



Australian Government
Department of Immigration and Citizenship

**Response to the Australian Human Rights Commission Statement on
Immigration Detention at Curtin**

Introduction

The Department of Immigration and Citizenship (DIAC) welcomes the opportunity to respond to the Australian Human Rights Commission (AHRC) *Public Statement on Immigration Detention in Curtin*.

DIAC places a high value on the work of the AHRC and appreciates the AHRC's substantial recognition of the hard and consistent efforts of all those staff supporting the management of clients at Curtin Immigration Detention Centre (Curtin IDC).

The AHRC has outlined a number of key issues related to Immigration Detention Curtin IDC. DIAC comments in response to these recommendations are outlined below.

Recommendation 1: The Australian Government should end the current system of mandatory and indefinite immigration detention.

The Australian Government should implement reforms it announced in 2008 under which immigration detention is to be used as a last resort and for the shortest practicable period, people are to be detained in the least restrictive environment appropriate to their individual circumstances, and there is a presumption that people will be permitted to reside in the community unless they pose an unacceptable risk.

The need to detain should be assessed on a case-by-case basis taking into consideration individual circumstances. That assessment should be conducted when a person is taken into immigration detention or as soon as possible thereafter. A person should only be held in an immigration detention facility if they are individually assessed as posing an unacceptable risk to the Australian community and that risk cannot be met in a less restrictive way. Otherwise, they should be permitted to reside in community-based alternatives while their immigration status is resolved.

The Australian Government considers immigration detention to be an essential component of strong border control. In line with the Government's approach to immigration detention, mandatory detention is applicable to the following groups of people:

1. all unauthorised arrivals for the management of health, identity and security risks to the community;
2. unlawful non-citizens who present unacceptable risks to the community; and
3. unlawful non-citizens who repeatedly refuse to comply with their visa conditions.

people our business

The decision to detain is based on an assessment of risk. In the case of a person who arrived in Australia lawfully and subsequently became unlawful, the decision to detain is based on an assessment of the risk that person may present to the Australian community, or to the integrity of the migration program through repeated refusal to comply with their visa conditions. In the case of irregular maritime arrivals who have not given the Government an opportunity to assess any health, identity or security risks to the community they may present, the Government has made the judgement that they will be detained for the purposes of assessing and managing those risks.

Mandatory detention, along with strong border security measures, ensures the orderly processing of migration to our country.

It remains the Government's position that indefinite or otherwise arbitrary immigration detention is not acceptable and the length and the conditions of the detention are subject to regular review. The reviews consider the lawfulness and appropriateness of the person's immigration detention, their detention arrangements and other matters relevant to their ongoing detention and case resolution. Continuing immigration detention is dependent upon factors such as the management of health, identity and security risks and ongoing assessments of risks to the community or the integrity of Australia's migration programs.

A person in immigration detention can seek judicial review of the lawfulness of their detention in the Federal Court or High Court of Australia. A person in immigration detention may generally also seek merits or judicial review of the visa-related decision that resulted in them remaining or becoming an unlawful non citizen and being liable for detention, including a decision to refuse a bridging visa once they are detained.

We note the Australian Human Rights Commission's (AHRC) previous position that a legitimate purpose of immigration detention can be for the purposes of conducting security checks. The screening mechanisms in place ensure that Australia is protected from people who may pose a risk to our national security. Detention of unauthorised arrivals for the purpose of managing health, identity and security risks to the community is a reasonable and proportionate approach which also enables Australia to meet its obligations to those who are found to be in need of protection. Following an announcement on 18 October 2010, the Government has expanded its existing community-based arrangement program, moving significant numbers of people out of immigration detention facilities into community-based accommodation.

DIAC is managing the implementation of the expanded community-based arrangements. The Minister's Council for Immigration Services and Status Resolution (CISSR) is working closely with DIAC to support this process.

Recommendation 2: The Australian Government should comply with its international human rights obligations by providing for a decision to detain a person, or a decision to continue a person's detention, to be subject to prompt review by a court. To comply with article 9(4) of the ICCPR, the court must have the power to order the persons release if their detention is not lawful. The lawfulness of their detention is not limited to domestic legality – it includes whether the detention is compatible with the requirements of article 9(1) of the ICCPR, which affirms the right to liberty and prohibits arbitrary detention.

DIAC notes the AHRC's view that Australia is not complying with its international obligations in this regard and that the AHRC has cited the views of the United Nations Human Rights Committee in *A v. Australia*¹. Australia disagreed with that Committee's interpretation of Article 9(4) of the International Covenant on Civil and Political Rights and expressed to the Committee its view that, under that Article, judicial review needs to be available to consider the lawfulness of detention in the context of domestic law rather than the issues of arbitrariness.

Nevertheless, the Government is considering ways of improving the review of the appropriateness of detention.

As stated in the response to recommendation 1, the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, are subject to regular review. These reviews are conducted every three months and alternate between senior officer reviews conducted by DIAC and Commonwealth Ombudsman reviews. The reviews consider the lawfulness and appropriateness of the person's detention, their detention arrangements and other matters relevant to their ongoing detention and case resolution.

In addition, a person in immigration detention can seek judicial review of the lawfulness of their detention in the Federal Court or High Court of Australia. A person in immigration detention because of the refusal of a visa or cancellation of a visa, may generally also seek merits or judicial review of the visa decision that resulted in them becoming an unlawful non-citizen and being liable for detention, or of a decision to refuse a bridging visa once they are detained. This is consistent with Article 9(4) which, in Australia's view, requires courts to be empowered to assess whether the detention is lawful according to domestic law.

Immigration detention is also subject to regular scrutiny from external agencies such as the AHRC, the Commonwealth Ombudsman, the United Nations High Commissioner for Refugees and the CISSR to ensure people in immigration detention are treated humanely, decently and fairly.

Recommendation 3: Until the above recommendations are implemented, the Australian Government should avoid the prolonged detention of asylum seekers by complying with its *New Directions in Detention* policy under which detention of asylum seekers is for conducting health, identity and security checks. The security check should not be interpreted as requiring a full ASIO security assessment before an individual is released from an immigration detention facility. Rather, the security check should consist of an assessment of whether an individual would pose an unacceptable risk to the Australian community if they were given authority to live in the community. That assessment should be made when the individual is taken into immigration detention, or as soon as possible thereafter.

¹ *A v Australia* [1997] UNHRC 7; CCPR/C/59/D/560/1993 (30 April 1997)

People who arrive in Australia without the appropriate authority do not provide the Government with an opportunity to assess any risks they might pose to the Australian community prior to presenting at the border. These unauthorised arrivals are detained for the purposes of managing health, identity and security risks. In contrast, people who arrive lawfully have already been assessed including in relation to character, health, identity and bona fides.

The Government's approach to immigration detention is based on a set of values that take a risk-based approach to immigration detention and seek a prompt resolution of cases. The values commit DIAC to detention as a last resort, to detention for the shortest practicable period and to the rejection of indefinite or otherwise arbitrary detention.

DIAC uses a number of programs which provide flexibility in the provision of services to people in immigration detention. These arrangements include community detention facilitated by organisations such as the Australian Red Cross, detention in immigration residential housing or immigration transit accommodation and foster care arrangements for unaccompanied minors.

All clients in immigration detention are subject to regular departmental senior officer reviews and Commonwealth Ombudsman reviews, which include assessment of the appropriateness of the client's placement. In considering the recommendations from these reviews and balancing the risks to the Australian community, DIAC explores alternative placement options. Where considered appropriate, DIAC also refers cases to the Minister for consideration of a community detention placement in accordance with the s197AB Ministerial intervention guidelines.

The Minister for Immigration and Citizenship announced on 29 June 2011 that the Government met its commitment to move the majority of children and a significant number of vulnerable families from facility based detention into community-based arrangements by the end of June 2011. As of 12 September 2011, the Minister had approved 1887 people for community detention placement, including 890 children (which also includes 302 unaccompanied minors).

DIAC is working to move the current priority groups into community detention over the coming months. These groups include the youngest unaccompanied minors, families with young children, single parent families, families with pregnant women and other particularly vulnerable families, older unaccompanied minors and other family groups. DIAC is also looking to place a small number of low risk, compliant, vulnerable single adult men who may have experienced torture or trauma into community detention. The capacity for this to occur is limited by the availability of suitable accommodation and support services in the community.

Recommendation 4: The Minister for Immigration and DIAC should make the greatest possible use of community-based alternatives to holding people in immigration detention facilities. This should include:

- **Alternatives to detention such as bridging visas. While people who arrive in excised offshore places are barred from applying for a bridging visa under the Migration Act, the Minister retains discretionary powers to either lift that bar, or to grant a bridging visa to a person in immigration detention.**

- **Alternative forms of detention such as community detention. If a person cannot be granted a bridging visa and must be held in immigration detention, the Minister and DIAC should make the greatest possible use of community detention. This should apply to all people in immigration detention, particularly those who meet the priority criteria under the Residence Determination Guidelines.**

While immigration detention is a key component of immigration compliance, it is only one tool in a suite of management options available. If a client is not an unauthorised arrival and poses no unacceptable risk to the community or the integrity of Australia's migration programs, a bridging visa is usually granted while their status is resolved and they remain in the community.

All clients in immigration detention are subject to regular departmental senior officer reviews and Commonwealth Ombudsman reviews, which include assessment of the appropriateness of the client's placement. In considering the recommendations from these reviews and balancing the risks to the Australian community, DIAC explores alternative placement options. Where considered appropriate, DIAC also refers cases to the Minister for consideration of a community detention placement in accordance with the s197AB Ministerial Intervention guidelines under the *Migration Act 1958*.

On 18 October 2010, the Australian Government announced an expansion of its existing Residence Determination (or community detention) program to progressively move significant numbers of children and vulnerable family groups out of immigration detention facilities and into community-based accommodation by the end of June 2011. Whilst residence determination is not a visa grant, it allows children and their families to move about in the community under the care of the Commonwealth and its Non-Governmental Organisation (NGO) partners.

As per the response to recommendation 2, the majority of children and a significant number of vulnerable families were moved from facility based detention into community-based arrangements by the end of June 2011. DIAC is working to move the current priority groups into community detention over the coming months. As stated in the response to recommendation 3, the capacity for this to occur is limited by the availability of suitable accommodation and support services in the community.

The Australian Red Cross is the lead agency contracted by DIAC to deliver community detention. The Australian Red Cross are working with other NGOs, including church groups, to source accommodation without putting extra pressure on housing that is already in demand from vulnerable Australians.

Recommendation 5: In relation to processing of refugee claims:

- **the Australian Government should take ongoing steps to ensure the quality, fairness and rigour of the process used to assess peoples refugee claims**

In July 2011, the Government strengthened the senior reviewer ranks of Independent Protection Assessment Office (IPAO) reviewers by appointing four highly experienced and skilled refugee decision makers from the Refugee Review Tribunal (RRT) to fill the roles of Principal Reviewer and Senior Reviewers.

These appointments provide a heightened level of professional leadership and supervision of reviewers' performance and quality of work. Additional appointments of RRT members were made in July 2011 and further appointments are anticipated.

A strong professional development program has been maintained throughout 2010-2011 and is being further developed with a practical focus on training and workshopping key natural justice and refugee law issues, country of origin information, interview techniques and the effective use of interpreters.

The Principal Reviewer and Senior Reviewers play a key role in this professional development, providing professional leadership, guidance and advice, including quality assuring of decisions, counselling, supporting and monitoring reviewers' work.

Since April 2010, six training workshops and/or inductions have been held with reviewers to address effective and timely decision-making, the use of country information, decision quality and consistency, and professional development needs.

Workshops and induction sessions have also focussed on consistency in approaches to decision-making (a Code of Conduct issue), use of and consistency in interpretation of country information as well as on complementary protection and humanitarian issues.

International country experts are sourced to provide presentations to reviewers on the circumstances prevailing in particular countries of interest, for example, Afghanistan and Pakistan.

Each workshop program has contained specific training on natural justice requirements, focussing from December 2010 on the High Court Decision in *M61 and M69 v Commonwealth*.

RRT country advisers and refugee law experts also participate in the training and development of reviewers, both within and outside formal workshops. New reviewers are required to obtain the advice of the RRT's legal advisers for their first five decisions and have ongoing access to this legal service and to country advice staff through a MOU operating between the IPAO and the RRT.

Mentoring arrangements for new reviewers operate to ensure they are oversighted initially by their Senior Reviewer and are assisted in the conduct of their reviews by an experienced reviewer mentor. Each new reviewer also has their first five draft recommendations commented on by their mentor and their Senior Reviewer.

Quality assurance is also provided in other ways, including by the Courts, the Principal Reviewer and the CEO IPAO.

From 1 January 2011 to date 247 persons have sought judicial review out of 403 'affirm' reviewer reports. There have been 14 reviewer reports upheld by the Courts and six reports found to contain legal error.

- **DIAC should increase information flow to asylum seekers in immigration detention so that each person is kept informed about processing steps, estimated timeframes and progress with their individual case**

DIAC agrees with this recommendation and has recently been implementing a range of measures to improve information flow to clients. DIAC staff work with complex and challenging caseloads in dispersed and remote places. To address this, a number of formal communication guides and client information sheets have now been developed for use by Case Managers to ensure that they provide accurate information to clients about the options available to them to resolve their immigration status. In addition this enables them to also provide regular information to clients about the expected timeframes in relation to the progress of their case.

Regular face to face team briefings are held between staff and team leaders at immigration detention centres and significant issues around information flow and/or communication are raised with Global Managers and Program Leaders so that they can be addressed. Policy and program support areas provide staff with specific scripts, Frequently Asked Questions, notification letters and information sheets to enable staff to communicate clearly with clients about the options available to them and the expected timeframes around the progress of their individual case.

Regular visits to immigration detention centres by senior staff and frequent communication in the form of video or telephone conferences (including information sessions) help to underpin a two-way communication process. This also ensures DIAC Case Managers have accurate information about policy parameters that help them inform clients about how they can regularise their immigration status, including making decisions to discontinue their claims for asylum and depart from Australia.

- **DIAC should ensure that IAAAS contractual and funding arrangements provide for migration agents to spend sufficient time with their clients preparing for interviews and lodgement of written submissions**

DIAC's Immigration Advice and Application Assistance Scheme (IAAAS) Service Providers are contractually obligated to ensure that their clients are regularly kept informed of the progress of their claims for protection.

IAAAS Service Providers produce their own information material that describes their agency-specific arrangements for managing contact between themselves and their clients. Communication between a client and their migration agent is regular and ongoing throughout the client's immigration pathway.

IAAAS Service Providers are also required to explain, through the use of an interpreter, the extent of the service to be provided including time spent in preparation for an interview or lodgment of a written submission.

DIAC and the IAAAS Service Providers have an agreed IAAAS Communication Protocol for clients and Providers under Protection Obligations Evaluation (POE) arrangements. This protocol sets out the expectations of DIAC, the IAAAS Service Providers and DIAC's Detention Service Provider, Serco, in facilitation of timely contact between clients and providers.

The amount of time spent on preparation for interview or lodgement of written submissions can vary on a case by case basis and is dependent on the complexity of the claims.

DIAC continues to improve the facilitation of timely communication between provider and client, including the provision of sufficient opportunities for providers to assist clients with the lodgement of written submissions. In September 2011, DIAC commissioned an extra 8-10 rooms at Curtin IDC specifically for the use of providers to interview their clients. Provider access to their clients is facilitated within 24 hours of a request by either client or provider.

A client who is unable to contact their agent or is unhappy with the level of service provided can complain to the Director of Client Support and Liaison Section who manages the delivery of IAAAS services to people in immigration detention or, alternatively, to the Commonwealth Ombudsman.

- **DIAC should ensure that all asylum seekers in immigration detention are aware of their ability to lodge a complaint about their migration agent with the Office of the Migration Agents Registration Authority**

When clients are engaged with IAAAS they are given comprehensive information about the service in an *IAAAS Client Information Leaflet*. This leaflet includes advice regarding complaint mechanisms. Clients sign an acknowledgment that they fully understand the information and that they agree to use the service.

The *IAAAS Client Information Leaflet* informs clients that if they are dissatisfied with the services provided to them by their IAAAS provider, they may complain to DIAC. Clients are informed that DIAC will investigate the complaint and, where appropriate, refer the matter to the Office of Migration Agents Registration Authority (MARA) which is responsible for regulating the migration advice industry. The leaflet advises clients that MARA will independently investigate their complaint and, if appropriate, take disciplinary action against the migration agent.

- **additional reviewers should be appointed to minimise waiting periods for independent merits review interviews and decisions**

The Government has recently strengthened the management of IPAO reviewers by appointing a Principal Reviewer and 3 Senior Reviewers. Each Senior Reviewer has responsibility for ensuring their group of reviewers are case managing their reviews effectively and efficiently. The IPAO has key performance indicators to ensure key process milestones are being met in a timely manner and assist in identifying any risk areas.

The appointment of additional reviewers, most of whom are RRT members, will make a significant difference in the timeliness of the conduct of reviews and improved decision making through their mentoring of newer reviewers.

During the period 1 July 2010 to 30 June 2011, 3,160 review requests were made by refugee claimants. Of these claims, 1,802 interviews were held and 1,392 recommendations were completed. During this period, the average time taken from interview to reviewer recommendation was 53 days and from review request to reviewer recommendation was 169 days.

With the Government's appointment of additional reviewers during 2010-2011, and with further appointments anticipated, a significant reduction in the time taken to allocate cases to reviewers, conduct interviews and finalise decisions is expected.

- **DIAC should provide all asylum seekers in immigration detention who receive a negative decision on their refugee status with contact details for legal and community groups able to provide assistance with judicial review**

When asylum seekers are notified of negative decisions, they are informed that they may seek judicial review if they believe the decision is wrong in law. The notification letters for irregular maritime arrivals also provide the addresses of the national legal aid website and the access to justice website for information on the possibility of free legal advice. Both the Legal Aid website and the Access to Justice website contain easy to find and up to date links to a range of relevant organisations, including Community Legal Centres, and the contact details of the Legal Aid Commissions in each state. The Access to Justice website also has an easy to use language assistance feature, which allows the contact details of Legal Aid and Community Legal Centres to be viewed in 17 different languages.

DIAC has also developed three fact sheets that outline the judicial review process. The *Litigation Involving Migration Decisions* fact sheet provides a general outline of merits review and judicial review. The *Seeking Protection in Australia* fact sheet provides information for irregular maritime arrivals assessed under the Protection Obligations Determination process and is available in English, Arabic, Hazaragi, Kurdish, Persian, Tamil and Dari. The *Options Following Negative Refugee Decision* fact sheet, which is currently available in English, Arabic, Burmese, Dari, Farsi, Indonesian, Kurdish, Tamil and Vietnamese, provides information on the availability of judicial review. It also contains the contact details for Legal Aid in each state.

Recommendation 6: DIAC should change its approach to case manager's engagement with recognised refugees in immigration detention facilities about the option of voluntary removal. Case Managers should not propose the voluntary removal of recognised refugees to their country of origin. Rather, DIAC efforts should be targeted towards ensuring that recognised refugees are removed from immigration detention facilities as quickly as possible.

A key focus of the case management role is to keep clients informed of all their immigration options as they transit through their immigration pathway. Case Managers do not, however, advise clients about their individual circumstances and a preferred way forward. This is a matter for the client's IAAAS provider. In rare circumstances, DIAC considers that discussions about the option of voluntary return with clients who have been found to be a refugee may be appropriate. Case Managers will continue to use their professional judgment about when to have such discussions with clients and these conversations will be carried out with all due sensitivity and respect.

Recommendation 7: The Australian Government should adopt a specific mechanism to address the situation of stateless persons. This should include a statelessness determination process, mechanisms to ensure that people are not subjected to prolonged detention while they go through the process, and access to sustainable outcomes such as through the creation of a permanent visa class for stateless persons. Pending the adoption of such a mechanism, the Australian Government should ensure that stateless persons are not subjected to prolonged or indefinite detention.

Noting that statelessness is not in itself a ground for protection under the *1951 Refugee Convention* nor covered by the proposed Complementary Protection legislation, DIAC has been actively reviewing international practice in relation to managing the issues that arise due to the practical barriers to arranging removal when a stateless person who is not owed a protection obligation is not lawfully in the territory of a State. This review includes looking at models of determination processes, and extends to the consideration of pathways for resolution of cases where a person is not a refugee and is unable to be returned to their country of former habitual residence.

Recommendation 8: DIAC and ASIO should take all possible steps to ensure that outstanding ASIO security assessments for people in immigration detention facilities are completed as quickly as possible, particularly for those people who have already been detained for prolonged periods.

DIAC and the Australian Security Intelligence Organisation (ASIO) continue to liaise regularly and discuss available options to expedite outstanding security assessments. As noted in the report, DIAC has asked ASIO to prioritise long-standing and complex case assessments.

Recommendation 9: People in immigration detention subject to ASIO security assessments should be provided with greater information about the processes and timeframes involved and about progress with their individual assessments.

DIAC is unable to comment on the security assessment process and timeframes as they lie outside DIAC's portfolio responsibility and as they are matters of national security this information is not disclosed to DIAC. However, as noted above, DIAC continues to closely engage with ASIO on expediting outstanding security assessments.

Recommendation 10: The Australian Government should ensure that durable solutions are provided for people who have received adverse security assessments from ASIO. In doing so:

- **these people should be removed from immigration detention facilities as soon as possible**
- **alternative placement options should be considered including less restrictive places of detention than high-security Immigration Detention Centres and community detention, if necessary with conditions to mitigate any identified risks**

- **possible visa options should be considered, for example the Minister for Immigration could exercise discretionary power to grant temporary visas with appropriate conditions attached**
- **the Australian Government should not propose then voluntary removal of recognised refugees in this situation to their country of origin**

The Government is committed to managing the situation of irregular maritime arrivals with adverse security assessments in a manner consistent with both Australia's international non-refoulement obligations and the Government's obligation to protect the Australian community from threats to security. Consistent with this, options are being explored to have these people removed from Australia. However, given the complex nature of these cases, this may not be quickly achievable for some individuals. These individuals will remain in immigration detention while removal options continue to be explored.

Recommendation 11: The Australian Government should introduce reforms so that all people who have received adverse security assessments from ASIO:

- **are provided with information sufficient for them to be reasonably informed of the basis of the adverse assessment**
- **are provided with access to merits review by the Administrative Appeals Tribunal**
- **are provided with access to greater information about the basis of the adverse assessment if they apply for judicial review, either directly or through an appropriate person – for example, a Special Advocate able to view both an original and a redacted summary of the assessment.**

As stated above, questions of this nature fall outside DIAC's portfolio responsibility so DIAC is consequently unable to respond to them.

Recommendation 12: People should not be held in immigration detention in remote locations such as Curtin IDC. If people must be held in immigration detention facilities, they should be located in or near metropolitan areas.

If the Australian Government intends to continue to use Curtin IDC, it should reduce the number of people detained there, cease the practice of accommodating people in dormitory bedrooms and return those rooms to their original use as space for recreational activities.

DIAC is cognisant of the issues raised by the AHRC in operating facilities in remote locations. Due to the high influx of irregular maritime arrivals and subsequent pressures on existing facilities, the opportunities in sourcing suitable facilities of sufficient size in or near metropolitan areas proved difficult, particularly at short notice. The Curtin facility provided an immediate solution to the pressing need to accommodate irregular maritime arrivals.

DIAC seeks to make use of available Commonwealth property but is also working on finding suitable accommodation nearer to metropolitan areas and has achieved worthy results with the recently opened Pontville facility, located about 30 kilometres north of Hobart, as well as two additional facilities due to come on line in the next few months. Both facilities are located within close proximity to major capital cities. They are Yongah Hill, which is situated approximately 80 kilometres north-east of Perth, and Wickham Point which is located about 35 kilometres south-east of Darwin.

In relation to the use of dormitory style accommodation, it is DIAC's ongoing intention to reduce the client population at Curtin IDC to, or below, its operational capacity of 1200 people. It is hoped that with the addition of the Pontville, Yongah Hill and Wickham Point facilities, DIAC can reduce the number of clients accommodated at Curtin IDC to, or below, operational levels. This would allow for all of the dormitories at Curtin IDC to be returned to recreational facilities.

In addition, a number of activity areas are due for completion soon, including a large grassed oval, a number of cricket pitches and volleyball courts. A large multi-purpose area is also due for completion in October 2011. These infrastructure developments will increase the number of recreational areas available to people at Curtin IDC.

Recommendation 13: DIAC should ensure that all people in immigration detention at Curtin IDC have access to:

- **adequate outdoor recreation spaces including grassy and shaded areas**
- **adequate indoor areas for educational and recreational activities**
- **a range of recreational and educational activities conducted on a regular and frequent basis**
- **a freely accessible library area stocked with reading materials in languages spoken by people in detention**
- **adequate access to communication facilities including internet, fax, and incoming and outgoing telephones**
- **a secure space for storing their personal belongings**

DIAC ensures that all clients housed at immigration detention facilities have access to adequate facilities. At Curtin IDC this includes:

- indoor and outdoor recreation areas;
- 6 classrooms for education purposes;
- 6 recreation rooms that provide clients with pool and table tennis tables and electronic games;
- 3 library buildings;
- 6 rooms for religious purposes; and
- 6 gymnasiums provided with gym equipment across the site.

DIAC is aware that a number of these buildings may be used for contingency accommodation at times and marquees have been provided for the services that these buildings would have been used for. The use of the recreation buildings for accommodation is always for the shortest possible time.

Following the Commission's visit in May 2011, a number of outdoor cabana areas (similar to those on Christmas Island) have been constructed throughout the Curtin facility. In addition, the large grassed oval has been top dressed and reseeded and will be available for use in the near future. Along with the oval are other sporting facilities already available including cricket nets, basketball and volley ball courts. A number of outdoor shaded areas are also provided throughout the site for clients to sit around and make tea and coffee. They are also provided with ice making machines, tables and chairs. The site also has an all weather facility for indoor cricket and other sports such as volleyball and tennis.

There is currently a program in place to landscape the clients' accommodation and recreation areas. This is progressing taking into account the final site drainage plans. A large number of plants, including trees and grass, have already been planted.

DIAC has been working hard with Serco to increase the number of activities available to people at the Curtin IDC. The range and number of activities has increased significantly, with over six hundred scheduled activities for the month of September 2011.

Curtin IDC currently has two libraries onsite which are stocked with a range of reading materials in different languages. Serco has ordered additional stock for the library to cater for the number of clients and different nationalities at the facility. This is the subject of ongoing monitoring by DIAC to ensure that the clients' needs are being met.

A multi-purpose room is due to come online in October 2011, which will increase the number of computers for client use at Curtin IDC. Outgoing telephones have also been increased, and will increase further with the opening of the multi-purpose room. When the site is fully functional there will be 120 phones for clients to use and 45 internet stations. Additional interview rooms have also come online which will allow for greater access to private communication areas for clients.

People in immigration detention at Curtin IDC have access to secure storage of personal items and valuables through Serco in Serco's property area. In addition, all bedrooms are provided with two safes for storing personal belongings.

Recommendation 14: DIAC and Serco should ensure that people in immigration detention at Curtin IDC are provided with regular opportunities to leave the detention environment on external excursions. DIAC should implement consistent standards for external excursions across the detention network. Standards for the conduct of a minimum number of external excursions should be specified in the Serco contracts applicable to all detention facilities, and financial penalties should be applied if those standards are not met.

DIAC continues to work with Serco to ensure that clients have access to external excursions. The number and variety of external excursions from Curtin IDC has been increased over previous months with the addition of activities including sporting matches with local Derby teams, visits to a cattle station, tours of Derby, swimming and volunteer opportunities in the Derby community such as renovating a local Indigenous shopfront. This is an area of ongoing audit and management attention onsite at Curtin IDC, with a view to encouraging further opportunities for people in immigration detention to have access to excursions.

DIAC has also sought submissions from local community representatives who may be interested in participating in a Directed Persons arrangement which would also facilitate further opportunities for clients at Curtin IDC to leave the detention environment on external excursions.

DIAC is very mindful of the need to have a rich program of meaningful activities for all people in immigration detention and is working very closely with Serco and other key stakeholders, which include the CISSR, who are the Minister's reference group, to improve programs and activities at all facilities. Serco advises that they are developing a strategic re-vamped programs and activities model with all relevant stakeholders and have also recruited a research company to engage with clients to establish the types of programs and activities they would like to have the opportunity to be involved in.

Opportunities to explore the aspect of this recommendation relating to defining a minimum number of external excursions for example, is provided through the research process that Serco will undertake, as well as through conversations with key stakeholders. Similarly, opportunities to explore and/or refine management methods appropriate to ensuring the implementation of a re-vamped schedule are provided through those processes as well as through contractual arrangements.

Recommendation 15: DIAC and Serco should ensure that:

- **staff training and performance management mechanisms include a strong focus on treating all people in immigration detention with humanity and with respect for their dignity**
- **all staff refer to people in immigration detention by their name – their identification number should only be used as a secondary identifier where this is necessary for clarification purposes**
- **people in immigration detention are able to lodge both internal and external complaints confidentially and without fear of repercussions.**

DIAC is committed to ensuring that people in immigration detention are treated fairly, with dignity and respect. DIAC welcomes the AHRC's observation that a positive culture shift has occurred over the past five or six years in the way people are treated in immigration detention.

All staff have been instructed, and are expected, to refer to people in immigration detention by their name. In situations where this does not occur, the staff member will be counselled. Management have reiterated this expectation on a number of occasions to ensure all staff are made aware.

The services delivered by Serco to people in immigration detention are underpinned by the Immigration Detention Values (IDVs) and the Detention Services Contract (DSC) has been developed to ensure that it takes into account the seven IDVs, and in particular one of which states that people in detention are treated fairly and reasonably within the law and that detention will ensure the inherent dignity of the human person. Should a member of staff be found to not abide by these requirements, they will be counselled in line with DIAC's or Serco's performance management framework or, at its most serious, removed from their role.

Key performance indicators were agreed to by DIAC and Serco that focus on, amongst other areas, the implementation of those IDVs in all of Serco's interactions with people in immigration detention.

The decisions, actions and behaviour of Serco staff in dealing with people in immigration detention are underpinned by a Code of Conduct that is intended to provide an ethical framework for Serco's service delivery. It advocates values that include integrity, honesty and impartiality, in line with the IDVs.

In accordance with the DSC, Serco must ensure that all its personnel are trained and qualified prior to commencing duties. This training includes cultural awareness, mental health awareness, human rights, human interaction and regular refresher training. Serco must engage a Level IV accredited trainer to select and coordinate the delivery of training for its personnel. The DSC requires that the Code of Conduct is integrated into training and development programs, particularly those for leadership, management and supervisor training.

DIAC can and does regularly test Serco's compliance with the training requirements through monitoring at facilities. The DSC also requires that specific mention of the Code of Conduct is made in performance agreements for Managers and that performance appraisal and associated discussions focus on this key area.

Clients in immigration detention at Curtin IDC are encouraged to provide feedback and lodge complaints if necessary. There are no repercussions for either of these actions and staff regularly advise people in immigration detention at Curtin that their feedback is valued and assists in managing service provision arrangements. This is reiterated at Client Consultative Group meetings during induction and also during regular interactions with clients in the facility. Should there be any substantiated allegations in relation to repercussions as a result of a complaint, then this would also be managed in terms of DIAC's or Serco's performance management frameworks.

Recommendation 16: An independent body should be charged with monitoring the provision of physical and mental health services in immigration detention, and adequate resources should be allocated to that body to fulfil this function.

DIAC monitors the delivery of physical and mental health services in immigration detention through:

- an expert advisory body called the Detention Health Advisory Group (DeHAG);
- input from the CISSR;
- external scrutiny and complaints processes;

- feedback from the Detention Health Services Provider, International Health and Medical Services (IHMS); and
- health reviews conducted by independent consultants.

The Detention Health Advisory Group (DeHAG)

The DeHAG and its Mental Health Sub-Group (MHSG) provides DIAC with independent expert advice to design, develop, implement and monitor health and mental health care services and policies for people in immigration detention. The DeHAG consists of key health and mental health professional and consumer group organisations including:

- Australian Medical Association;
- Royal Australian College of General Practitioners;
- Mental Health Council of Australia;
- Australian Psychological Society;
- Forum of Australian Services for the Survivors of Torture and Trauma;
- Victorian Health Promotion Foundation;
- Royal Australian and New Zealand College of Psychiatrists;
- Royal College of Nursing Australia;
- Public Health Association of Australia; and
- Australian Dental Association.

The Commonwealth Ombudsman's Office has an observer status on the DeHAG.

The DeHAG represents DIAC's commitment to working in an open and accountable manner with our key health stakeholders to improve the general and mental health of people under our care. The DeHAG's work program includes site inspections of all immigration detention facilities, including Curtin IDC. Following these inspections, the DeHAG has provided expert advice on a range of health issues, including mental health, dental services, communicable disease prevention and child health issues. DeHAG has also provided advice on safety concerns, including Occupational Health and Safety issues for some of the sites visited. These are followed up with relevant areas of DIAC.

The Council for Immigration Services and Status Resolution (CISSR)

The CISSR provides feedback to DIAC about the influence of health service delivery on the wellbeing of people in immigration detention, including how it can impact status resolution.

External Scrutiny and Complaints Processes

DIAC also receives feedback on health service delivery to people in immigration detention from organisations such as the Commonwealth Ombudsman and the Australian Red Cross.

The Commonwealth Ombudsman visits immigration detention facilities and scrutinises service delivery, including health services. It provides feedback to DIAC about possible issues with service delivery and DIAC follows up on the issues identified as required. The Australian Red Cross, through its work with people in immigration detention, also provides valuable feedback to DIAC about services delivery including health services.

Formal complaint mechanisms allow people in immigration detention, or their representatives, to raise their concerns directly to DIAC through the Global Feedback Unit. The Commonwealth Ombudsman and the AHRC also receive and investigate complaints about health services provision in immigration detention facilities. These organisations will, when required, advise DIAC of instances where they consider the provision of health care services has been deficient. DIAC considers this reporting and feedback carefully and follows up as appropriate, including with IHMS.

International Health and Medical Services (IHMS)

IHMS is part of International SOS (IHMS's parent company), which provides health services to a number of governments and companies. It has its own internal audit and assessment processes.

IHMS undertakes audits and assessments of its services in immigration detention facilities:

- **During 2009:** Internal audits against the Royal Australian College of General Practitioner (RACGP) Standards were conducted by IHMS head office personnel at a number of facilities.
- **April 2011:** An internal audit at Christmas Island facilities against RACGP standards was conducted by IHMS head office personnel.
- **May-Jun 2011:** A detailed audit was undertaken of the management processes and governance of health services. The audit was commissioned by IHMS and conducted by International SOS.
- **June 2011:** Each site conducted a self-assessment against the RACGP Standards.
- **Quarterly:** An internal audit of health records and medication records is conducted at each site.

DIAC has also commissioned various reviews of health services delivery in detention facilities as outlined below:

Review of Health Service Delivery Model Christmas Island

DIAC engaged Phillipa Milne and Associates to provide independent expert advice on the appropriate level of health care services to be provided to people in immigration detention on Christmas Island. The report was completed in June 2010.

Review of Health Service Delivery Model Mainland Detention Facilities

DIAC engaged Phillipa Milne and Associates to provide independent expert advice on the appropriate level of health care services to be provided to people in immigration detention facilities on the Australian mainland. The report was completed in October 2010.

Royal Australian College of General Practitioners (RACGP) Accreditation Pilot

DIAC commissioned Quality in Practice (QIP) to review the RACGP *Standards for health services in Australian immigration detention centres*, develop an accreditation process, and provide a Detention Health Standards Report detailing recommended changes to the Standards. QIP provided a final report to DIAC in October 2010.

Review of Christmas Island Detention Health Services Clinical Governance Processes

DIAC contracted Communio to conduct a clinical governance review (the Review) of health services provided to people in immigration detention on Christmas Island. The Review was conducted on 28 April 2011 and 3 May 2011. This work included the development of an audit tool, to enable assessment of the clinical governance arrangements on Christmas Island. Communio presented the findings of the review to DIAC on 19 May 2011.

Recommendation 17: In relation to the provision of physical and mental health services, DIAC should:

- **Ensure that all people detained at Curtin IDC are provided with timely access to appropriate physical and mental health services, including dental, optometry, physiotherapy and medical specialist care as required.**
- **Ensure that the IHMS physical and mental health staffing at Curtin IDC is increased to an adequate level as soon as possible.**
- **Overhaul the clinical governance framework for the delivery of mental health services at Curtin IDC and across the detention network. This should involve a consultant psychiatrist overseeing and being clinically responsible for mental health service delivery including supervision of staff in the provision of clinical care.**

DIAC considers that people detained at Curtin IDC generally receive an appropriate level of health services, comparable to that available to the broader Australian community. The remote location of Curtin IDC sometimes provides challenges to service delivery. DIAC monitors the provision of health services at Curtin IDC and discusses service delivery issues with IHMS. Following are updates on the particular services and issues raised by the Commission:

Clinical Governance: In August 2011 IHMS filled the position of Medical Director, Mental Health. This officer is a clinical psychiatrist, provides clinical guidance and oversees clinical practice of IHMS mental health staff. This appointment significantly enhances the clinical governance of mental health services across the national detention network, including Curtin IDC.

Nurse (including Mental Health Nurse) and General Practitioner consultations:

These services will improve with the recent completion of new clinic infrastructure at Curtin IDC. The new clinic commenced limited operations on 12th September 2011. Services at the new clinic will be expanded over September 2011. IHMS considers that this additional infrastructure will lead to a sustained improvement in health service delivery at Curtin IDC.

Dental: DIAC continues to work closely with its service providers to improve the provision of dental services available to people at Curtin IDC. Dental treatment for people in immigration detention is aimed at providing a level of dental care that is comparative to public sector dental services available to the wider Australian community.

Dental services for people in immigration detention are determined on a triage-based system that aligns the priority of care needed and delivered to the severity of a person's condition. Such a system is fundamental for ensuring limited dental resources are used in the most effective manner possible and directed where there is the greatest level of need.

DIAC had been working with IHMS to provide a temporary onsite dental clinic at Curtin IDC, however, in early July 2011 this option was not pursued due to equipment no longer being available for leasing.

DIAC and IHMS have worked with the Western Australian Department of Health on an alternative arrangement to lease the Derby Dental Clinic after-hours and on weekends, when not being used to provide dental services to the broader community. This arrangement commenced in early August 2011. It has been given approval for an initial period of six months and uses a fly-in IHMS dental service (including a dentist and dental assistant) on a monthly basis and a radiographer when required.

During the dental service's initial visit to the Derby clinic in August 2011, a total of 18 clinic days were conducted for people triaged as high and medium priority. During this time 242 clients, over half of the clients on the dental waiting list, were seen and treated. Approximately 40 clients required follow up dental treatment. In addition, 23 clients either did not attend or declined their dental appointment. DIAC has been advised that the dental service will next return to Derby from 23-29 September 2011.

Optometry: A three day on-site clinic was conducted at the end of August 2011 which managed to clear the list of clients requiring an optometry consultation. As at 12 September 2011 there were 10 clients on the optometry waiting list. IHMS is sending five clients each week to Broome for optometry consultations.

Physiotherapy: Currently a physiotherapist visits Curtin IDC for four hours each week. As at 12 September 2011, there were 46 people undergoing a treatment plan, with 16 more people awaiting an initial physiotherapy consultation. Each referral is reviewed by the physiotherapist who prioritises people according to the nature and severity of their condition. People classed as 'Category 1' are usually seen within seven days of referral. At present approximately five new referrals are generated weekly.

Torture and Trauma Counselling: DIAC has been working with the counselling provider, the Association for Services to Torture and Trauma Survivors (ASeTTS), to provide appropriate staffing levels to meet increased client needs at Curtin IDC. DIAC recently agreed to a submission from ASeTTS to increase the number of counselling staff at Curtin IDC to four. Within this staffing profile is a team leader that is based in Derby who will be responsible for liaison with IHMS, local departmental staff and the fly-in-fly-out ASeTTS counsellors. The agreed model is expected to decrease counsellor case loads as well as client waiting lists.

Mental Health Staffing at Curtin IDC: IHMS advises that there is currently sufficient staff at Curtin IDC to provide an adequate level of mental health services. IHMS believes that the new clinic will enhance mental health services delivery at Curtin IDC.

MOUs: DIAC notes the AHRC's comments regarding the absence of formal memoranda of understanding between DIAC and state health providers in Western Australia. DIAC is committed to working with the Western Australian Government to formalise arrangements for the provision of health services for people in immigration detention in Western Australia. These arrangements will enhance co-operation and clarify the level and type of services required. Discussions between DIAC and the Western Australian Government have been beneficial, and both parties are now working towards finalisation of formal arrangements for service delivery.

Recommendation 18: In relation to self-harm and suicide, DIAC should:

- **Continue to consult with specialists in suicide prevention as well as mental health professionals about measures to mitigate the risk of further suicides across the detention network, and implement these measures as a matter of urgency.**
- **Ensure that a full safety audit is conducted across Curtin IDC and all other immigration detention facilities, and that all appropriate measures are taken to minimise the risk of suicide and self-harm.**
- **Ensure that all relevant staff are provided with adequate training on the Psychological Support Program as soon as possible.**

DIAC shares the AHRC's concerns relating to the mental health of persons in immigration detention.

Self-harm is a complex issue and DIAC is seeking expert advice in examining the determinants of self-harm and ways to reduce the risk of self-harm.

Training on the Psychological Support Program and other mental health policies was delivered to staff across the Immigration Detention Network in 2010. DIAC recently developed a revised mental health awareness training program in consultation with the DeHAG. The revised training program was recently piloted with DIAC, IHMS and Serco staff and will now be delivered to all staff from these organisations who work in detention facilities and have contact with clients.

Other measures underway to help address the incidences of self-harm are as follows:

- DIAC is undertaking a project to analyse health and incident (including self-harm) data. This data is being analysed with the MHSG of DeHAG to help identify strategies which could help reduce the risk of self-harm;
- DeHAG has undertaken several site visits and issued reports addressing safety concerns. DeHAG is also developing an evaluation tool to assist with assessing the safety of detention environments; and
- DIAC is conducting an external review into the implementation of the detention mental health policies implemented in 2010. DIAC anticipates that the review will be completed by early 2012.

Recommendation 19: With regard to people in immigration detention who are survivors of torture and trauma, DIAC should:

- **Ensure that its policy, *Identification and Support of People in Immigration Detention who are Survivors of Torture and Trauma*, is implemented across the detention network. Under this policy, the continued detention of survivors of torture and trauma in Immigration Detention Centres is to occur only as a last resort where risk to the Australian community is considered unacceptable.**
- **Ensure that they are provided with adequate access to specialist counselling services.**

The policy *Identification and Support of People in Immigration Detention who are Survivors of Torture and Trauma* has been implemented across the Immigration Detention Network. This and other DIAC policies are designed to identify, professionally support and, where possible, appropriately place clients.

Torture and Trauma Screening

All people entering immigration detention undergo mental health screening within 72 hours of their arrival in the facility. The process includes screening for signs of torture or trauma. If a possible history of torture or trauma is identified the person is referred for assessment by a torture and trauma counselling service. In addition, given the high proportion of irregular maritime arrivals who may have experienced torture or trauma, all irregular maritime arrivals are automatically referred for assessment by a torture and trauma service.

Counselling

Torture and trauma counselling is provided by organisations that are members of the Forum of Australian Services for Survivors of Torture and Trauma (FASSTT), the peak body for torture and trauma rehabilitation services in Australia. There is a FASSTT member organisation in each state and territory of mainland Australia which provide torture and trauma counselling services to people in immigration detention. On Christmas Island torture and trauma counselling services are provided by the Indian Ocean Territories Health Service (IOTHS), a Commonwealth Government agency.

Placement in Community Detention

As per the response to recommendation 3, DIAC is working to move the current priority groups into community detention over the coming months including looking to place a small number of low risk, compliant, vulnerable single adult men who may have experienced torture or trauma into community detention. The capacity for this to occur is limited by the availability of suitable accommodation and support services in the community.