Australian Government
Department of Home Affairs

19 July 2018

Ms Lucy Morgan
Australian Human Rights Commission
GPO Box 5218
Sydney NSW 2001

By email: lucy.morgan@humanrights.gov.au

Dear Ms Morgan

Thank you for your email of 17 January 2018 providing the report of the Australian Human Rights Commission (the Commission) monitoring visit to Perth Immigration Detention Centre.

The Department of Home Affairs (the Department) notes the issues raised in the report and its response is attached.

The Department notes that the Commission has referenced a 'single separation room' and requests that, prior to publishing the report, these references be amended to reflect the correct description for the room, which is 'High-Care Accommodation'.

If you would like to discuss the Department's response, please contact [redacted]

Yours sincerely

[redacted]

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July 2018

RESPONSE TO AUSTRALIAN HUMAN RIGHTS COMMISSION RECOMMENDATIONS

PERTH IMMIGRATION DETENTION CENTRE (PIDC)

The Department of Home Affairs (the Department) appreciates the Commission's role in oversighting detention practices and welcomes review of the immigration detention network that the Commission's report provides.

Recommendation 1
Where mechanical restraints are used on people in detention (particularly where there has been a change in practice), facility staff should provide a clear explanation of the reasons for the use of restraints.

The Department agrees with the Commission's recommendation. The issue identified in the Commission's report was limited to a 'small number of detainees' accommodated at the PIDC at a specific point in time, it is not seen as a systemic issue affecting the immigration detention network generally. Relevant Serco and Australian Border Force (ABF) staff operating in Western Australia have been formally reminded that requests for pre-approved use of force are to be considered on a case-by-case basis, taking into account the risks associated with individual detainees.

Recommendation 2
The Department of Immigration and Border Protection and facility staff should 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. Particular consideration should be given to limiting the use of mechanical restraints during medical consultations and during transit where the risk of escape is low.

The 'use of force' in immigration detention, including use of mechanical restraints, is governed by legislation and departmental detention policy and procedural instructions. Detention policy and instructions in relation to the 'use of force' were comprehensively reviewed in 2016 and updated in early 2017. These policy and procedural instructions are also included in the Department's Policy and Procedures Control Framework process currently being undertaken to ensure documents are in a consistent format and centrally available to all staff.

A revised Security Risk Assessment Tool (SRAT) was produced in 2016 to better support the changing nature of cohorts accommodated in the immigration detention network, and takes into account a broader range of considerations when assessing the risk of individual detainees. The SRAT provides a consistent and agreed set of principles around risk assessment and subsequent mitigation strategies. The SRAT considers each detainee's individual circumstances, including consideration of an individual's capability (e.g. age, frailty, medical condition) and intent (e.g. immigration pathway, behaviour, prevalence of incidents).

Detainees who are rated High or Extreme escort risk are restrained under pre-planned escort arrangements, noting Detention Superintendents are required to provide approval for all High or Extreme risk escort plans. If there are concerns that a detainee does not warrant mechanical restraint, then the appropriateness of the risk rating is reviewed and the matter escalated to the Detention Superintendent, who may, where necessary, provide alternative written direction on a case-by-case basis.

Similarly, should the detention Health Service Provider recommend that restraints not be used on medical grounds, this matter is escalated to the Detention Superintendent who may give final written direction on a case-by-case basis.

The 'use of force' policy settings have been recently reviewed and updated, and while the Department acknowledges the Commission's observations, its view is that the settings provide clear guidance to officers and provide flexibility regarding risk mitigation arrangements and the use of restraints on a case-by-case basis.

Recommendation 3
Facility staff should continue to explore options for providing excursions to secure sites suitable for people who are considered to present a higher risk.

The Facility Detention Service Provider (FDSP) is required to provide meaningful programs and activities (P&A) to the detainee cohort in immigration detention facilities. P&A refers to the range of structured and unstructured social, welfare, recreational and educational events available to detainees. The monthly P&A Schedule takes account of a range of factors, including age, gender, religious beliefs, as well as a range of safety and security considerations. It is the ABF position that meaningful P&A can be delivered to detainees which meets their individual needs, without the requirement to facilitate external excursions.

The provision of P&A to detainees is governed by departmental policy and procedural instructions, whilst maintaining the integrity of Australia's migration program and its legal framework.

Detention policy and instruction in relation to P&A were comprehensively reviewed in 2016 and updated in 2017. These policy and procedural instructions are also included in the Department's Policy and Procedures Control Framework process currently being undertaken to ensure documents are in a consistent format and centrally available to all staff.

The P&A policy settings, including the availability and eligibility of excursions, has been recently reviewed, and while the Department acknowledges the Commission's observations, its view is that the current settings are appropriate to the current cohorts in immigration detention.

Recommendation 4
The Department of Immigration and Border Protection should review its policy regarding the use of mobile phones in immigration detention facilities, with a view to restricting mobile phone usage only in response to unacceptable risks determined through an individualised assessment process.

In order to satisfy the duty of care owed to detainees, a decision was made to remove mobile phones from Immigration Detention Facilities (IDF). While this policy is yet to be implemented due to an outstanding Court matter, the ABF's view is that allowing detainees to possess mobile phones poses significant risks to the safety and security of the immigration detention network (IDN). In the recent past, detainees have used mobile phones to commit crimes, including coordinating escapes, facilitating the entry of illicit substances into IDFs and organising illegal activities in the community.

The ABF does not consider that a 'piecemeal' approach to the implementation of mobile phone policy would be effective in addressing the risks posed by mobile phone use across the IDN. Further, allowing only a select group of detainees to use mobile phones may increase standover tactics within facilities and risk the safety of those detainees and the safety and security of staff and other detainees in IDFs.

However, to ensure that detainees have access to sufficient communication services, the ABF has installed additional landline telephones. Calls from these phones to other landlines in Australia are free and detainees can access calling cards to call other telephone numbers. Detainees also have access to email, post and fax services.

Recommendation 5

The Department of Immigration and Border Protection should accommodate people in immigration detention as close as possible to family members and friends living in the Australian community.

Placement decisions are part of a process of assessing and minimising risk to other detainees, service providers, visitors and staff. In making placement decisions, medical needs are given priority, and family and community links are carefully considered.

In considering the placement of an individual, the broader IDN is also considered. There is finite capacity across the national network and there is often an operational need to transfer detainees to rebalance the network and ensure detention facility stability.

Recommendation 6

Where a person in immigration detention has caring responsibilities, the Minister and Department of Immigration and Border Protection should consider their cases as a priority for release into alternative community-based arrangements.

The Department's Status Resolution Officers (SROs) undertake a *Detention Client Interview – Part C* (DCI) as soon as reasonably practicable after arrival of an individual at the place of detention. During the interview, SROs specifically ask the individual whether there is anyone in Australia they currently look after or provide care for.

In addition, a Community Protection Assessment Tool (CPAT) is completed for all detainees. The Department developed the CPAT as a decision support tool assisting SROs to assess the most appropriate placement for a client while status resolution processes are being undertaken. CPATs are conducted every three months during a person's detention. The CPAT documents risks, vulnerabilities and barriers to status resolution, as well as management strategies and activities to address those barriers. The alternative placements in this framework include:

- Community placement such as a Bridging Visa E.
- Residence Determination (community detention).
- Immigration Transit Accommodation, for low to medium risk clients for short periods pending removal.
- Held immigration detention for those who present a risk to the community and/or high risk clients, for short periods pending removal.
- Specialised held detention, tailored arrangements for complex or extreme risk clients.

Should caring responsibilities be identified through a DCI or CPAT, those responsibilities are given consideration by the Department in determining appropriate placement.

A person's caring responsibilities would need to be weighed against other factors, including immigration pathway and protection of the Australian community.

Recommendation 7
The Australian Government should introduce legislation to replace the current system of mandatory immigration detention with a case-by-case assessment process that takes individual circumstances into consideration. Closed detention should only be used as a last resort in circumstances where:

> **a) 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) the necessity for continued detention has been individually assessed by a court or tribunal, with further assessments to occur periodically up to a maximum time limit.**

Mandatory immigration detention is a necessary part of managing the status of unlawful non-citizens - people who do not have permission to arrive or stay in Australia. Immigration detention is an essential component of strong border control.

The decision to restrict a person's liberty is significant and it is not made lightly. Held detention is a last resort for the management of unlawful non-citizens. The decision not to grant a bridging visa (a non-substantive visa, which enables a non-citizen to remain lawfully in Australia), and hence to detain a person, is based on an assessment of risk. The following groups of people will generally not be granted a bridging visa:

- all illegal arrivals - until the health, identity and security risks which they present to the Australian community, are resolved
- unlawful non-citizens who present unacceptable risks to the community, including persons with adverse security assessments
- unlawful non-citizens who have repeatedly refused to comply with their visa conditions.

Children who arrive illegally are initially accommodated in alternative places of detention, such as Immigration Transit Accommodation. The priority remains that children, and where possible their families, are moved into community detention immediately following the completion of all necessary checks.

The Australian Government's position is that indefinite or otherwise arbitrary immigration detention is not acceptable. The length and the conditions of immigration detention are subject to regular review by senior departmental officers and the Commonwealth Ombudsman. These reviews consider the lawfulness and appropriateness of the person's detention, their detention arrangements and placement, health and welfare, and other matters relevant to their ongoing detention and case resolution.

Within the *Migration Act 1958* (the Act), detention is not limited by a set timeframe but is dependent upon a number of factors, including identity determination, developments in country information and the complexity of processing due to individual circumstances relating to health, character or security matters.

- These assessments are completed as expeditiously as possible to facilitate the shortest possible timeframe for detaining people in IDFs.
- Individuals with an adverse security assessment remain in immigration detention until they can be removed from Australia, either to their country of origin or a third country, where it is safe to do so.

If applicable, a detainee can also seek merits and judicial review of the visa refusal or cancellation decision that has resulted in them being an unlawful non-citizen, including a decision to refuse a bridging visa, once they are detained.

Recommendation 8
The Department of Immigration and Border Protection should ensure that the PIDC facility is only used for short periods of detention not exceeding one month.

Due to the finite capacity across the national detention network, limiting placement at PIDC to no longer than one month is not operationally viable.

Recommendation 9
The Minister and Department of Immigration and Border Protection should routinely consider all people in immigration detention (especially those with significant vulnerabilities) for release into alternative community-based arrangements.

Decisions on placement in the IDN are part of a process of assessing and minimising risk to other detainees, service providers, visitors and staff. In making placement decisions, medical needs are given priority, and family and community links are carefully considered.

In considering the placement of an individual in immigration detention, the broader IDN is also considered. There is finite capacity across the national network and there is often an operational need to transfer detainees to rebalance the network and ensure detention facility stability.

People in immigration detention have their cases regularly reviewed by departmental SROs, who consider placement and immigration status resolution options, consistent with legislation and government policy.

The CPAT is a decision support tool designed to support SROs to assess the most appropriate placement for a client while status resolution processes are being undertaken.

In this framework 'placement' is looking at the alternatives of:

a. Community, such as a BVE
b. Residence Determination
c. Immigration Transit Accommodation, for low-med risk clients for short periods pending removal
d. Held Immigration Detention for those that present a risk to the community and for high risk clients for short periods pending removal
e. Specialised Held Detention, bespoke arrangements for complex or extreme risk clients.

Depending on the circumstances of the case, the SRO may have an option to grant a bridging visa, provided the detainee meets the legislated requirements for grant. Alternatively, the SRO may have an option to refer the case to the Minister for the grant of a bridging visa under section 195A of the Act, or to make a residence determination under section 197AB of the Act. Both of these provide alternatives to held immigration detention and allow that person to reside in the community, while they resolve their immigration status.

While the Minster's powers under sections 195A and 197AB of the Act are non-compellable, the Department's Immigration Detention Values also state that detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.

Recommendation 10
The Department of Immigration and Border Protection should review the case management system for people in immigration detention to determine:

a) the extent to which the case management system addresses the needs of people in detention
b) whether the case management system is operating as effectively as possible to facilitate status resolution, including through ensuring that people in detention have access to sufficient advice about their status and options for resolution.

The Department is satisfied with the Status Resolution Service noting the overarching objectives are to:

- progress cases towards a timely immigration outcome by promoting the person's active engagement in the status resolution process and management of their own health and welfare
- effectively manage risks to ensure that barriers to status resolution are identified and addressed, and levels of service provision are appropriate for the management of vulnerability or case complexity
- support the person to make active decisions by communicating key messages and providing relevant information about their status resolution pathway
- manage, collect and share information to build an accurate, timely and reviewable record of case circumstances for the purpose of accountable and efficient program delivery.

In addition to the service, SROs promote self-agency by:

- talking early and often to the person about their status and pathway options
- reinforcing the responsibility of the person to stay engaged and make decisions
- providing the person with information about the immigration process in which they are engaged through verbal information sessions and the provision of fact/information sheets
- informing the person that relevant support services are available (for example a migration agent, International Organization for Migration (IOM), and other relevant stakeholders)
- ensuring the person understands how to access appropriate information products
- ensuring the person understands that the Department and any other decision makers can only make a decision based on the credibility of presented claims and submitted supporting documents.

Recommendation 11
Recognising the limited role of Status Resolution Officers, the Department of Immigration and Border Protection should introduce capacity for Status Resolution Officers to provide people in detention with appropriate information and referrals to independent migration and legal advice.

As soon as reasonably practicable after a person is detained under section 189 of the Act, they are provided with a Very Important Notice (VIN). The VIN sets out information that is required to be given to a detainee under section 194 of the Act. Besides stating that a detainee is eligible to apply for a visa within certain timeframes and their options for leaving Australia, the VIN also advises that a detainee may seek legal or migration advice.

Under section 256 of the Act, detainees must be given reasonable facilities for obtaining legal advice and/or representation in relation to his or her immigration detention, should they wish to access such services. Detainees may access the information necessary for them to choose their legal representative. This may be done through a community telephone directory or via public domain information via the Internet. The Department does not make recommendations or endorse any particular provider of legal services.