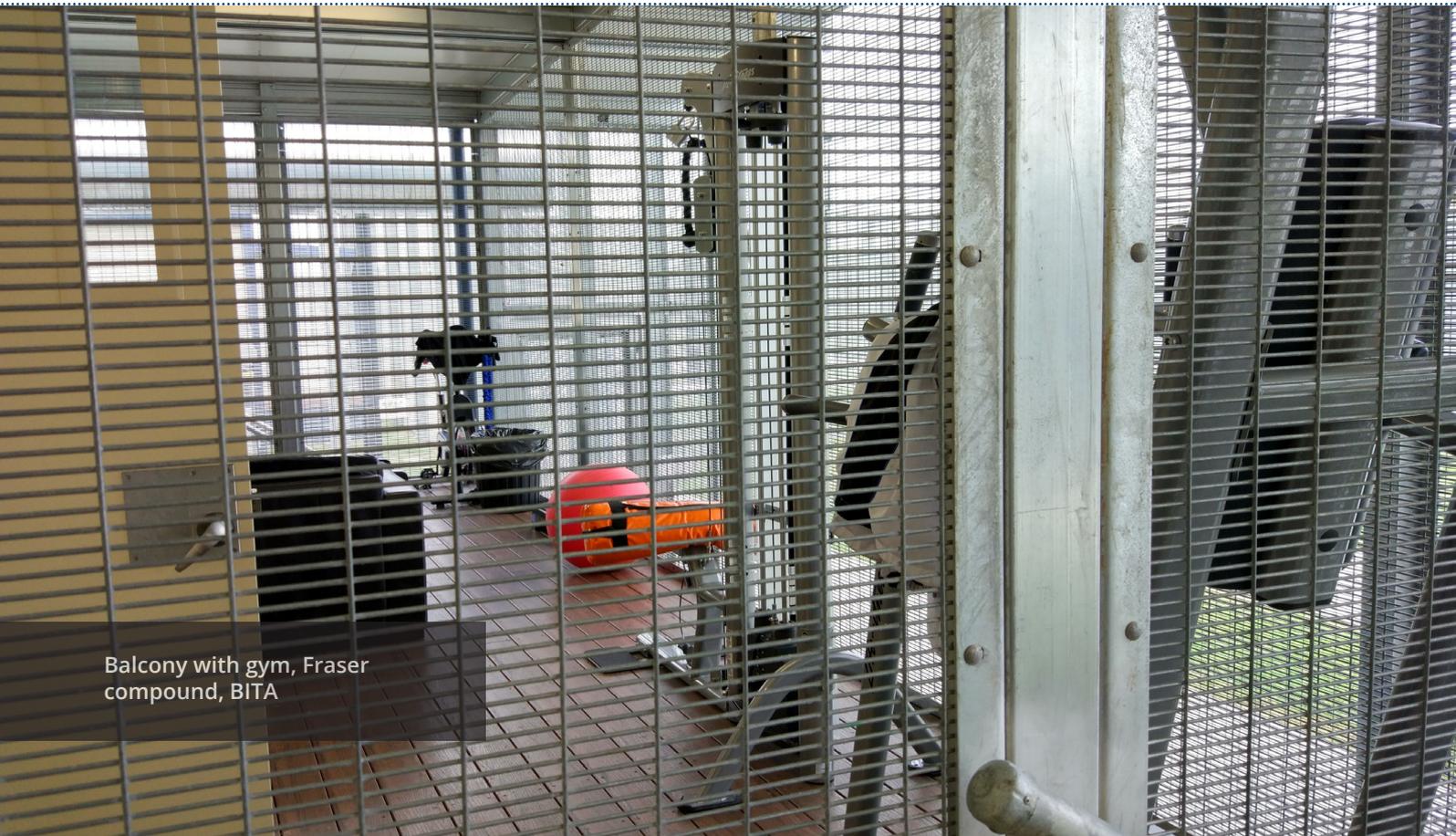
Several people at MITA reported that the seating in MITA North visiting area (which consists of metal stools that are fixed in place) was uncomfortable for visitors, particularly elderly visitors and children.

The Commission appreciates that the changing cohort in immigration detention has given rise to a need for more secure accommodation areas. Nonetheless, the Commission is concerned that the infrastructure in the new high-security accommodation areas is prison-like and generally not appropriate for administrative detention. It is also unnecessarily restrictive for the majority of people in immigration detention.

The Commission further considers that the compounds do not offer adequate privacy, particularly due to the lack of bathroom doors, limited secluded spaces and the use of shared accommodation arrangements. Facility staff informed the Commission that efforts were being made to improve privacy in bathrooms (such as the installation of shower curtains). Even with curtains installed, however, the Commission is concerned that the bathrooms would not afford sufficient privacy under shared accommodation arrangements.



Visits room, MITA North



Balcony with gym, Fraser compound, BITA

The Commission considers that, preferably, the new high-security compounds should only be used in exceptional cases, where there is a demonstrated need in a person's individual circumstances for restrictive conditions of detention. The Commission recognises, however, that the new compounds are likely to be used generally for people considered to be 'high risk'.

The Commission therefore suggests that the high-security compounds be modified to the extent possible, so as to lessen some of their more restrictive elements. Modifications could include:

- installing doors on the ensuite bathrooms
- replacing hard, fixed furniture with unfixed furniture made of more comfortable materials (the Commission notes that the dining areas in the high-security accommodation areas at BITA and MITA both contain furniture of this kind)

- replacing stainless steel bathroom fittings with plastic or ceramic fittings, including separate toilets and sinks
- removing security grilles from balconies
- dismantling non-essential fences (such as those separating accommodation areas from outdoor common areas)
- limiting shared accommodation arrangements to the extent possible.

Recommendation 10

In consultation with facility staff, the Department of Home Affairs should modify infrastructure (including fixtures and finishings) in the new high-security compounds at BITA, MITA and YHIDC, with a view to lessening harsh and restrictive conditions wherever possible.

(c) Construction works at the VIDC

At the time of the Commission's inspection of the VIDC, construction works were underway to establish a new high-security compound in the main complex. In light of the concerns outlined above, the Commission suggests that it would be beneficial to review the planned works and reduce or modify harsh and restrictive elements where possible.

This review could consider the models used for the Bass compounds at MITA and the Hotham, Mackenzie and Mitchell compounds at the VIDC. In the Commission's view, these compounds provide more appropriate models for infrastructure in administrative detention.

Recommendation 11

In consultation with facility staff, the Department of Home Affairs should review the planned construction works at the VIDC, with a view to reducing or modifying harsh and restrictive elements where possible.

While construction is underway, the Blaxland compound at the VIDC continues to be used for high-security accommodation. The Commission has repeatedly expressed concern about conditions of detention in this compound, and has recommended that it be closed.⁴⁷ During its 2018 inspection of the VIDC, people detained in the Blaxland compound continued to raise concerns about poor conditions of detention.

The Commission welcomes the Government's commitment to closing the Blaxland compound by mid-2019. Nonetheless, it remains the Commission's position that the use of this compound should cease as soon as possible, preferably sooner than the mid-2019 deadline.

Recommendation 12

As a matter of urgency, the Department of Home Affairs should cease using the Blaxland compound at the VIDC. All people currently detained in this compound should be moved into alternative arrangements at the VIDC or other detention facilities as appropriate.

(d) 'High-care' and separate accommodation

Each of the facilities inspected by the Commission in 2018 contained a 'high-care accommodation' unit used for single separation. These units typically comprise a series of single-occupancy bedrooms that are sparsely furnished with hard, fixed furniture. Bathrooms contain stainless steel fittings and are located within the room, with some separated by walls or partitions (but not doors). The rooms have solid metal doors and are constantly monitored via CCTV.



Bedroom in 'high care accommodation unit', Hotham compound, VIDC

'High-care' units also generally contain small common areas that variously contain seating, televisions and basic kitchen and laundry facilities. People being held in single separation under 'open door' arrangements are able to move freely between their rooms and these common areas. Those being held under 'closed door' arrangements remain confined to their rooms.

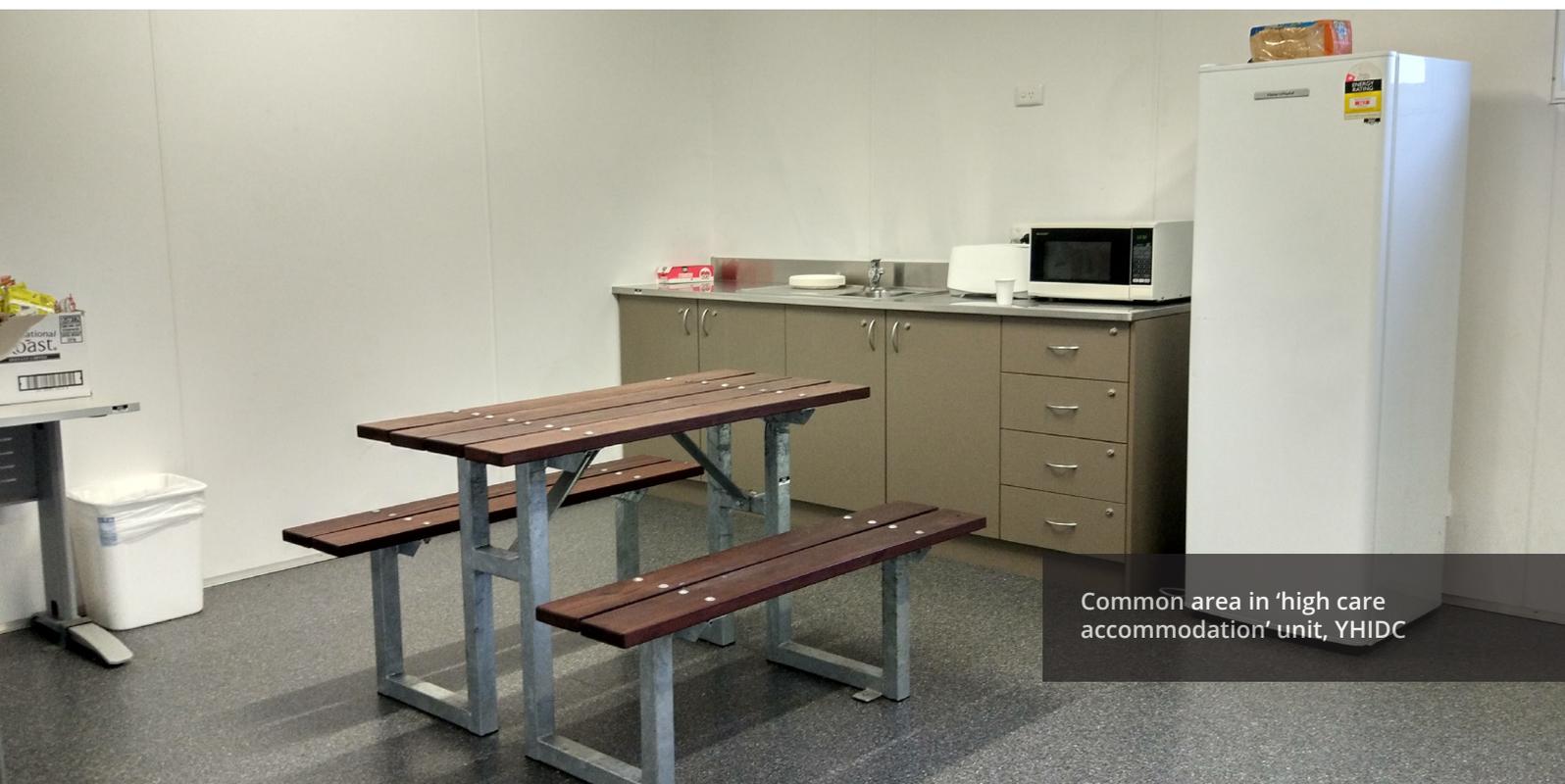
The Commission acknowledges that there may be some circumstances in which there is a need to use separate accommodation for people in immigration detention (such as where a person poses a serious risk of harm to others).

However, the Commission is concerned that conditions in 'high-care accommodation' units are typically harsh and highly restrictive.

In the Commission's view, these prison-like conditions would not be necessary, reasonable or proportionate in any but the most exceptional cases. These conditions are particularly unsuitable for people with significant mental health issues or who are at risk of self-harm.

In addition to 'high-care accommodation', the YHIDC also has several small 'Health Care' compounds that are used for separate detention. People are generally held in these compounds if they have significant health care needs, or if they are at risk of harm from other people in immigration detention.

These compounds are significantly less restrictive than 'high-care accommodation' units: furniture is more comfortable and is not fixed in place; bathrooms offer more privacy and fittings are not exclusively stainless steel; and the common areas are larger and open onto an outdoor courtyard. People in the 'Health Care' compounds also have rostered access to the 'Green Heart' at certain times of the day.



Common area in 'high care accommodation' unit, YHIDC



Common area, Health Care 2 compound, YHIDC

The Commission considers that conditions in the 'Health Care' compounds are more appropriate for short-term separation detention than the 'high-care accommodation' units. However, given their small and limited facilities for activities and exercise, the Commission considers that these compounds would not be appropriate for longer-term separate detention.

The Commission notes that the review of single separation proposed in Recommendation 20 (see Section 3.4(d)) would provide scope for reviewing current infrastructure and exploring alternative separate detention options.

(e) Broadmeadows Residential Precinct

The BRP consists of ten residential-style units. The units inspected by the Commission were spacious, well-furnished and comfortable.

The units open onto a shared outdoor common area, containing seating, shaded areas, garden beds and children's play equipment. The external fences are lower and less imposing than those typically used for immigration detention facilities.

The BRP has very limited facilities for exercise, activities and recreation: it does not contain a gym, playing fields, library, classroom or any other purpose-built facilities for activities. Facility staff reported that activities are generally delivered in an empty accommodation unit or in the central outdoor area.

At the time of the Commission's inspection of the BRP, most of the people detained at the facility had been held there for a short period of time (some for a matter of days). Others, however, had been held at the BRP for far longer periods.

The Commission considers that the BRP provides a far less harsh and restrictive detention environment as compared to higher-security immigration detention facilities and hotel APODs. However, the Commission notes that closed immigration detention generally should not be used for people who are vulnerable, and should never be used for children.⁴⁸

The Commission therefore questions whether the ongoing use of closed immigration detention, even under less restrictive conditions, is necessary, reasonable and proportionate in the circumstances of the people detained at the BRP. The Commission considers that community-based alternatives to detention should be used routinely for children, families and people who are vulnerable, with conditions varied as needed to manage identified risks.

In addition, given its small size and limited facilities, the Commission considers that the BRP would generally only be an appropriate facility for short periods of detention. The facility should also be upgraded to include additional facilities for exercise, activities and recreation, particularly if it continues to be used for longer periods of detention.

Recommendation 13

The Department of Home Affairs should ensure that the BRP is only used for short periods of detention.

Recommendation 14

The Department of Home Affairs should upgrade the BRP to include additional facilities for exercise, activities and recreation.



Accommodation units,
BRP APOD, MITA

3.4 Freedom of movement

(a) 'Controlled movement' policies

During inspections of immigration detention facilities conducted in 2017, the Commission documented an increase in the use of 'controlled movement' policies, designed to limit freedom of movement within detention facilities. These policies were introduced for the purposes of risk management (for example, to allow for separation of people who may pose a risk to others; or to prevent people in detention from congregating in large numbers and thereby reduce the risk of a major disturbance).

The Commission acknowledged that controlled movement policies aimed to ensure the safety of facility staff and people in immigration detention. However, the Commission also raised concerns that these policies could have a significant impact on living conditions and access to facilities for people in detention.⁴⁹ This was a particular issue for people in accommodation compounds that had not originally been designed to be fully self-contained, and therefore lacked adequate 'built-in' facilities for exercise, recreation and activities.⁵⁰

During the Commission's 2018 inspections, pressures on the detention network resulting from the closure of the CIIDC had led to further challenges relating to controlled movement policies.

At the time of the Commission's inspection of the VIDC, for example, a significant number of people had recently been transferred to the facility from the CIIDC. The majority of these individuals were considered to be 'high risk'. Staff indicated that the arrival of this new cohort had led to increased concern about the physical safety of certain groups at the VIDC. For example, there was concern that some of the new arrivals may present a risk to the safety of women and people who had been convicted of certain types of offences (namely sexual offences).

In response, staff elected to 'lock down' the lower-security Lachlan and Lima compounds. Both compounds were originally designed to operate on a more 'open' model, whereby the people detained there would have free access to the 'community' area. Locking down these compounds therefore resulted in reduced access to open space and various facilities for exercise and activities. Several people detained in the Lachlan compound expressed concern about their limited access to facilities.



Outdoor area previously accessible to Lachlan and Lima compounds, VIDC

The Commission acknowledges that staff at the VIDC made efforts to address the impacts of the 'lock down' arrangements, such as through installing a demountable building in the Lachlan compound to be used as a dining room and classroom, and providing additional exercise equipment. Staff also stressed that the 'lock down' policy was seen as necessary in the circumstances but was not their preferred operating model.

However, the Commission notes that the closure of the CIIDC had been planned for some time (it was originally announced in the 2016–17 Commonwealth budget).⁵¹ The risk profile of the detention population at the CIIDC was well-known, and additional pressure on the mainland immigration detention network was a foreseeable consequence of the CIIDC's closure.

In light of these factors, the Commission considers that it should have been feasible to plan for the closure of the CIIDC, without significant impact on conditions of immigration detention elsewhere. This could have been achieved, for example, through staging the closure of the CIIDC over a number of months, or through upgrading accommodation compounds in other facilities to ensure that 'controlled movement' policies (if considered necessary) did not have an undue impact on living conditions and access to facilities.

The Commission has previously recommended that Home Affairs review the impacts of 'controlled movement' policies on conditions of detention in particular facilities.⁵² In light of the continuing use of these policies (and the challenges arising from them), the Commission considers it would be beneficial to conduct a network-wide review of 'controlled movement' policies.

This review should also consider the additional resources and infrastructure necessary to ensure adequate access to facilities for exercise, recreation and activities in accommodation compounds operating under a 'controlled movement' or 'lock down' policy.

Recommendation 15

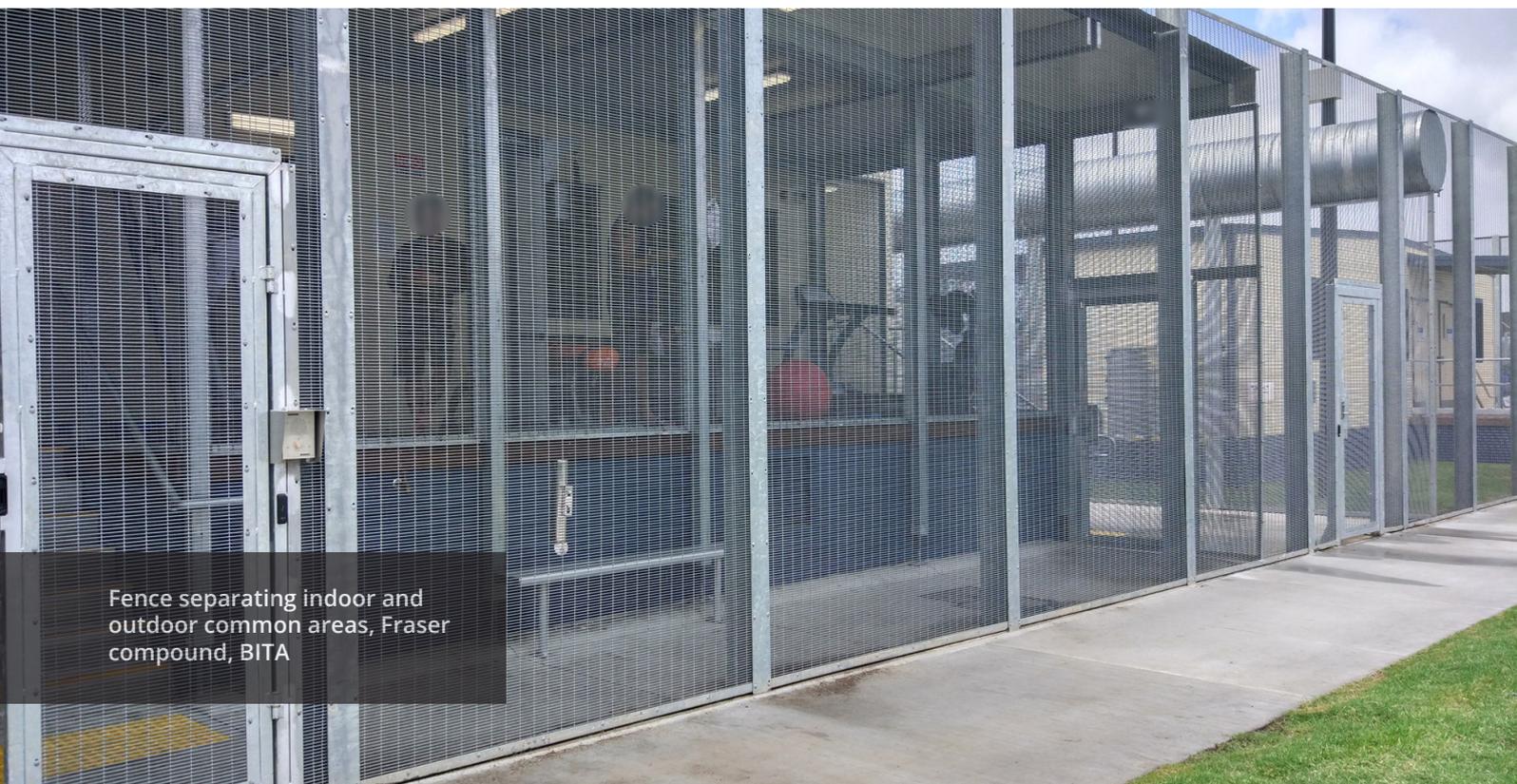
The Department of Home Affairs should review the impact of 'controlled movement' and 'lock down' policies on conditions of detention and access to facilities across the immigration detention network.

(b) Curfews

All of the facilities inspected by the Commission had overnight curfews in place for certain areas.

In some cases, these curfews applied to communal areas shared between multiple accommodation compounds. At the VIDC, for example, the 'community' area was closed between 8:00pm and 8:00am; and at the YHIDC, the 'Green Heart' was closed between midnight and 7:00am. During these hours, people in immigration detention were able to move freely within their accommodation compounds.

At BITA and MITA, however, curfews also applied within some accommodation compounds. In the Fraser and Moreton compounds at BITA, for example, the outdoor area remained closed between 2:00am and 6:00am. In the accommodation compounds in MITA North, access to outdoor areas was restricted overnight, with people allowed outside once per hour on request.



Fence separating indoor and outdoor common areas, Fraser compound, BITA



Outdoor common area, Erskine compound, MITA North

Restrictions on freedom of movement within immigration detention facilities may be reasonable in some situations, if they are necessary to manage particular risks and are proportionate in the circumstances. However, facility staff explained that the curfews at BITA and MITA were designed to promote a routine and a 'healthy lifestyle' through encouraging adequate sleep. They did not indicate that the curfews were considered necessary for risk management.

The Commission considers that the curfews in place at the times of its inspections did not impose severe restrictions on freedom of movement. However, the Commission questions whether the curfews within accommodation compounds at BITA and MITA were necessary in the circumstances. The Commission understands, for example, that curfews do not apply to people detained in the 'residential' area of BITA, or in MITA South.

The Commission further notes that conditions in the Fraser and Moreton compounds and in MITA North are generally harsh and restrictive (as discussed in Section 3.3).

At the time of the Commission's inspections, some of these compounds were also crowded. In these contexts, the imposition of a curfew may serve to amplify the restrictiveness of the environment or become a source of added tension and frustration. Indeed, several people interviewed by the Commission complained about the curfews at BITA and MITA.

The Commission suggests that the use of curfews in MITA North facility and the Fraser and Moreton compounds should be reviewed, with a view to removing curfews that are not strictly necessary to ensure safety and security.

Recommendation 16

The Department of Home Affairs should consult with facility staff about the use of curfews at the Brisbane Immigration Transit Accommodation and Melbourne Immigration Transit Accommodation facilities, with a view to removing curfews that are not strictly necessary to ensure safety and security.

(c) APODs

With some exceptions, APODs are generally considered to be lower-security facilities, and are typically used for vulnerable groups (including families with children). Nonetheless, APODs may be exceptionally restrictive environments with regard to freedom of movement.⁵³ This is particularly the case for APODs that are not purpose-built detention facilities, and may therefore lack features necessary to ensure adequate conditions of detention (such as sufficient open space and ‘built-in’ facilities for exercise, recreation and activities).

As a consequence, restrictions on freedom of movement that apply to people in APODs—particularly restrictions on the ability to come and go from accommodation areas—may have a significant negative impact on access to services and general wellbeing, to the extent that these restrictions are not proportionate to identified risks.

In the hotels being used as APODs in Brisbane, for example, people in detention were confined to their hotel rooms for most of the day. They were allowed outside for only one or two hours daily and were escorted during this time. In addition, a Serco officer was stationed inside the hotel room at all times (including overnight).

At the time of the Commission’s inspection of the BRP, people were able to move freely between their accommodation and a central common area. However, some of the people interviewed by the Commission at the BRP reported that they had previously been confined to their accommodation under similar conditions to the Brisbane hotel APODs.



Outdoor common area,
BRP APOD, MITA

The Commission appreciates that facility staff in Brisbane and Melbourne faced significant challenges in finding suitable placements for families and children at short notice.

In particular, the transfer of significant numbers of vulnerable families and children from Nauru to Australia led to a sudden need for additional low-security detention facilities. These transfers also coincided with the closure of the CIIDC and consequent pressures on the immigration detention network, with the result that purpose-built facilities on the mainland did not have sufficient capacity to accommodate families and children safely.

The Commission also understands that the use of APODs is usually intended to be a short-term measure. Facility staff indicated that many families in APODs had been referred for consideration of a residence determination, and it was expected that they would ultimately be released into community detention. Nonetheless, some of the people interviewed by the Commission reported that they had been detained at APODs for weeks or (in the case of the BRP) months.

In general, the Commission considers that hotels are not appropriate places of detention, given their lack of dedicated facilities and restrictions on access to open space. Accordingly, hotels should only be used as APODs in exceptional circumstances and for very short periods of time.

Recommendation 17

The Department of Home Affairs should ensure that hotels are only used as Alternative Places of Detention in exceptional circumstances and for very short periods of immigration detention.

The Commission further considers that restrictions on freedom of movement for people detained at hotel APODs in Brisbane are disproportionate and inappropriate. These restrictions appear to be particularly challenging for families with children, given the limited access to space and facilities where children can play.

The Commission welcomes the lifting of restrictions on freedom of movement for people detained at the BRP. However, the Commission notes that the BRP is nonetheless a restrictive environment given its small size and very limited facilities for exercise, activities and recreation (as outlined in Section 3.3).

The Commission considers that there is a need to explore strategies for providing greater freedom of movement and access to outdoor space for people detained in APODs, particularly those in hotels. These strategies could include 'open door' arrangements, whereby people detained in hotels are able to come and go from their hotel rooms; and the introduction of additional daily excursions for people detained in APODs.

Recommendation 18

The Department of Home Affairs should implement strategies to provide greater freedom of movement and access to outdoor space for people detained in Alternative Places of Detention.

The Commission further considers that the presence of Serco staff within hotel rooms in APODs was intrusive and clearly had a negative impact on privacy and comfort. While continuous monitoring of people in immigration detention may be required to ensure safety and security in some limited circumstances (such as where a person is at high risk of self-harm), it did not appear to be justified for those interviewed by the Commission at the Brisbane hotel APODs and the BRP. Information gathered during interviews suggests that people at high risk of self-harm were not generally detained in hotel APODs or the BRP, but were instead detained in hospital APODs in order to receive medical treatment.

The Commission recommends that this practice be immediately revised, with a view to ensuring that continuous monitoring is only used when it is demonstrated to be necessary, reasonable and proportionate in the circumstances (such as where a person's life or health may be at risk, or where there is an unacceptable risk of escape).

Recommendation 19

The Department of Home Affairs should ensure that people detained in Alternative Places of Detention are only subject to continuous monitoring by staff in cases where it is necessary, reasonable and proportionate in the circumstances.

(d) Single separation

A significant number of people interviewed by the Commission reported that they had been held in single separation during their time in immigration detention, generally in a 'high-care accommodation' compound.



Bedroom in 'high care accommodation' unit, Shaw compound, MITA

The Commission's human rights standards for immigration detention stipulate that single separation should occur as a last resort and only where strictly necessary to avoid a serious and imminent threat of self-harm, injury to others, or serious destruction of property. In addition, single separation should be used only for as long as is necessary to prevent such events and for the shortest practicable time.⁵⁴

The guidance in the Home Affairs Detention Services Manual generally reflects these standards. It stipulates:

Relocation of detainees to high-care accommodation, separating them from the general population, should only be used as a last resort and when other strategies to manage their behaviour and the risk they pose have not succeeded.⁵⁵

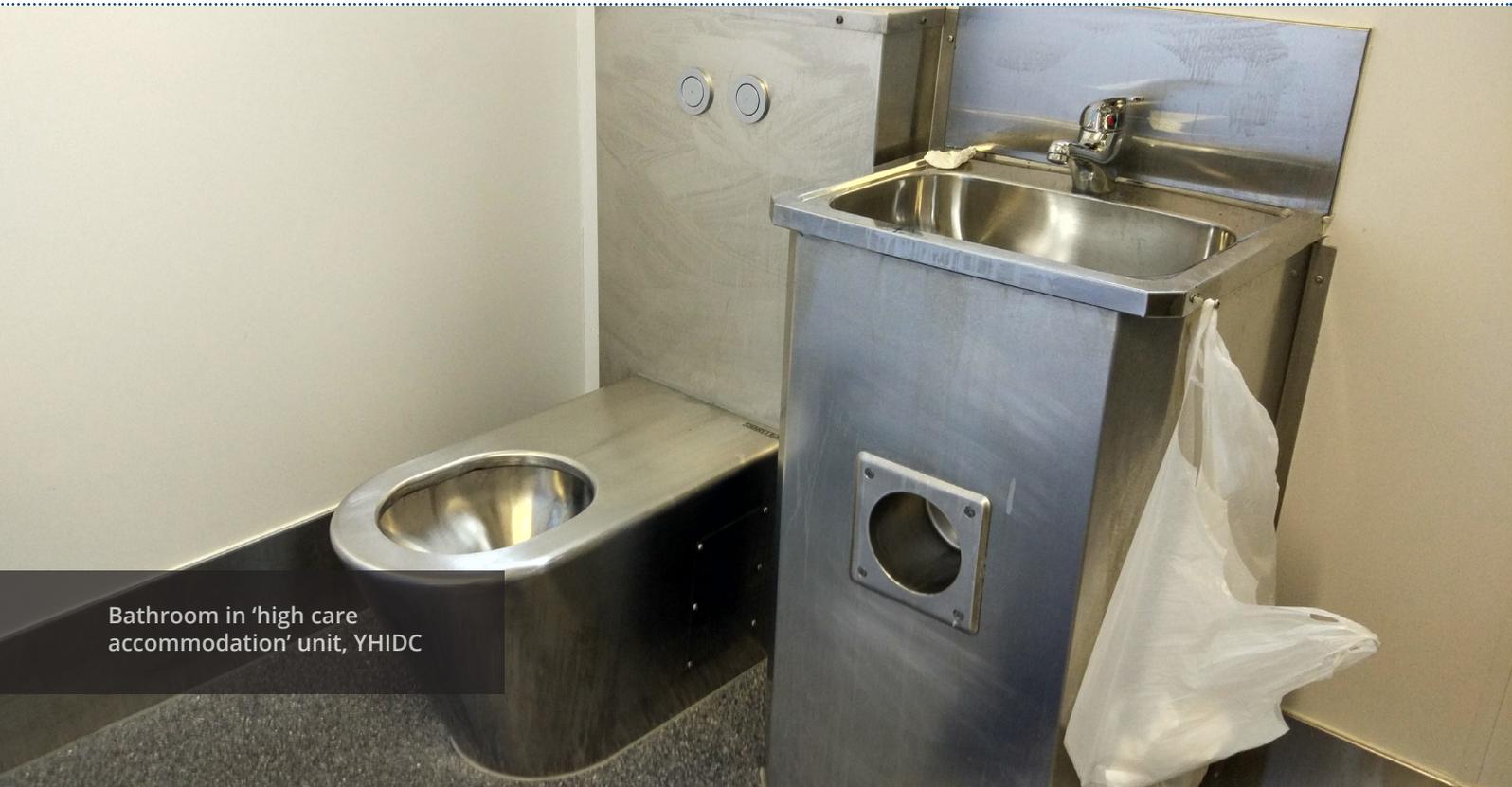
The Manual further affirms that:

- people may be placed in high-care accommodation if they exhibit violent or unlawful behaviour and repeatedly refuse to cease this behaviour; are pending transfer to a mental health facility; or request to be relocated and are assessed as requiring temporary respite
- high-care accommodation is to be used 'for the shortest practicable time'
- placement in high-care accommodation 'should be as free of restrictions as is safe and practicable'
- staff should 'aim to safely reintegrate the detainee to the main detention population'.⁵⁶

Facility staff informed the Commission that people in immigration detention may initially be held in single separation for up to 24 hours. Longer periods of separation require the approval of an ABF Commander. Staff also affirmed that they seek to return people in high-care accommodation to regular accommodation as soon as possible. However, there is no overall limit on the amount of time that people can be held in isolation or separate detention.

The Commission notes the stated efforts of staff to limit the use of single separation where possible. Nonetheless, information gathered by the Commission during inspections suggests that single separation may sometimes be used in circumstances where it is not appropriately justified.

For example, the Commission was informed about a case in which a person was held in single separation after becoming verbally abusive towards staff. The Commission acknowledges that it did not receive comprehensive information about this incident. However, the Commission considers that there would generally be few circumstances in which verbal abuse alone would warrant the use of single separation, particularly under the harsh and often highly restrictive conditions of 'high-care accommodation' units (as described in Section 3.3).



Bathroom in 'high care accommodation' unit, YHDC

Facility staff also indicated that single separation may be used when it is deemed that a person requires time to 'cool down' (such as after an altercation). It is unclear whether single separation under highly restrictive conditions is strictly necessary in these kinds of circumstances. For example, it may be possible to achieve the desired outcome of defusing tension through separation under less harsh and restrictive conditions.

The Commission considers that an independent review of the use of single separation may assist in determining whether current practices are in line with Australia's international obligations and departmental policy.

The Commission acknowledges that facility staff may currently have limited options for separating people in immigration detention other than through the use of high-care accommodation, due to lack of appropriate facilities. As part of the review described above, it would be beneficial to investigate alternative options for separating people in detention where the use of high-care accommodation is not warranted.

Recommendation 20

The Department of Home Affairs should commission an independent review of the use of single separation and other separate detention in immigration detention facilities, with a view to determining:

- whether current practices are compliant with international human rights law and departmental policy
- alternative options for separating people in detention in circumstances where separation is necessary but the use of 'high-care accommodation' would be unreasonable or disproportionate
- the additional facilities required to provide appropriate alternative options for separate detention.

3.5 Personal items, contraband and external visits

(a) Management of contraband

The Detention Services Manual sets out several categories of items that are not permitted in immigration detention facilities. The table below provides an overview of these categories.

Items not permitted in immigration detention⁵⁷

Category	Overview	Examples of items
Prohibited	Items that are considered illegal under Australian law	Illicit drugs, weapons, child pornography
Excluded	Items that are not illegal under Australian law but are deemed to present a risk to health, privacy, safety, security and/or good order of the detention facility	Pornography, material that incites violence, racism or hatred
Controlled	Items that are not illegal under Australian law but are deemed to present a risk to health, privacy, safety, security and/or good order of the detention facility, but may be permitted under specific entry approval	Internet-enabled devices, electronic recording devices, alcohol, home-cooked food, certain types of medication, sharp items, cigarette lighters, aerosols, tools, money

Most of the people interviewed by the Commission reported that their rooms and property were searched for contraband on a regular basis. They also indicated that they were routinely subject to pat and wand searches when entering or leaving the facility, before and after visits, after returning from meals and during room searches.

Some people indicated that they had no concerns about the searches conducted in detention. However, a number of people claimed their rooms had been left in a mess by staff conducting room searches. Concerns were also raised about body searches, with some indicating that they found pat searches invasive or embarrassing. A number of people alleged that certain staff members conducted pat searches in a rough or particularly invasive manner.

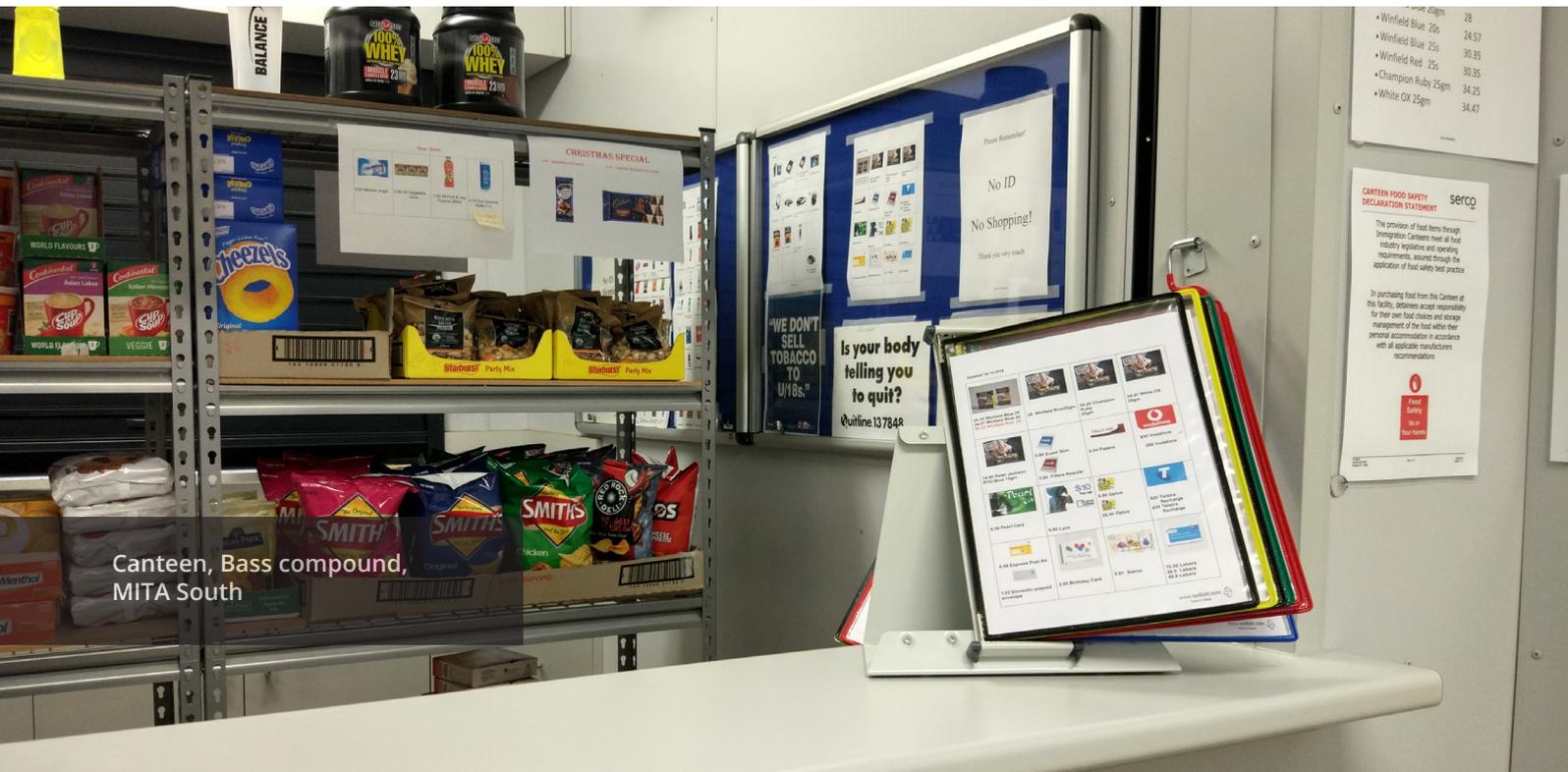
While concerns about searches were not widespread, the feedback received by the Commission was sufficiently consistent to suggest that additional guidance or training on the conduct of searches may be beneficial.

Recommendation 21

In consultation with facility staff, the Department of Home Affairs should consider providing additional training on the conduct of searches to staff working in immigration detention facilities.

A number of people also expressed frustration about restrictions on personal items that, in their view, seemed unreasonable or disproportionate. Some highlighted restrictions on items that did not appear to pose an inherent risk to safety or security.

Examples included Bluetooth speakers and headphones, clothing with hoods, fresh fruit and USB sticks. A number of people claimed that certain items they had previously been permitted to have in prison (such as electric shavers and toiletries) were not permitted in immigration detention.



Canteen, Bass compound, MITA South

Some also noted inconsistencies in restrictions on personal items between facilities. Facility staff acknowledged these inconsistencies and indicated that efforts were being made to harmonise standards across the immigration detention network.

The Commission understands that seemingly innocuous items may present a risk in some circumstances (for example, fresh fruit may be used to produce alcohol).

However, blanket restrictions on the possession of items that do not present an inherent risk to safety or security may not be reasonable or proportionate, particularly if many of the individuals affected have never used these items in a manner that threatens safety or security.⁵⁸ The Commission suggests that it would be beneficial to adopt a more individualised and targeted approach to restrictions on personal items.

Recommendation 22

The Department of Home Affairs should amend the Detention Services Manual to stipulate that items that do not present inherent risks to safety and security may only be prohibited in immigration detention:

- on the basis of individual risk assessments
- where there is evidence that the person has used or is reasonably likely to use the item in a manner that presents clear risks to safety or security
- where those risks cannot be managed in a less restrictive way.

(b) Use of illicit drugs

As was the case during the Commission's 2017 inspections, facility staff continued to report concerns about the presence of illicit drugs within immigration detention facilities. Staff indicated that they faced significant challenges in detecting contraband due to limited legislative powers for search and seizure of illicit drugs.

As noted in Section 3.1, the presence of illicit drugs was cited by some people in detention as a factor that made them feel unsafe in detention.

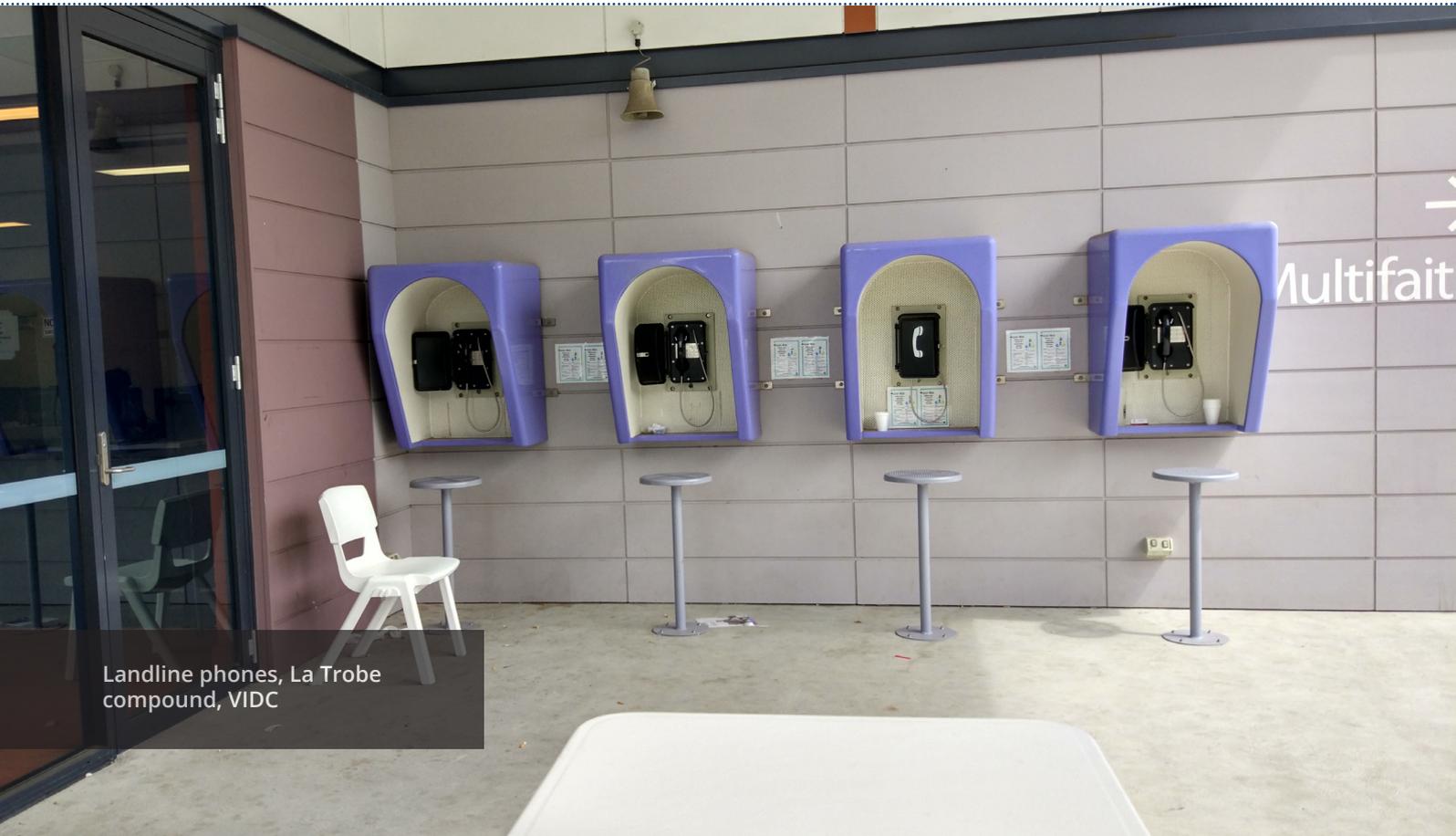
Some facilities provide information and programs on drug and alcohol rehabilitation as part of their regular schedule of activities. At the YHIDC, for example, staff indicated that they had previously partnered with local community organisations to deliver drug and alcohol programs for people in detention.

However, facility staff indicated that there is no comprehensive drug and alcohol rehabilitation service available across the immigration detention network, and access to state-based services may vary from state to state. In addition, while some people in detention are able to access opioid substitution programs, these programs are not be suitable for all drug users and do not provide holistic rehabilitation services.

In light of the concerns raised by staff and people in detention, the Commission considers that it would be beneficial to introduce drug and alcohol rehabilitation as a core component of the health care services and activities delivered in immigration detention. The Commission suggests that these services could form part of the contractual obligations of detention service providers to ensure consistent access across the immigration detention network.

Recommendation 23

The Department of Home Affairs should introduce drug and alcohol rehabilitation programs as a core component of service provision in immigration detention.



Landline phones, La Trobe compound, VIDC

(c) Mobile phones

Beginning in February 2017, the possession and use of mobile phones and SIM cards in immigration detention facilities was prohibited. This policy change aimed to respond to concerns that some people in detention were using mobile phones 'to organise criminal activities, threaten other detainees, create or escalate disturbances and plan escapes by enlisting outsiders to assist them'.⁵⁹

In June 2018, the Federal Court of Australia ruled that the mobile phone policy was invalid on the basis that it was not authorised by any provision of the Migration Act.⁶⁰ Consequently, people in detention are now permitted to possess and use mobile phones and SIM cards.

Prior to the introduction of the 2017 policy, people in detention (other than those who arrived by boat) were permitted to possess mobile phones, provided that the phones did not have recording capabilities or internet access functions.⁶¹ As a consequence of the Federal Court ruling, however, people in detention may possess mobile phones of any kind, including smartphones.

Facility staff reported that the reintroduction of mobile phones, and particularly the use of smartphones, had created some risk management challenges. Staff provided examples of cases where smartphones had been used to take photos or recordings of staff members or people in detention, which could then be distributed publicly without permission.

As well as raising privacy concerns, this practice could reportedly be used as a form of intimidation. For example, facility staff reported that some people in detention may seek to intimidate staff members by threatening to post photos, recordings or personal details to social media. They also highlighted a small number of more serious cases in which staff members had been threatened with harm after their images were posted online.

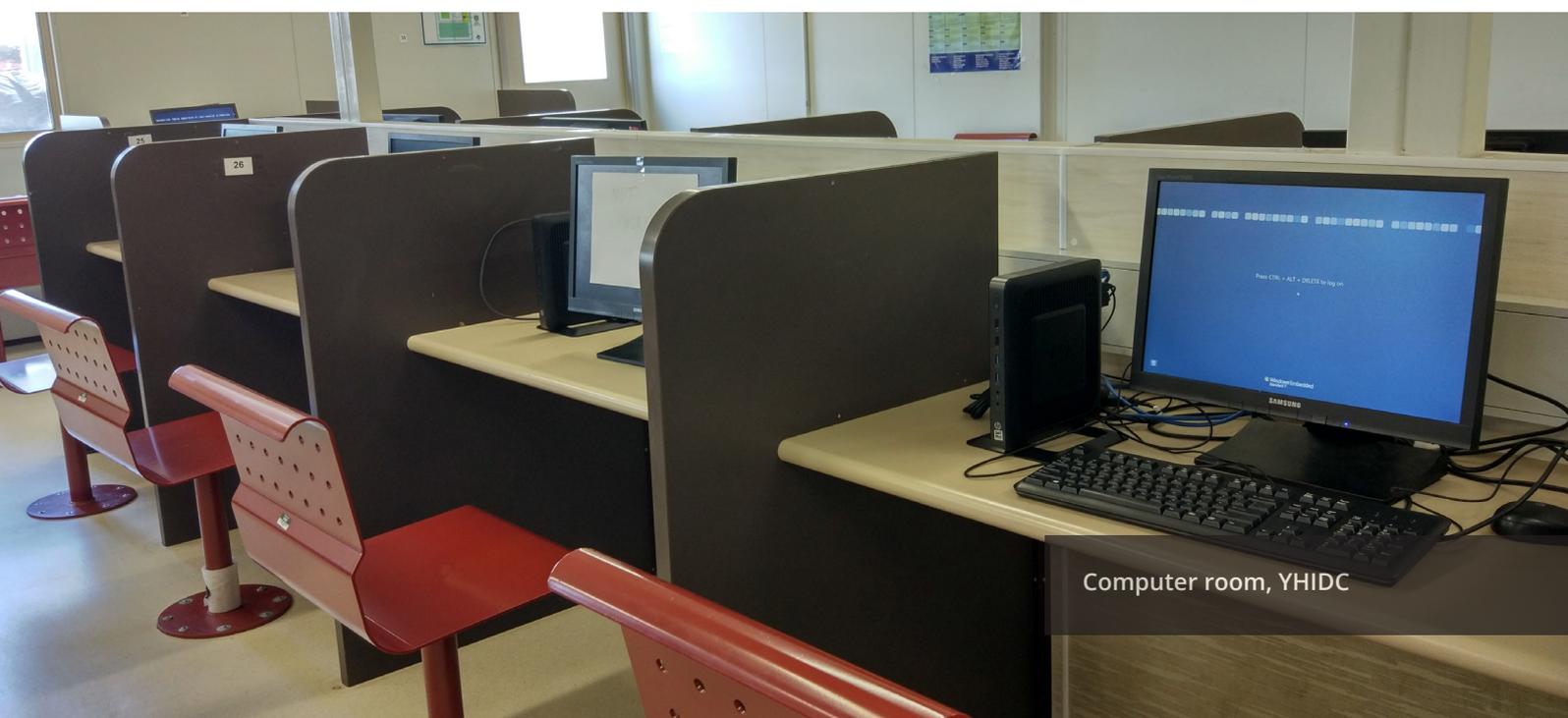
At all of the facilities inspected by the Commission in 2018, staff indicated that only a small proportion of people in immigration detention were using mobile phones in the manner described above. Nonetheless, this issue was clearly of significant concern to facility staff, and was seen to have a negative impact on relationships between staff and people in detention.

At the same time, staff acknowledged that the reintroduction of mobile phones had significant benefits, such as allowing people in detention to have more regular contact with family members; and facilitating communication with people outside detention more generally (including with status resolution staff). Increased contact with family members was noted to have a positive impact on mental health.

This feedback was echoed by people in immigration detention themselves. A significant number of people interviewed by the Commission provided strong positive feedback on the benefits of increased mobile phone access, particularly in relation to maintaining contact with family members and friends outside detention.

In addition, relatively few people raised concerns about access to communication facilities in detention, which may in part be attributable to increased mobile phone access. Some of the people interviewed by the Commission, for example, specifically noted that they were now able to use their smartphones for activities that would previously have required the use of a landline phone or desktop computer.

Overall, the Commission considers that the reintroduction of mobile phones in immigration detention facilities is a net positive, given its significant benefits for the wellbeing of people in detention and their capacity to maintain contact with people outside detention.



The Commission also recognises the risk management challenges that have arisen as a result of the reintroduction of mobile phones. However, information provided to the Commission by facility staff suggests that only a small proportion of people in immigration detention are using mobile phones inappropriately, and that incidents of a serious nature involving mobile phone use are exceptional rather than commonplace.

On this basis, the Commission considers that any blanket prohibition on mobile phones in immigration detention would not be a necessary, reasonable or proportionate response to the risks arising from their use.⁶² A more appropriate response would be to ensure proper accountability for misuse of phones among the individuals involved.

In some cases, this could be achieved through existing laws and policies. For example, existing offences relating to threats, intimidation and misuse of carriage services may be relevant in cases where mobile phones are used to threaten facility staff; and internal standards of behaviour could be revised to include content on privacy and sharing images without consent.

Recommendation 24

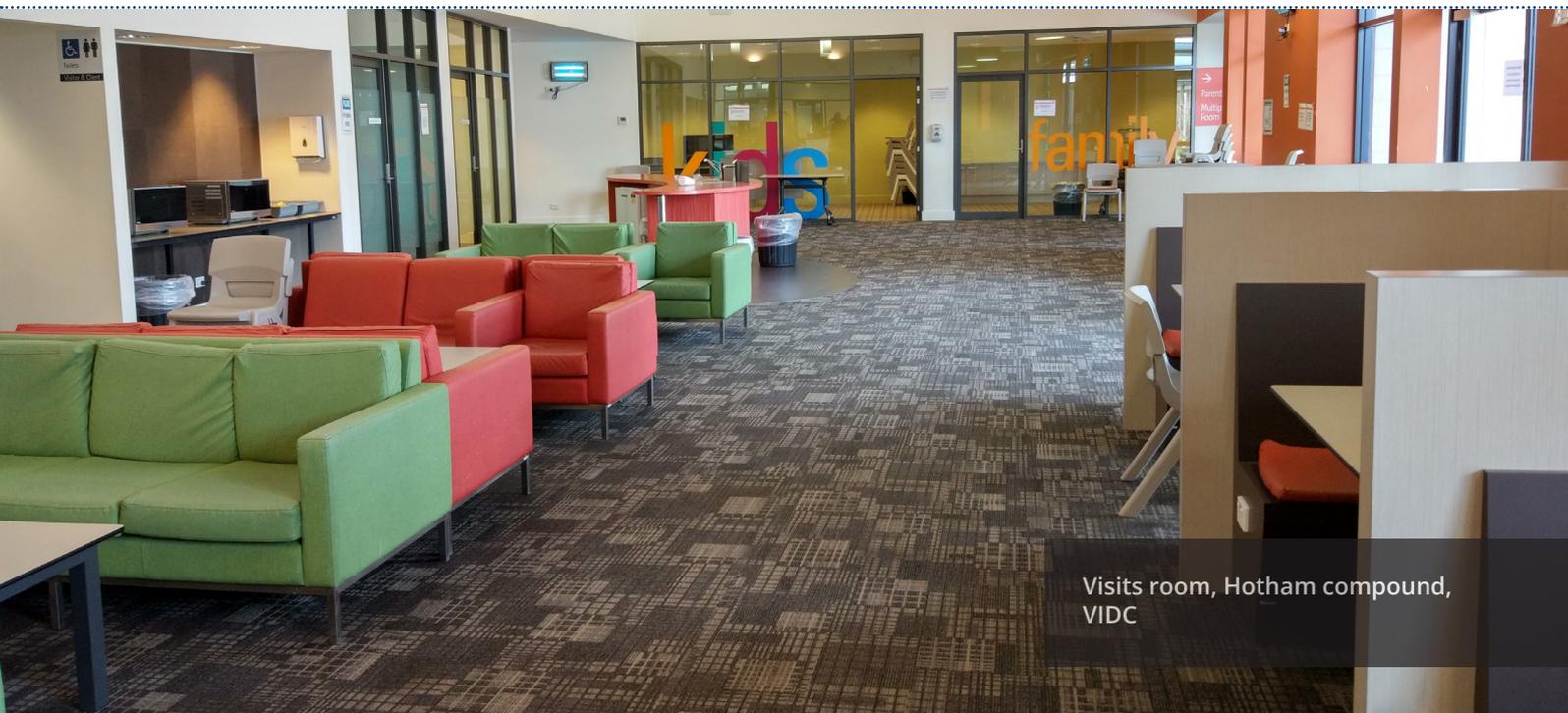
The Department of Home Affairs should commission a review of existing laws and policies that may assist in addressing concerns regarding inappropriate use of mobile phones in detention.

(d) Visits

In recent years, Home Affairs has introduced a range of new policies affecting personal visitors to immigration detention facilities. These changes were introduced with the aim of improving safety and security, in particular through preventing the entry of contraband; preventing the entry of perishable foods that may cause illness; and ensuring that Home Affairs 'has accurate information about the identity of individuals visiting its facilities'.⁶³

Key elements of the new policies include the following:

- Personal visitors (such as family members, friends and community groups) must apply for a visit through an online form at least five business days in advance of the visit. If they are over the age of 18, personal visitors must also provide 100 points of identification to support their application. Visitors must reapply each time they seek to visit a detention facility.⁶⁴
- Food brought into detention facilities by visitors must be commercially packaged and labelled, factory sealed, and have a visible and valid expiry date; must not have any metal or glass packaging; and must be of a quantity that can be eaten during the visit. Any leftover food must be disposed of at the end of the visit.⁶⁵
- Visitors must undergo screening procedures, which may include metal detectors and drug trace detection.⁶⁶



Visits room, Hotham compound, VIDC

During interviews with the Commission, a number of people raised concerns about the new visiting policies:

- The visit application process can be complicated and cumbersome for some visitors. For example, regular visitors must apply five business days in advance, fill in the lengthy online form and provide ID for every visit; and the online form may be difficult to use for some visitors (such as those who have limited English language skills or computer literacy).
- People who do not have 100 points of identification may be unable to visit people in detention.
- Drug trace detection machines may return 'false positives' or detect traces of substances from other sources (such as the visitor's work environment), with visitors potentially denied entry as a consequence.
- Restrictions on food prevent visitors from bringing in home-cooked food and fresh food (such as fruit), and can make it difficult for visitors to bring in substantial meals (the latter being a particular issue for visitors who have travelled long distances, booked lengthy visits or are visiting with children).

The Commission appreciates the challenges of preventing the entry of contraband (such as illicit drugs) into detention facilities. The Commission also acknowledges that Home Affairs and facility staff have made efforts to assist visitors to navigate the new application procedures (such as through installing tablets in reception areas that can be used to explain the new procedures to visitors).

However, applying the entry conditions and restrictions described above to all visitors may not be necessary, reasonable and proportionate, particularly for visitors who have a proven track record of complying with entry requirements and have never been suspected of bringing in contraband or presenting incorrect information about their identity. The requirement to submit a separate application form and identification for every visit also appears to be unnecessarily cumbersome for regular visitors who are known to facility staff.



Visits room, YHDC

The Commission therefore suggests that it would be beneficial to adopt a more individualised and targeted approach to visitor entry conditions, whereby conditions and restrictions are applied only when necessary in the visitor’s individual circumstances.

The Commission notes that Home Affairs is piloting a ‘trusted visitor’ program for community groups that visit immigration detention facilities on a regular basis, with a view to streamlining the entry requirements for these visitors. The Commission suggests that similar strategies could be adopted for individual visitors who routinely comply with entry conditions.

Recommendation 25

The Department of Home Affairs should revise entry conditions for external visitors, with a view to applying conditions and restrictions only when necessary to manage specific risks in a visitor’s individual circumstances.

Recommendation 26

The Department of Home Affairs should consider extending the ‘trusted visitor’ pilot to individual visitors who routinely comply with entry conditions.

3.6 Behaviour management

(a) Standards of behaviour

According to facility staff, information about the standards of behaviour expected of people in immigration detention is communicated through a booklet that is provided on arrival, and an induction process. Information gathered during the Commission's inspections, however, suggests that this information is not being conveyed as effectively as possible.

When asked by the Commission if they had been provided with information about standards of behaviour, some people in detention confirmed that they had. More commonly, however, people claimed that they had not received this information. A number of people recalled that they had been asked to 'sign a piece of paper' about behaviour; or that they had been given information but had not read it or had it explained to them by staff.

Some responses suggested that providing information about standards of behaviour on arrival may not be an effective approach, as people may be feeling too overwhelmed or tired at this point to absorb the information given to them.

For example, one person interviewed by the Commission recounted his experiences of arriving at a detention facility after a lengthy transfer, having been awake since the early hours of the morning. He confirmed that he had been given information about standards of behaviour but stated that he had not read it, because 'everyone just wanted to get their stuff and go to bed'.

Recommendation 27

Facility staff should review strategies for providing information about standards of behaviour to people in immigration detention, to ensure that this information is communicated effectively, and not only on arrival.

(b) Incentives

Incentives for positive behaviour in immigration detention are primarily offered through the 'points' system. Points can be used to purchase personal items such as cigarettes, drinks, snacks, phone cards and toiletries. People in detention receive a base allocation of points each week, and can earn additional points through participation in activities and 'good behaviour'.

People in some facilities may also be able to participate in additional activities as a result of positive behaviour. For example, the cooking and woodwork programs offered at the YHIDC are available to people who have demonstrated good behaviour in detention.



In discussions with the Commission, however, some facility staff noted that they had limited capacity to provide incentives for positive behaviour.

During the Commission’s 2017 inspection of the CIIDC, for example, people who had demonstrated positive behaviour would have the opportunity to move into an accommodation compound with more favourable conditions, and increased access to outdoor space.⁶⁷ During the 2018 inspections, staff indicated that it was currently difficult to offer incentives of this kind in other facilities due to limited vacancies in lower-security compounds.

In addition, the fact that positive behaviour may not lead to a person’s risk rating being downgraded (as noted in Section 3.1(a)) may reduce incentives for complying with standards of behaviour. For instance, two individuals with a similar offending history—one of whom has demonstrated positive behaviour in detention, and one of whom as not—may both remain ‘high risk’ and be subject to similar restrictive measures. Some of the people interviewed by the Commission expressed frustration that their positive behaviour did not appear to affect their treatment in detention.

The Commission reiterates its recommendation to consider options for revisiting risk assessments downwards over time, as a means of providing incentives for positive behaviour.

(c) Disciplinary measures

Only a small proportion of the people interviewed by the Commission indicated that they had been subject to disciplinary measures, generally for possessing contraband or being involved in altercations. Of these, most reported that they had not received their weekly allocation of points for 'good behaviour' as a consequence. A small number of people stated that they had been placed on individual 'behaviour management plans'.

The Commission also observed some troubling perceptions among people in immigration detention about disciplinary measures. For example, some believed that they had been transferred to a particular detention facility or placed in a particular accommodation compound as a form of punishment or coercion. Some also expressed the view that raising concerns or making a complaint about treatment and conditions in detention could lead to punitive measures.

The Commission understands that placements and transfers may occur in some circumstances simply because of space limitations. However, where placements have a significant negative impact on the person affected—for example, where a person is moved into a compound with harsher conditions and less privacy, or transferred to a facility in another state where it is difficult to receive regular visits from family members—it is not difficult to imagine how placements could be perceived by those affected as punitive measures.

The Commission further notes that, in general, people in immigration detention are not routinely provided with information or explanations about their treatment in detention. As noted in Section 3.1(a), people interviewed by the Commission typically reported that they had not been given information about the risk assessment process. Many people similarly indicated that they did not receive clear information or explanations about decisions that affected them, such as those relating to the use of restraints, transfers and placements.



The Commission is concerned that this information ‘vacuum’ appears to be a significant factor driving the perceptions described above. The Commission suggests that it would be beneficial to provide people in immigration detention with clearer and more routine explanations about decisions that affect them, particularly where those decisions may have significant consequences.

Recommendation 28

The Department of Home Affairs and facility staff should ensure that people in detention are routinely provided with explanations of decisions that affect them, including those relating to the use of restraints, transfers and placements.

(d) Meaningful activities

During its 2017 inspections of immigration detention facilities, the Commission received feedback indicating that the programs and activities available in detention were not sufficiently engaging or meaningful.⁶⁸ In several of the reports from these inspections, the Commission recommended that Home Affairs and facility staff implement strategies to provide greater access to educational opportunities for people in immigration detention.⁶⁹

Home Affairs responded to the Commission’s recommendations as follows:

Unlawful non-citizens do not have work or study rights, which are otherwise available to the holders of certain visas. The extension of such rights to a detainee is not supported by legislation and may undermine the integrity of Australia’s visa programs. Under policy, detainees’ access to educational or vocational opportunities are limited to activities that do not constitute work or lead to a qualification or certification.

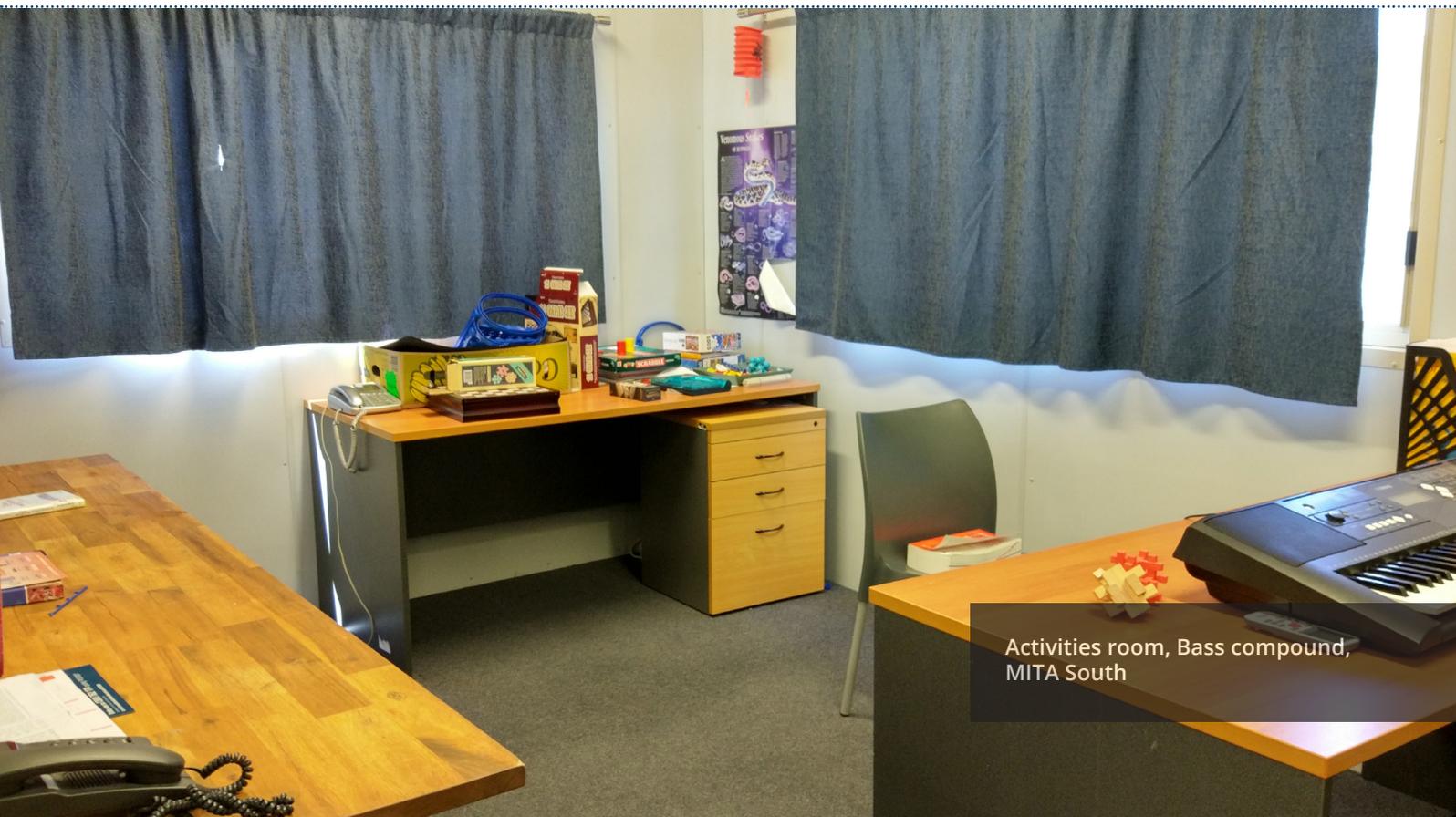
Although detainees are not permitted to undertake courses that are directed towards achieving formal qualifications, they may participate in workshops and non-award educational programs and receive a ‘recognition of attendance’ certificate. A number of informal programs are available, such as English lessons and other online learning programs.⁷⁰

During the 2018 inspections, facility staff noted the challenges of providing activities to people in immigration detention, which were sufficiently meaningful to prevent boredom and provide structure and routine. Some specifically cited the inability to provide vocational training.

It was also evident during discussions with people in immigration detention that the lack of meaningful activities could be a source of significant frustration. Due to the thematic focus of the inspections on risk management practices, the Commission did not specifically ask questions about programs and activities during its interviews with people in detention. Nonetheless, a number of people interviewed by the Commission offered unprompted feedback on activities.

Some expressed the view that the programs and activities available in detention were insufficient, particularly on weekends (detention services providers are not contractually obliged to deliver activities on weekends). Several people reported that they felt bored and frustrated in detention or had ‘nothing to do’.

A number of people stated that they did not find activities interesting or meaningful, or that facilities available for activities were inadequate. Some contrasted the activities available in detention with those available in prison, noting in particular the lack of opportunities for education and employment.



Activities room, Bass compound,
MITA South

The Commission is concerned that the boredom, frustration and lack of engagement arising from the limitations of the current activities program may contribute to the level of tension in immigration detention facilities, with implications for safety and security.

The Commission notes that current policy frameworks do not permit people in detention to undertake vocational training. This framework may be justifiable in situations where people are held in detention for short periods. When immigration detention becomes prolonged, however—and particularly when alternatives to detention, as a matter of policy, are not considered for certain groups (as discussed in Section 3.7)—the rationale for this framework becomes less compelling.

Recommendation 29

The Department of Home Affairs should review its policy on access to vocational training in immigration detention, with a view to enhancing access to educational opportunities for people held in immigration detention for prolonged periods.

The Commission further notes that, even within current policy frameworks, further options could be explored for enhancing access to meaningful activities. These options include:

- providing non-award education programs such as short courses, workshops, practical training and a broader range of literacy and numeracy classes

- reviewing current infrastructure to determine the additional facilities required for provision of meaningful activities (the facilities for activities at the YHIDC provide a possible model for other immigration detention facilities)
- reintroducing a contractual requirement for detention service providers to offer programs and activities on weekends.

Recommendation 30

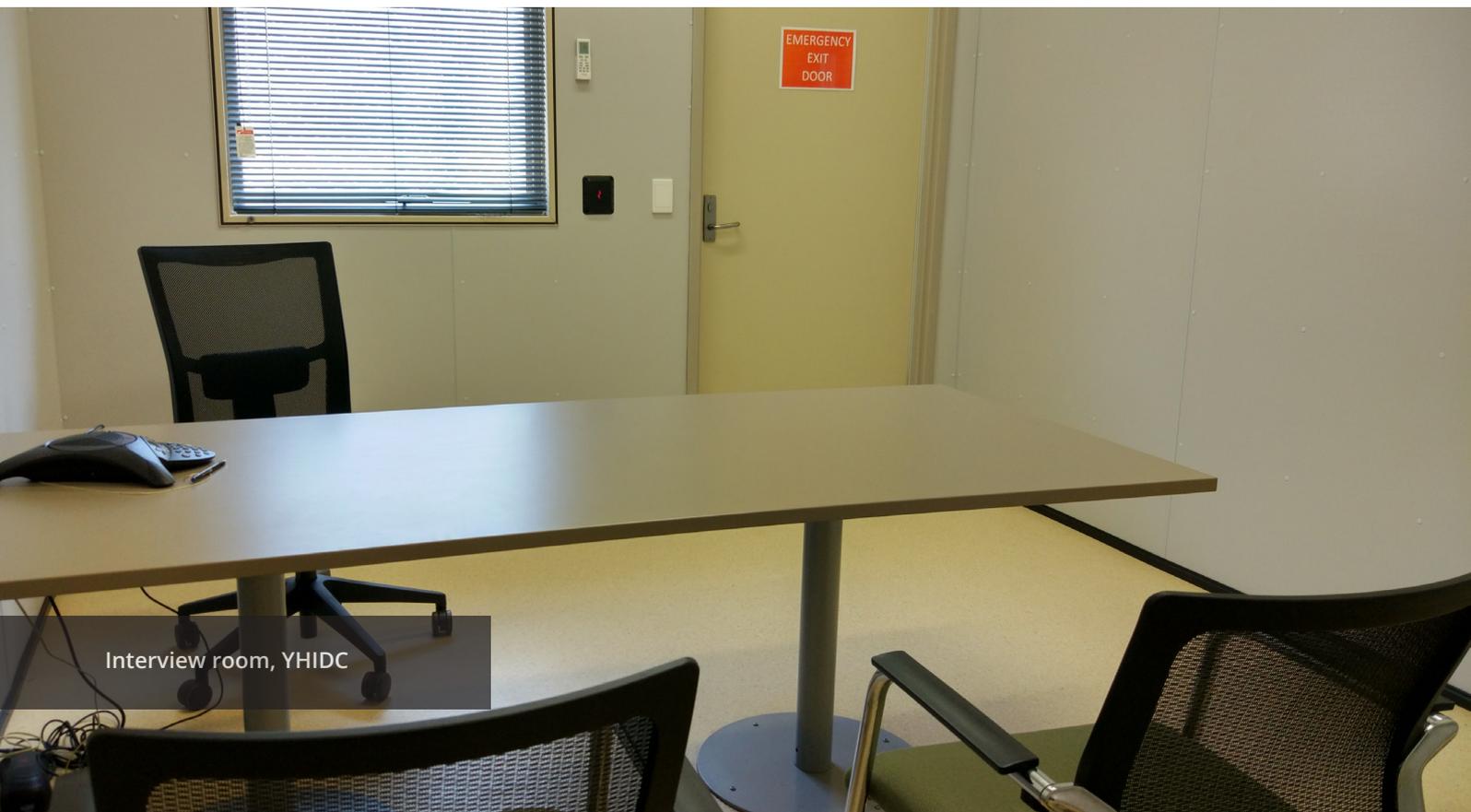
In consultation with facility staff and people in detention, the Department of Home Affairs should explore options for enhancing access to meaningful activities in immigration detention.

3.7 Decisions to detain

(a) Reasons for detention

The Detention Services Manual sets out seven 'immigration detention values' that inform detention policy and practice. The values stipulate that three groups will be subject to immigration detention in Australia:

- all unauthorised arrivals, for management of health, identity and security risks to the community
- unlawful non-citizens who present unacceptable risks to the community
- unlawful non-citizens who have repeatedly refused to comply with their visa conditions.⁷¹



Interview room, YHIDC

These values indicate that immigration detention is intended to be used as a means of managing risks, including risks to the community (health, safety and security) and risks to the integrity of Australia's migration program (non-compliance with visa conditions and absconding).

A short period of immigration detention aimed at managing these kinds of risks may be justifiable under international law, provided that the risks cannot be managed in a less restrictive way, and that detention is reasonable and proportionate in the circumstances.

During inspections of detention facilities conducted in 2017, however, the Commission identified numerous cases in which ongoing closed immigration detention did not appear to be justified.⁷² The Commission continued to encounter similar cases during its 2018 inspections.

Among those detained due to character-related visa decision, these cases typically related to people who had been detained after having a visa refused or cancelled on the basis of:

- historical criminal convictions, where the person had been living in the community for a significant period of time after the relevant convictions
- criminal convictions that resulted in a custodial sentence, where the person had served their sentence and was due to be released from prison
- criminal convictions that did not result in custodial sentences
- criminal charges, including in cases where the person was granted bail, the relevant charges had been withdrawn or the person was acquitted.

In these cases, the criminal justice system has generally determined that the people concerned should now be permitted to live freely in the community. Indeed, had they been Australian citizens, these individuals would not have been subject to ongoing detention. It is therefore questionable whether immigration detention was a necessary, reasonable and proportionate measure in these cases.

The Commission has also observed that there appears to be wide variation in the types of offences that may lead to a visa refusal or cancellation, and consequent detention. In some cases, the relevant offences are of a serious, violent nature. In others, the offences are less serious or non-violent (such as fraud, traffic violations and drug possession).

The Commission does not intend to suggest that the offences in this latter category are insignificant. Where a person has no history of violent offending, however, it is less likely that a highly restrictive measure such as closed detention would be necessary to manage potential risks to the community.

Even in cases where a person has been imprisoned for a serious violent offence, however, there would likely be few circumstances in which ongoing detention after the expiration of their prison sentence—particularly for an extended period of time—would be considered necessary, reasonable and proportionate under international law.⁷³

Furthermore, as noted above, the immigration detention population includes people with a range of risk profiles, many of whom would not present any identifiable risk to community safety.

The Commission has long recommended that the Migration Act be amended to ensure that closed immigration detention is only used in circumstances where it is strictly necessary to manage unacceptable risks to the community.⁷⁴ In cases where this threshold is not met, alternative strategies could be used to mitigate any identified risks (such as a requirement to reside at a specified location, curfews, travel restrictions, reporting requirements or sureties).

Recommendation 31

The Australian Government should introduce legislation to ensure that closed immigration detention is used only as a last resort in circumstances where a person has been individually assessed as posing an unacceptable risk to the Australian community, and that risk cannot be managed in a less restrictive way.

(b) Length of detention

As noted in Section 2.7, the average length of detention has stood at over 400 days since mid-2015.⁷⁵ A large proportion of the people interviewed by the Commission during its 2018 inspections reported that they had been held in immigration detention for at least a year, and in some cases for far longer. Several people alleged that they had been in detention for longer than they had been in prison.

Processing timeframes for migration matters can be a significant contributor to prolonged detention. For example, a 2016 investigation by the Commonwealth Ombudsman found that delays in processing applications for revocation of a mandatory visa cancellation under s 501 had resulted in many people spending prolonged periods in immigration detention.⁷⁶ Between December 2014 and April 2018, the average time taken to finalise a revocation request was 262 days, or more than eight months.⁷⁷

Prolonged detention is a risk factor for mental ill-health, as the negative impacts of immigration detention on mental health tend to worsen as the length of detention increases.⁷⁸ This is of particular concern in the current context given the consistently high average length of detention in recent years, and the large number of people being held in closed facilities for prolonged periods.

The Commission considers that regular review of the necessity of closed detention, and the introduction of an overall limit on the length of closed detention, would help to reduce the likelihood of detention becoming unreasonably prolonged. In addition, given the consistently high average length of immigration detention in recent years, it may also be beneficial to conduct a more targeted investigation of strategies to reduce the prevalence of prolonged detention.

Recommendation 32

The Australian Government should introduce legislation to ensure that the necessity for continued immigration detention is periodically assessed by a court or tribunal, up to a maximum time limit.

Recommendation 33

The Department of Home Affairs should conduct a review to identify:

- factors contributing to the high average length of immigration detention since 2015
- strategies to reduce the average length of immigration detention.

(c) Alternatives to detention

Since 2010, successive Australian Governments have progressively expanded the use of community alternatives to closed immigration detention. As a consequence, most people have their immigration status resolved while living in the community, rather than in closed detention.

For many people currently in immigration detention, however, the consideration of alternative community-based arrangements does not appear to occur on a routine basis. For example, during interviews with the Commission, a significant number of people in detention reported that options for being released from detention had never been discussed with them. Several others stated that they had sought to apply for release but were informed that they were not eligible; or had applied for release and been rejected.

Some are excluded from consideration of community alternatives entirely. People who have had a visa refused or cancelled under s 501 are not eligible to apply for any visa other than a Protection Visa.⁷⁹ Consequently, they are not able to apply for a Bridging Visa or any other short-term visa that would allow for their release from closed detention.

Under s 195A of the Migration Act, the Minister has a discretionary, non-compellable intervention power to grant visas to people in immigration detention.⁸⁰ The Minister has issued guidelines for referring cases for consideration of a visa grant under s 195A.⁸¹

These guidelines outline the types of cases that should and should not be referred to the Minister for consideration of a visa grant. According to the guidelines, cases in which a person has had a visa refused or cancelled under s 501 generally should not be referred for consideration.

The Minister has similarly issued guidelines for referring cases for consideration of a residence determination, which also identify cases that should not be referred to the Minister for consideration (other than in exceptional circumstances or on request).⁸² In some cases, the guidelines require an assessment of relevant risks, such as the risk that a person may cause harm to the Australian community.

However, the guidelines do not apply solely to people who may present a risk to the community, nor do they require decision-makers to consider whether ongoing closed detention is necessary, reasonable and proportionate in the person's circumstances.

For example, the guidelines exclude from consideration:

- anyone who arrived in Australia on or after 1 January 2014
- asylum seekers whose claims have been rejected at both the primary and review stages
- people who present character issues that may indicate they fail the character test under s 501
- people who have been charged with an offence and are awaiting the outcome of the charge.

The Commission can see no reason to conclude that all people in these circumstances would necessarily present an unacceptable risk to the Australian community, such that a residence determination cannot be considered. Indeed, some may present no risk to the community at all.

Furthermore, even if a person may fail the character test or be subject to a criminal charge, there are likely to be cases in which ongoing detention is not necessary, reasonable and proportionate in the circumstances (as discussed above). Consideration of a residence determination or the grant of a Bridging Visa would therefore still be appropriate in many of these cases.

The Commission considers that eligibility for community alternatives to detention should be determined on the basis of an individualised risk assessment that takes all circumstances into account, instead of particular categories of people in detention being excluded from consideration as a general rule.

Recommendation 34

The Minister and Department of Home Affairs should routinely consider all people in immigration detention for release into alternative community-based arrangements.

4 Summary of recommendations

Recommendation 1

The Department of Home Affairs should request that the external consultant commissioned to review the Security Risk Assessment Tool consider options for revising risk assessments downwards over time in response to positive behaviour.

Recommendation 2

The Department of Home Affairs and facility staff should ensure that people in immigration detention are informed of their risk rating and of the reasons for this rating, unless doing so would present an unacceptable risk.

Recommendation 3

The Department of Home Affairs should commission an independent review of the response to the September 2018 incident at the Yongah Hill Immigration Detention Centre, with a view to improving responses to similar incidents in the future.

Recommendation 4

The Department of Home Affairs should consider family links as a priority when making decisions about placements across the detention network.

Recommendation 5

In consultation with facility staff, the Department of Home Affairs should review the risk assessment process used to inform transfers between detention facilities, with a view to minimising disruption for people subject to transfer.

Recommendation 6

The Department of Home Affairs should develop a protocol for consulting with facility staff in advance of significant transfers, with a view to minimising possible negative impacts of transfers on conditions of detention.

Recommendation 7

The Department of Home Affairs should expand the terms of reference for the current review of the Security Risk Assessment Tool to include specific consideration of policies and practices regarding the use of restraints.

Recommendation 8

The Department of Home Affairs should only restrict access to excursions when it is necessary and proportionate in an individual's circumstances.

Recommendation 9

The Department of Home Affairs and facility staff should implement strategies to provide increased access to outdoor space and facilities for exercise, activities and recreation for people detained in medium- and high-security compounds (such as rostered access to facilities in adjacent lower-security compounds).

Recommendation 10

In consultation with facility staff, the Department of Home Affairs should modify infrastructure (including fixtures and finishings) in the new high-security compounds at BITA, MITA and YHIDC, with a view to lessening harsh and restrictive conditions wherever possible.

Recommendation 11

In consultation with facility staff, the Department of Home Affairs should review the planned construction works at the VIDC, with a view to reducing or modifying harsh and restrictive elements where possible.

Recommendation 12

As a matter of urgency, the Department of Home Affairs should cease using the Blaxland compound at the VIDC. All people currently detained in this compound should be moved into alternative arrangements at the VIDC or other detention facilities as appropriate.

Recommendation 13

The Department of Home Affairs should ensure that the BRP is only used for short periods of detention.

Recommendation 14

The Department of Home Affairs should upgrade the BRP to include additional facilities for exercise, activities and recreation.

Recommendation 15

The Department of Home Affairs should review the impact of 'controlled movement' and 'lock down' policies on conditions of detention and access to facilities across the immigration detention network.

Recommendation 16

The Department of Home Affairs should consult with facility staff about the use of curfews at the Brisbane Immigration Transit Accommodation and Melbourne Immigration Transit Accommodation facilities, with a view to removing curfews that are not strictly necessary to ensure safety and security.

Recommendation 17

The Department of Home Affairs should ensure that hotels are only used as Alternative Places of Detention in exceptional circumstances and for very short periods of immigration detention.

Recommendation 18

The Department of Home Affairs should implement strategies to provide greater freedom of movement and access to outdoor space for people detained in Alternative Places of Detention.

Recommendation 19

The Department of Home Affairs should ensure that people detained in Alternative Places of Detention are only subject to continuous monitoring by staff in cases where it is necessary, reasonable and proportionate in the circumstances.

Recommendation 20

The Department of Home Affairs should commission an independent review of the use of single separation and other separate detention in immigration detention facilities, with a view to determining:

- whether current practices are compliant with international human rights law and departmental policy
- alternative options for separating people in detention in circumstances where separation is necessary but the use of 'high-care accommodation' would be unreasonable or disproportionate
- the additional facilities required to provide appropriate alternative options for separate detention.

Recommendation 21

In consultation with facility staff, the Department of Home Affairs should consider providing additional training on the conduct of searches to staff working in immigration detention facilities.

Recommendation 22

The Department of Home Affairs should amend the Detention Services Manual to stipulate that items that do not present inherent risks to safety and security may only be prohibited in immigration detention:

- on the basis of individual risk assessments
- where there is evidence that the person has used or is reasonably likely to use the item in a manner that presents clear risks to safety or security
- where those risks cannot be managed in a less restrictive way.

Recommendation 23

The Department of Home Affairs should introduce drug and alcohol rehabilitation programs as a core component of service provision in immigration detention.

Recommendation 24

The Department of Home Affairs should commission a review of existing laws and policies that may assist in addressing concerns regarding inappropriate use of mobile phones in detention.

Recommendation 25

The Department of Home Affairs should revise entry conditions for external visitors, with a view to applying conditions and restrictions only when necessary to manage specific risks in a visitor's individual circumstances.

Recommendation 26

The Department of Home Affairs should consider extending the 'trusted visitor' pilot to individual visitors who routinely comply with entry conditions.

Recommendation 27

Facility staff should review strategies for providing information about standards of behaviour to people in immigration detention, to ensure that this information is communicated effectively, and not only on arrival.

Recommendation 28

The Department of Home Affairs and facility staff should ensure that people in detention are routinely provided with explanations of decisions that affect them, including those relating to the use of restraints, transfers and placements.

Recommendation 29

The Department of Home Affairs should review its policy on access to vocational training in immigration detention, with a view to enhancing access to educational opportunities for people held in immigration detention for prolonged periods.

Recommendation 30

In consultation with facility staff and people in detention, the Department of Home Affairs should explore options for enhancing access to meaningful activities in immigration detention.

Recommendation 31

The Australian Government should introduce legislation to ensure that closed immigration detention is used only as a last resort in circumstances where a person has been individually assessed as posing an unacceptable risk to the Australian community, and that risk cannot be managed in a less restrictive way.

Recommendation 32

The Australian Government should introduce legislation to ensure that the necessity for continued immigration detention is periodically assessed by a court or tribunal, up to a maximum time limit.

Recommendation 33

The Department of Home Affairs should conduct a review to identify:

- factors contributing to the high average length of immigration detention since 2015
- strategies to reduce the average length of immigration detention.

Recommendation 34

The Minister and Department of Home Affairs should routinely consider all people in immigration detention for release into alternative community-based arrangements.

Appendix:

Human rights standards relevant to immigration detention

1. Treatment of people in detention

Australia has obligations under articles 9(1) and 10(1) of the *International Covenant on Civil and Political Rights* (ICCPR) respectively, to uphold the right to security of the person and ensure that people in detention are treated with humanity and respect for the inherent dignity of the human person.⁸³ Australia also has obligations under article 7 of the ICCPR and articles 2(1) and 16(1) of the *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) not to subject anyone to torture or to cruel, inhuman or degrading treatment or punishment, and to take effective measures to prevent these acts from occurring.⁸⁴

These obligations require Australia to ensure that people in detention—including immigration detention—are treated fairly and reasonably, and in a manner that upholds their dignity. They should enjoy a safe environment free from bullying, harassment, abuse and violence. Security measures should be commensurate with identified risks, and should be the least restrictive possible in the circumstances, taking into account the particular vulnerabilities of people in detention. Measures that may constitute torture or cruel, inhuman or degrading treatment or punishment (such as collective punishment, corporal punishment, excessive use of force and holding people incommunicado) should be prohibited.

2. Conditions of detention

Australia has a range of obligations under the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) relevant to the material conditions of immigration detention. These include the right to education (articles 6(2) and 13); the right to an adequate standard of living, including adequate food, clothing and housing (article 11); the right to the highest attainable standard of health (article 12); and the right to take part in cultural life (article 15(1)(a)).⁸⁵

Australia's obligations under the ICCPR and the CAT to treat people in detention with humanity and respect, and not to subject anyone to cruel, inhuman or degrading treatment or punishment, are also relevant to conditions of detention.⁸⁶ In addition, Australia has an obligation under articles 17 and 18 of the ICCPR to uphold the right to privacy and freedom of religion respectively.⁸⁷

These obligations require Australia to ensure that immigration detention facilities are safe, hygienic and uphold human dignity. People in detention should have their basic needs met and have access to essential services (such as health care and primary and secondary education) to a standard commensurate with those provided in the Australian community.

People in immigration detention should have opportunities to engage in meaningful activities and excursions that provide physical and mental stimulation. People in detention should also be able to profess and practise the religion of their choice, including through being able to attend religious services, receiving pastoral visits from religious representatives and celebrating major religious holidays and festivals.

In light of the negative impact of detention on mental health, the length of immigration detention should be limited to the minimum period necessary to achieve a legitimate aim, and community-based alternatives to detention should be used wherever feasible.

3. Communication, association and complaints

Australia has a range of obligations under the ICCPR relevant to communication between people in immigration detention and their family members, friends, representatives and communities outside closed detention.

These include the right to freedom of expression and to seek, receive and impart information and ideas (article 19(b)); the right to freedom of association with others (article 22); and the right of ethnic, religious and linguistic minorities, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion and to use their own language (article 27).⁸⁸ Under the ICESCR, Australia also has an obligation to uphold the right to take part in cultural life (article 15(1)(a)).⁸⁹

In addition, Australia has obligations under articles 23(1) of the ICCPR and 10(1) of the ICESCR to afford protection and assistance to the family as the natural and fundamental group unit of society.⁹⁰ Australia also has obligations under article 17(1) of the ICCPR and article 16(1) of the *Convention on the Rights of the Child* (CRC) not to subject anyone to arbitrary or unlawful interference with their family.⁹¹

These obligations require Australia to ensure that immigration detention does not have a disproportionate impact on people's ability to express themselves, communicate and associate with others, and remain in contact with their family members, friends, representatives and communities. People in immigration detention should be able to receive regular visits, and should have access to adequate communication facilities (such as telephones and computers) as well as news and library services. People in detention should, if possible, be located in facilities within a reasonable distance from their family members, friends and communities.

External communication, particularly access to complaints processes, is also essential for the prevention of torture and other cruel, inhuman or degrading treatment or punishment. Australia has obligations under articles 13 and 16(1) of the CAT to ensure that anyone who alleges that they have been subjected to torture or to cruel, inhuman or degrading treatment or punishment, has the right to complain to and have their case examined by competent authorities.⁹²

To ensure these obligations are upheld, people in immigration detention should have opportunities to raise concerns and issues regarding treatment and conditions in detention, and make complaints both internally and to independent monitors (including the Commission and the Commonwealth Ombudsman), without fear of repercussions.

4. Legal and policy framework

Australia has an obligation under article 9 of the ICCPR not to subject anyone to arbitrary detention.⁹³ According to the United Nations Human Rights Committee, 'arbitrary detention' includes detention that, although lawful under domestic law, is unjust or disproportionate. In order for the detention of a person not to be arbitrary, it must be a reasonable and necessary measure in all the circumstances.⁹⁴

Australia has further obligations under article 9 of the ICCPR to ensure that anyone who is arrested has the right to be informed of the reasons for their arrest and the charges against them, and that anyone who is detained has the right to challenge the legality of their detention in court.⁹⁵

These obligations require Australia to ensure that people are only detained in closed immigration detention facilities when it is reasonable and necessary in their individual circumstances (such as where they pose an unacceptable health or security risk), and for a limited period of time. Community-based alternatives to detention should be used wherever possible. People held in immigration detention should be informed of the reasons for their detention and be able to seek judicial review of whether their detention is arbitrary.

5. Detention of children

Australia has an obligation under article 3(1) of the CRC to ensure that in all actions concerning children, the best interests of the child shall be a primary consideration.⁹⁶

Australia also has an obligation under articles 37(a), (b) and (c) of the CRC to ensure, respectively, that children are not subjected to torture or other cruel, inhuman or degrading treatment or punishment; that children are only detained as a last resort and for the shortest appropriate period of time; and that children in detention are treated in a manner that takes into account the needs of people their age.⁹⁷

There is an emerging consensus that the obligations under article 37(b) of the CRC apply specifically in the context of juvenile detention facilities, and that the relevant standard for immigration detention is one of 'no detention'. For example, a Joint General Comment issued by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Committee on the Rights of the Child provided the following advice on the application of article 37(b):

Offences concerning irregular entry or stay cannot under any circumstances have consequences similar to those derived from the commission of a crime. Therefore, the possibility of detaining children as a measure of last resort, which may apply in other contexts such as juvenile criminal justice, is not applicable in immigration proceedings as it would conflict with the principle of the best interests of the child and the right to development.⁹⁸

In light of this principle, the General Comment affirmed that:

Children should never be detained for reasons related to their or their parents' migration status and states should expeditiously and completely cease or eradicate the immigration detention of children. Any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice.⁹⁹

Endnotes

- 1 *Migration Act 1958* (Cth) s 189.
- 2 Section 5 of the Migration Act defines 'immigration detention' to include 'being held by, or on behalf of, an officer in another place approved by the Minister in writing'.
- 3 *Migration Act 1958* (Cth) s 187AB.
- 4 Reports from previous inspections of immigration detention facilities can be found on the Commission's website at <<https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/immigration-detention-reports-and-photos>>.
- 5 Human Rights and Equal Opportunity Commission, *Those Who've Come across the Seas: Detention of Unauthorised Arrivals* (Report, 1998); Human Rights and Equal Opportunity Commission, *A Last Resort? National Inquiry into Children in Immigration Detention* (Report, 2004); Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention* (Report, 2014).
- 6 Australian Human Rights Commission, *Asylum Seekers, Refugees and Human Rights: Snapshot Report (2nd Edition)* (Report, 2017) 11–25.
- 7 Reports from these inspections can be found on the Commission's website at <<https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/immigration-detention-reports-and-photos>>.
- 8 In line with the thematic focus of this project, the Commission conducted inspections of several different detention facilities so as to identify systemic issues and trends across the detention network (as opposed to localised issues within individual facilities). The Commission did not consider it necessary to inspect all purpose-built detention facilities in Australia on this occasion. The Commission did not inspect the Christmas Island Immigration Detention Centre and Maribyrnong Immigration Detention Centre, as both facilities were due to close by the end of 2018 and therefore will not form part of the detention network going forward. The Commission also did not inspect the Adelaide Immigration Transit Accommodation and Perth Immigration Detention Centre facilities, as these are very small facilities that are primarily used for short-term detention of people who are due to be rapidly removed from Australia. Consequently, conditions in these facilities are not necessarily reflective of conditions across the network as a whole.
- 9 Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Guidelines on National Preventive Mechanisms*, 12th Sess, UN Doc CAT/OP/12/5 (9 December 2010); Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *The Approach of the Subcommittee on Prevention of Torture to the Concept of Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 12th Sess, UN Doc CAT/OP/12/6 (30 December 2010); Association for the Prevention of Torture and Inter-American Institute for Human Rights, *Optional Protocol to the UN Convention against Torture Implementation Manual* (Manual, 2010); Association for the Prevention of Torture, International Detention Coalition and United Nations High Commissioner for Refugees, *Monitoring Immigration Detention: Practical Manual* (Manual, 2014) 2014.
- 10 Australia has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, or the International Convention for the Protection of All Persons from Enforced Disappearance.
- 11 United Nations Human Rights Committee, *General Comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc CCPR/C/21/Rev.1/Add. 13 (26 May 2004) [6].
- 12 Australian Human Rights Commission, *Human Rights Standards for Immigration Detention* (Report, 2013).
- 13 *Migration Act 1958* (Cth) ss 501(1)–(3A).
- 14 *Migration Act 1958* (Cth) s 501(6).
- 15 *Migration Act 1958* (Cth) s 501(3A).
- 16 'Key Visa Cancellation Statistics', *Department of Home Affairs* (Webpage), <<https://www.Homeaffairs.Gov.Au/Research-and-Statistics/Statistics/Visa-Statistics/Visa-Cancellation>>.
- 17 'Immigration Detention Statistics', *Department of Home Affairs* (Webpage), <<https://www.Homeaffairs.Gov.Au/Research-and-Statistics/Statistics/Visa-Statistics/Live/Immigration-Detention>>.
- 18 'Immigration Detention Statistics', *Department of Home Affairs* (Webpage), <<https://www.Homeaffairs.Gov.Au/Research-and-Statistics/Statistics/Visa-Statistics/Live/Immigration-Detention>>.
- 19 Facilities closed include the Curtin, Maribyrnong, Northern and Scherger Immigration Detention Centres; the Bladin, Darwin Airport Lodge, Inverbrackie, Leonora, Pontville and Wickham Point Alternative Places of Detention; the Perth and Port Augusta Immigration Residential Housing facilities; and the Aqua and Lilac Alternative Places of Detention on Christmas Island. See The Hon. Scott Morrison MP, Minister for Immigration and Border Protection, 'Closure of Four Detention Facilities Saves \$88.8 Million a Year' (Media Release, 14 January 2014); The Hon. Scott Morrison MP, Minister for Immigration and Border Protection, 'Government Success Stopping Illegal Boats to Save \$2.5 Billion' (Media Release, 13 May 2014); The Hon. Peter Dutton MP, Minister for Immigration and Border Protection, 'Government Closes Darwin's Bladin Detention Facility' (Media Release, 21 February 2015); Commonwealth of Australia, *Budget Paper No. 2 2016-17* (Budget Paper, 3 May 2016) 123.
- 20 ABC Radio National, 'Interview with Fran Kelly', *RN Breakfast*, 4 April 2016 (The Hon. Peter Dutton MP, Minister for Immigration and Border Protection).
- 21 Facilities placed into contingency include the Christmas Island Immigration Detention Centre (also known as the North West Point Immigration Detention Centre) and the Construction Camp and Phosphate Hill Alternative Places of Detention. See Commonwealth of Australia, *Budget Paper No. 2 2016-17* (Budget Paper, 3 May 2016) 123.
- 22 'Immigration Detention Statistics', *Department of Home Affairs* (Webpage), <<https://www.Homeaffairs.Gov.Au/Research-and-Statistics/Statistics/Visa-Statistics/Live/Immigration-Detention>>.
- 23 'Immigration Detention Statistics', *Department of Home Affairs* (Webpage), <<https://www.Homeaffairs.Gov.Au/Research-and-Statistics/Statistics/Visa-Statistics/Live/Immigration-Detention>>.
- 24 'Immigration Detention Statistics', *Department of Home Affairs* (Webpage), <<https://www.Homeaffairs.Gov.Au/Research-and-Statistics/Statistics/Visa-Statistics/Live/Immigration-Detention>>.

- 25 'Annual Detention Statistics, 2012–2018', *Canada Border Services Agency* (Webpage), <<https://www.Cbsa-Asfc.Gc.ca/Security-Securite/Detent/Stat-2012-2018-Eng.Html>>.
- 26 'National Statistics: How Many People Are Detained or Returned?', *Home Office, United Kingdom* (Webpage), <<https://www.Gov.Uk/Government/Publications/Immigration-Statistics-October-to-December-2017/How-Many-People-Are-Detained-or-Returned>>.
- 27 'Immigration Detention Statistics', *Department of Home Affairs* (Webpage), <<https://www.Homeaffairs.Gov.Au/Research-and-Statistics/Statistics/Visa-Statistics/Live/Immigration-Detention>>.
- 28 'Key Visa Cancellation Statistics', *Department of Home Affairs* (Webpage), <<https://www.Homeaffairs.Gov.Au/Research-and-Statistics/Statistics/Visa-Statistics/Visa-Cancellation>>.
- 29 'Immigration Detention Statistics', *Department of Home Affairs* (Webpage), <<https://www.Homeaffairs.Gov.Au/Research-and-Statistics/Statistics/Visa-Statistics/Live/Immigration-Detention>>.
- 30 'Immigration Detention Statistics', *Department of Home Affairs* (Webpage), <<https://www.Homeaffairs.Gov.Au/Research-and-Statistics/Statistics/Visa-Statistics/Live/Immigration-Detention>>.
- 31 'Immigration Detention Statistics', *Department of Home Affairs* (Webpage), <<https://www.Homeaffairs.Gov.Au/Research-and-Statistics/Statistics/Visa-Statistics/Live/Immigration-Detention>>.
- 32 Based on operational capacity rather than surge capacity.
- 33 See, for example, Australian Human Rights Commission, *Inspection of Christmas Island Immigration Detention Centre* (Report, 2017) 11–12.
- 34 See, for example, Australian Human Rights Commission, *Inspection of Christmas Island Immigration Detention Centre* (Report, 2017) 12.
- 35 Department of Home Affairs, *Response to Australian Human Rights Commission Recommendations: Christmas Island Immigration Detention Centre* (Response to Recommendations, October 2018) 1.
- 36 Australian Border Force, 'Update on Yongah Hill Immigration Detention Centre Incident' (Media Release, 3 September 2018).
- 37 Department of Home Affairs, *Response to Australian Human Rights Commission Recommendations: Christmas Island Immigration Detention Centre* (Response to Recommendations, October 2018) 3–4.
- 38 Department of Home Affairs, *Response to Australian Human Rights Commission Recommendations: Christmas Island Immigration Detention Centre* (Response to Recommendations, October 2018) 4.
- 39 Australian Human Rights Commission, *Inspection of Brisbane Immigration Transit Accommodation* (Report, 2017) 12; Australian Human Rights Commission, *Inspection of Christmas Island Immigration Detention Centre* (Report, 2017) 15–16; Australian Human Rights Commission, *Inspection of Maribyrnong Immigration Detention Centre* (Report, 2017) 15–16; Australian Human Rights Commission, *Inspection of Melbourne Immigration Transit Accommodation* (Report, 2017) 14; Australian Human Rights Commission, *Inspection of Villawood Immigration Detention Centre* (Report, 2017) 16; Australian Human Rights Commission, *Inspection of Yongah Hill Immigration Detention Centre* (Report, 2017) 14–15.
- 40 Department of Home Affairs, *Response to Australian Human Rights Commission Recommendations: Christmas Island Immigration Detention Centre* (Response to Recommendations, October 2018) 3–4.
- 41 Australian Human Rights Commission, *Inspection of Adelaide Immigration Transit Accommodation* (Report, 2017) 11–12; Australian Human Rights Commission, *Inspection of Brisbane Immigration Transit Accommodation* (Report, 2017) 11–12; Australian Human Rights Commission, *Inspection of Christmas Island Immigration Detention Centre* (Report, 2017) 14–15; Australian Human Rights Commission, *Inspection of Maribyrnong Immigration Detention Centre* (Report, 2017) 15; Australian Human Rights Commission, *Inspection of Melbourne Immigration Transit Accommodation* (Report, 2017) 13–14; Australian Human Rights Commission, *Inspection of Perth Immigration Detention Centre* (Report, 2017) 12–13; Australian Human Rights Commission, *Inspection of Villawood Immigration Detention Centre* (Report, 2017) 15–16; Australian Human Rights Commission, *Inspection of Yongah Hill Immigration Detention Centre* (Report, 2017) 13–14.
- 42 Australian Human Rights Commission, *Inspection of Adelaide Immigration Transit Accommodation* (Report, 2017) 11–12; Australian Human Rights Commission, *Inspection of Brisbane Immigration Transit Accommodation* (Report, 2017) 11–12; Australian Human Rights Commission, *Inspection of Christmas Island Immigration Detention Centre* (Report, 2017) 14–15; Australian Human Rights Commission, *Inspection of Maribyrnong Immigration Detention Centre* (Report, 2017) 15; Australian Human Rights Commission, *Inspection of Melbourne Immigration Transit Accommodation* (Report, 2017) 13–14; Australian Human Rights Commission, *Inspection of Perth Immigration Detention Centre* (Report, 2017) 12–13; Australian Human Rights Commission, *Inspection of Villawood Immigration Detention Centre* (Report, 2017) 15–16; Australian Human Rights Commission, *Inspection of Yongah Hill Immigration Detention Centre* (Report, 2017) 13–14.
- 43 Department of Home Affairs, *Response to Australian Human Rights Commission Recommendations: Christmas Island Immigration Detention Centre* (Response to Recommendations, October 2018) 2.
- 44 Australian Human Rights Commission, *Human Rights Standards for Immigration Detention* (Report, 2013) 42.
- 45 Australian Human Rights Commission, *Inspection of Villawood Immigration Detention Centre* (Report, 2017) 19.
- 46 Australian Human Rights Commission, *Inspection of Villawood Immigration Detention Centre* (Report, 2017) 18–20.
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