
Joint Select Committee on Australia's Immigration Detention Network

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Australian Human Rights Commission Submission
to the Joint Select Committee on Australia's
Immigration Detention Network

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1 Introduction

1. The Australian Human Rights Commission (the Commission) makes this submission to the Joint Select Committee on Australia's Immigration Detention Network.
2. For more than ten years the Commission has raised significant concerns about Australia's mandatory immigration detention system and the conditions in Australia's immigration detention facilities. This submission draws on the extensive work the Commission has undertaken regarding Australia's immigration detention system, including:
 - national inquiries, in particular *A last resort?: National Inquiry into Children in Immigration Detention*¹ and *Those who've come across the seas: Detention of unauthorised arrivals*²
 - examining proposed legislation and making submissions to parliamentary inquiries³
 - inspections and reports on conditions in immigration detention facilities⁴
 - investigating complaints from individuals in immigration detention⁵
 - commenting on policies and procedures relating to immigration detention at the request of the Department of Immigration and Citizenship (DIAC).
3. Over the past two years, the Commission has visited immigration detention facilities on Christmas Island and in Darwin, Leonora, Villawood, Curtin, Maribyrnong and Inverbrackie. The Commission has published reports regarding visits to Christmas Island, Darwin, Leonora, and Villawood. A report of the visit to Curtin IDC will be published in September 2011. Reports can be accessed at the Commission's website and have also been provided to the Joint Select Committee on Australia's Immigration Detention Network.⁶ This submission draws heavily on the observations that were made and concerns that arose during these visits.
4. The Commission acknowledges the assistance provided by DIAC in organising and facilitating its visits to immigration detention facilities, as well as the positive cooperation received from DIAC and detention services provider staff members during such visits. In making its observations of immigration detention facilities, the Commission also acknowledges that many staff are making significant efforts to ensure that people in detention are treated appropriately despite difficult circumstances.

2 Summary

5. The terms of reference for this Inquiry are extremely broad.⁷ In this submission the Commission does not seek to address the terms of reference exhaustively, but rather to outline its principal concerns regarding immigration detention law, policy and practice, conditions of detention and the impacts of prolonged and indefinite detention.
6. The key reforms that the Commission wishes to see made to Australia's immigration detention system are outlined in the recommendations made in this submission. These key reforms include:
 - An end to the system of mandatory, prolonged and indefinite detention, especially in remote locations.
 - Implementation of the Australian Government's 2008 *New Directions in Detention* policy 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.
 - Individual assessment of whether it is necessary, reasonable and proportionate to hold a person in an immigration detention facility. This assessment should be conducted when the 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.
 - Implementation of a system of judicial oversight of the decision to hold a person in an immigration detention facility.
 - Urgent action to ensure that that all appropriate measures are taken to minimise the risk of suicide and self-harm within immigration detention facilities.
 - Full use of community detention, particularly for people who meet the priority criteria under the Residence Determination Guidelines. This includes children and accompanying family members, people who may have experienced torture or trauma, people with significant physical or mental health concerns and people whose cases will take a considerable period to substantively resolve.
 - Durable solutions for people who are stateless; who have received adverse security assessments from the Australian Security Intelligence

Organisation (ASIO); or who have had their visas cancelled under s 501 of the *Migration Act 1958* (Cth) (*Migration Act*).

- Implementation of the outstanding recommendations of the report of the National Inquiry into Children in Immigration Detention, *A last resort?*, to ensure any detention of a child is truly a measure of last resort and for the shortest appropriate period of time.
 - Appointment of an independent guardian for unaccompanied minors in immigration detention.
 - Legislation establishing minimum standards for conditions of immigration detention and the treatment of people in immigration detention.
 - Ratification of the *Optional Protocol to the Convention against Torture*.
7. Australia's mandatory detention system has led to prolonged and, in some cases, indefinite immigration detention in breach of Australia's international obligations, including the obligation to ensure that no one is arbitrarily detained.⁸ It has also led to breaches of children's rights, including the right to be detained only as a matter of last resort and for the shortest appropriate period of time.⁹
 8. The Commission does not claim that no one should be held in immigration detention. Rather, the Commission has long argued that, instead of requiring the mandatory detention of broad groups of people, a person should only be detained if it is shown to be necessary in their individual case. Further, time limits for detention and access to judicial oversight of detention should be introduced to ensure that if a person is detained, they are not detained for any longer than is necessary. These basic protections are both common sense and required of the Australian Government under its international obligations.
 9. The Commission recognises that use of immigration detention may be legitimate for a strictly limited period of time. However, the need to detain should be assessed on a case-by-case basis taking into consideration individual circumstances. 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 – if necessary, with appropriate conditions imposed to manage any identified risk.
 10. The Commission has serious concerns about the long periods of time for which many people are held in immigration detention and the impact of prolonged detention on mental health. In particular, the Commission is concerned about delays in processing claims for asylum and about delays in the finalisation of ASIO security assessments, both of which lead to the prolonged detention of asylum seekers and refugees. The Commission is also concerned about the prolonged and indefinite detention of long term residents

whose visas have been cancelled under s 501 of the Migration Act, of people who have received adverse security assessments and of people who are found not to be owed protection but who are stateless or who otherwise cannot be returned to their country of origin or transferred to a third country.

11. The Commission has ongoing concerns about the conditions of immigration detention. The Commission's main concerns include the impacts of detention in remote locations, overcrowding, inadequate health and mental health services in some facilities, and inadequate provision of education, activities and excursions in some facilities.
12. Conditions in immigration detention should meet international human rights standards. The private provider of detention services is contractually obliged to provide a minimum standard of services, and there is some external scrutiny of services, including by the Commission. However, the Commission is concerned that these mechanisms are inadequate to safeguard the treatment of people in detention.
13. The Commission acknowledges that a significant number of people have been released from detention over the past six months. This is the result of the progressive placement of significant numbers of families and unaccompanied minors into community detention since late 2010, and of the introduction in early 2011 of new security indicator triage method for managing security assessments.
14. The Commission urges the expansion of the community detention program so that all families and unaccompanied minors as well as other vulnerable individuals are placed into community detention. The Commission also urges the Australian Government to consider all possible community-based alternatives to immigration detention, including the use of bridging visas.

3 Recommendations

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. 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.

Recommendation 2: 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 the purpose of conducting health identity and security checks. The security check for the purpose of release from detention should be a summary assessment of whether an individual would pose an unacceptable risk to the Australian community. The assessment should be made when the individual is taken into immigration detention, or as soon as possible thereafter.

Recommendation 3: 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 *International Covenant on Civil and Political Rights*, the court must have the power to order the person's 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 *International Covenant on Civil and Political Rights*, which affirms the right to liberty and prohibits arbitrary detention.

Recommendation 4: The Australian Government should ensure that durable solutions are provided for individuals who have failed in their applications for asylum and who cannot be returned to their country of origin or habitual residence, including for people who are stateless. People in this situation should not be subject to prolonged or indefinite detention; they should be removed from immigration detention facilities as soon as possible.

Recommendation 5: The Australian Government should ensure that durable solutions are provided for individuals who have received adverse security assessments from the Australian Security Intelligence Organisation, and that they are removed from immigration detention facilities as soon as possible.

Recommendation 6: People whose visas have been cancelled under s 501 should only be held in an immigration detention facility if they have been individually assessed as posing an unacceptable risk to the Australian community and that risk cannot be managed in a less restrictive way. Alternative placement options should be considered for such people, including less restrictive places of detention than immigration detention centres, and community detention with imposition of conditions necessary to mitigate any identified risks. Consideration of appropriate alternatives should begin as soon as DIAC becomes aware that an individual is likely to have their visa cancelled and be taken into immigration detention.

Recommendation 7: In relation to self-harm and suicide, DIAC should:

- Consult with organisations that specialise in suicide prevention, as well as mental health professionals including members of the Detention Health Advisory Group, for advice about measures that should be taken to mitigate the risk of further suicides across the detention network and implement these measures as a matter of urgency.

- Ensure that safety audits are conducted at all facilities in the detention network, and that all appropriate measures are taken to minimise the risk of suicide and self-harm.
- Ensure that there is a clear written policy in place at each detention facility setting out the procedures for responding to threats of self-harm and suicide and ensure that all relevant staff are provided with training on the policy and procedures.
- Ensure that all relevant staff have adequate Psychological Support Program training.

Recommendation 8: DIAC should ensure that a full critical incident review is conducted as soon as possible after a critical incident occurs within an immigration detention facility, that Memoranda of Understanding are agreed with state police and emergency services as soon as possible and that all relevant staff working in immigration detention facilities receive adequate training in critical incident response.

Recommendation 9: People should not be held in immigration detention in remote locations. If people must be held in immigration detention facilities, they should be located in or near metropolitan areas.

Recommendation 10: The Australian Government should implement all of the recommendations made regarding immigration detention infrastructure and accommodation in Commission reports from 2008 onwards. The most significant of these recommendations are repeated below.

Recommendation 11: The Australian Government should stop using Christmas Island as a place in which to hold people in immigration detention.

Recommendation 12: The redevelopment of Villawood Immigration Detention Centre should be undertaken as soon as possible. It should include the demolition of Blaxland compound, ensure that people are detained in the least restrictive form of detention possible, and address the infrastructure concerns raised by the Commission in its *2008 Immigration detention report*.

Recommendation 13: If people must be held in immigration detention facilities, they should be held in less restrictive facilities such as Immigration Residential Housing complexes rather than high-security immigration detention centres, wherever possible.

Recommendation 14: An independent body should be charged with the function of monitoring the provision of health and mental health services in immigration detention. The Australian Government should ensure that adequate resources are allocated to that body to fulfil this function.

Recommendation 15: In relation to the provision of physical and mental health services, DIAC should:

- Ensure that all people in immigration detention are provided with timely access to appropriate health and mental health services, including dental care and specialist care as required.
- Conduct a review of the IHMS staffing levels in all immigration detention facilities, and ensure as a matter of priority that there is a sufficient number of staff in each facility to meet the needs of the number of people in detention there.
- Overhaul the clinical governance framework for the delivery of mental health services across the detention network. This would involve a consultant psychiatrist overseeing mental health service delivery, providing onsite clinical supervision of staff and accepting clinical responsibility for the provision of clinical care.
- Ensure that active outreach work is conducted by IHMS mental health staff in the accommodation compounds of all immigration detention facilities.

Recommendation 16: DIAC should ensure that all people in detention who are survivors of torture and trauma have adequate access to specialist counselling services.

Recommendation 17: 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 immigration detention network. Under this policy, the continued detention of survivors of torture and trauma in an immigration detention centre is to occur only as a last resort where risk to the Australian community is considered unacceptable.

Recommendation 18: Children of all ages should be permitted to attend school or participate in other appropriate educational programs outside the detention environment.

Recommendation 19: All people in immigration detention should be provided with access to a range of educational activities, including English language classes, conducted on a regular and frequent basis.

Recommendation 20: DIAC should ensure that all people in immigration detention have access to:

- adequate outdoor recreation spaces including grassy and shaded areas
- adequate indoor areas for recreational activities
- a range of recreational activities conducted on a regular and frequent basis
- a freely accessible library area stocked with reading materials in languages spoken by people in detention
- opportunities to attend religious services in the community, should they wish to do so.

Recommendation 21: DIAC should ensure that people in immigration detention 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.

Recommendation 22: DIAC should ensure that all people in immigration detention have adequate access to communication facilities including internet facilities and telephones.

Recommendation 23: Legislation should be enacted to set out minimum standards for conditions and treatment of detainees in all of Australia's immigration detention facilities, including those located in excised offshore places. The minimum standards should be based on relevant international human rights standards, should be enforceable and should make provision for effective remedies.

Recommendation 24: The Australian Government should ratify the *Optional Protocol to the Convention against Torture* and establish an independent and adequately resourced National Preventive Mechanism to conduct regular inspections of all places of detention. This should include all immigration detention facilities, including those located in excised offshore places.

Recommendation 25: The Australian Government should implement the outstanding recommendations of the report of the National Inquiry into Children in Immigration Detention, *A last resort?*. These include that Australia's immigration detention laws should be amended, as a matter of urgency, to comply with the *Convention on the Rights of the Child*. In particular, the new laws should incorporate the following minimum features:

- There should be a presumption against the detention of children for immigration purposes.
- A court or independent tribunal should assess whether there is a need to detain children for immigration purposes within 72 hours of any initial detention (for example, for the purposes of health, identity or security checks).
- There should be prompt and periodic review by a court of the legality of continuing detention of children for immigration purposes.
- All courts and independent tribunals should be guided by the following principles:
 - detention of children must be a measure of last resort and for the shortest appropriate period of time
 - the best interests of children must be a primary consideration
 - the preservation of family unity

- special protection and assistance for unaccompanied children.

Recommendation 26: The Australian Government should, as a matter of priority, implement the recommendations made by the Commission in *A last resort?* that:

- Australia's laws should be amended so that the Minister for Immigration and Citizenship is no longer the legal guardian of unaccompanied minors in immigration detention.
- An independent guardian should be appointed for unaccompanied minors in immigration detention.

Recommendation 27: In the absence of an independent guardian, DIAC officers and staff members of detention service providers in each immigration detention location should be provided with a clear written protocol setting out which DIAC officer has been delegated the Minister's powers of legal guardianship of unaccompanied minors in that location, and how and when that guardian should be consulted.

Recommendation 28: DIAC should pursue the adoption of Memoranda of Understanding with state and territory child welfare authorities regarding responsibilities for the welfare and protection of children in immigration detention.

Recommendation 29: DIAC should ensure that all relevant DIAC officers and staff members of detention service providers are provided with a localised protocol setting out the requirements, procedures and contact details for making child welfare and protection notifications in relation to concerns that arise in respect of children in immigration detention in the location in which they work.

Recommendation 30: DIAC and the Minister for Immigration and Citizenship should make greater use of community-based alternatives to holding people in immigration detention facilities for prolonged and indefinite periods. This should include alternatives to detention such as bridging visas, and alternative forms of detention such as community detention.

Recommendation 31: DIAC and the Minister for Immigration and Citizenship should make full use of community detention, particularly for people who meet the priority criteria under the Residence Determination Guidelines. This includes children and accompanying family members, people who may have experienced torture or trauma, people with significant physical or mental health concerns and people whose cases will take a considerable period to substantively resolve.

PART 1: Immigration detention law, policy and practice

15. The terms of reference for this Inquiry largely concern the conditions of detention and the impact of those conditions on people in detention. Prior to an examination of the conditions of detention, it is important to consider how current immigration detention law, policy and practice lead to people being

held in immigration detention for prolonged and sometimes indefinite periods of time.

16. Australia has one of the strictest immigration detention systems in the world – it is mandatory, it is not time limited, and people are not able to challenge the need for their detention in a court. The Commission has for many years called for an end to this system because it leads to breaches of Australia's human rights obligations.

4 Mandatory detention

17. It is mandatory under the Migration Act for any non-citizen in Australia without a valid visa to be detained, regardless of his or her individual circumstances.¹⁰ The Migration Act provides that the detention of an 'unlawful non-citizen' who has arrived at an 'excised offshore place' is discretionary, but current Australian Government policy is that all such people are detained.¹¹ Once detained, unlawful non-citizens must be kept in detention until they are removed from Australia or granted a visa.¹²
18. While there are some mechanisms in place to grant people bridging visas and release them into the community, or to place people into alternative forms of detention,¹³ in practice the majority of unlawful non-citizens are detained in secure immigration detention facilities. Of the 6403 people in immigration detention at 30 June 2011, 5327 or 83% of these people were being held in secure immigration detention facilities.¹⁴
19. The Commission has raised concerns over many years that the system of mandatory detention leads to breaches of Australia's international human rights obligations. For instance, Australia has binding obligations under article 9(1) of the *International Covenant on Civil and Political Rights* (ICCPR) and article 37(b) of the *Convention on the Rights of the Child* (CRC) to ensure that no one is subjected to arbitrary detention.¹⁵ The prohibition on arbitrary detention includes detention which, while it may be lawful, is unjust or unreasonable. The United Nations Human Rights Committee has stated that to avoid being arbitrary, detention must be a proportionate means to achieve a legitimate aim. In determining whether detention is proportionate to a particular aim, consideration must be had to the availability of alternative means for achieving that end which are less restrictive of a person's rights.¹⁶ The United Nations Working Group on Arbitrary Detention has confirmed that this principle of proportionality requires detention to be used only as a last resort.¹⁷
20. The Commission has also repeatedly raised concerns about the significant human impact of mandatory immigration detention. During visits by the Commission to immigration detention facilities, people have told the Commission of their experiences of detention, making comments such as the following:

There is no place for us in Afghanistan – people are trying to kill us. In Pakistan, there are targeting killings and bombs. Here the situation is like this. It seems like there is no place on earth for us where we can live peacefully.¹⁸

First we were victims of Taliban, then of the Indonesian people smugglers and now we come here and we are a victim of this system.¹⁹

We felt overjoyed when we were intercepted by the navy, because we thought that the persecution and discrimination would end then.²⁰

21. The Commission's concerns about Australia's system of mandatory detention are shared internationally. A number of United Nations bodies have criticised mandatory immigration detention in Australia, including the United Nations High Commissioner for Refugees (UNHCR); the United Nations Human Rights Committee; the United Nations Committee on Economic, Social and Cultural Rights; the United Nations Committee on the Rights of the Child; the United Nations Human Rights Council's Working Group on the Universal Periodic Review; the United Nations Human Rights Council's Working Group on Arbitrary Detention and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.²¹
22. On 29 July 2008, the then Minister for Immigration and Citizenship, Senator Chris Evans, announced the New Directions in Detention policy (the New Directions policy).²² Minister Evans declared that the New Directions policy would 'fundamentally change the premise underlying detention policy',²³ that is, it would reverse the presumption regarding detention by requiring DIAC to justify a decision to place someone in immigration detention.
23. Under the New Directions policy, the Australian Government was to be guided by a set of seven immigration detention values:
 1. Mandatory detention is an essential component of strong border control.
 2. To support the integrity of Australia's immigration program, three groups will be subject to mandatory detention:
 - all unauthorised arrivals, for management of health, identity and security risks to the community
 - unlawful non-citizens who present unacceptable risks to the community and
 - unlawful non-citizens who have repeatedly refused to comply with their visa conditions.
 3. Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre.
 4. Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review.

5. Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.
 6. People in detention will be treated fairly and reasonably within the law.
 7. Conditions of detention will ensure the inherent dignity of the human person.
24. Under the New Directions policy, immigration detention is meant to be used as a last resort, only for limited, specified purposes and for the shortest practicable period; people are meant to be detained in the least restrictive environment appropriate to their individual circumstances; and there is meant to be a presumption that people will be permitted to reside in the community unless they pose an unacceptable risk.
 25. The Commission has long been concerned that the New Directions policy is not being implemented in practice for asylum seekers, particularly those who arrive by boat. Rather, most asylum seekers are held in detention facilities for the duration of processing of their refugee claims. The Commission has more recently become concerned that the Australian Government appears to have abandoned this key aspect of the New Directions policy. The current position appears to be that asylum seekers who have arrived by boat will remain in immigration detention throughout processing of their refugee claims, including during judicial review should they pursue that avenue.²⁴ The Commission is concerned that this contradicts the intention of the New Directions policy. It wrongly conflates the period of a person's detention with the resolution of their immigration status, instead of detaining a person on the basis of the risk that they pose to the Australian community.
 26. Detention is not being used only as a last resort and for the shortest practicable time. Very high numbers of people continue to be held in detention facilities across Australia, some of them for prolonged periods;²⁵ reviews of immigration detention are not occurring regularly across the immigration detention network;²⁶ and conditions in some detention facilities remain inconsistent with the inherent dignity of the people detained within them.²⁷
 27. The Commission recognises that detention may be legitimate for a strictly limited period of time. However, the need to detain a person should be assessed on a case-by-case basis taking into consideration their individual circumstances.
 28. To avoid detention being arbitrary, there should be an individual assessment of the necessity of detention for each person, as soon as possible after a person is taken into detention. 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 managed in a less restrictive way. Otherwise, they should be permitted to reside in community-based alternatives while their immigration status is resolved – if necessary, with appropriate conditions imposed to mitigate any identified risks. Australia's

system of mandatory detention of all unlawful non-citizens is fundamentally inconsistent with this approach.

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. 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.

5 Security checks

29. According to the New Directions policy, detention of unauthorised arrivals is for the purpose of conducting 'health, identity and security checks'. Once those checks have been successfully completed, 'continued detention while immigration status is resolved is unwarranted'. Thereafter, the presumption is that an individual will be permitted to reside in the community unless he or she poses an unacceptable risk.²⁸
30. In the Commission's view, the 'security check' under the New Directions policy should not be interpreted as requiring a full ASIO security assessment prior to a person being released from an immigration detention facility. In the Commission's understanding, this is not required under the Migration Act, the *Migration Regulations 1994* (Cth) or the *Australian Security Intelligence Organisation Act 1979* (Cth).
31. The 'security check' should instead consist of a summary assessment of whether there is reason to believe that 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. 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. A full ASIO security assessment, if deemed necessary, prior to the grant of a visa could be conducted while the person was residing in the community.

32. For over a year, the Commission has held serious concerns about the significant delays in the finalisation of ASIO security assessments, which have led to prolonged detention for many asylum seekers and refugees. The Commission welcomed the announcement in March of a new security indicator triage method developed by ASIO. Under this method, people in detention who have been found to be refugees are assessed according to several security indicators. The Commission regards the security indicator triage method as preferable to the system which it replaced and acknowledges that a large number of people have been granted protection visas and released from detention in the approximately five months since the triaging process began.
33. However, the Commission remains concerned that current policy requires the majority of unauthorised arrivals seeking asylum to remain in detention for the duration of the processing of their asylum claims. It is only after a person has been found to be a refugee that the security indicator triage process commences.
34. The Commission also remains seriously concerned about the ongoing and prolonged detention of hundreds of recognised refugees who have been referred to ASIO for a full security assessment. The Commission is concerned that people in this situation have been in detention for long periods, in some cases for over a year.²⁹ The Commission urges the speedy finalisation of all outstanding ASIO security assessments.
35. Finally, the Commission is concerned about the limited access asylum seekers have to merits review or judicial review of adverse assessments. While the Administrative Appeals Tribunal (AAT) has the power to review adverse assessments, access to AAT review is denied to people who are not Australian citizens or holds of either a valid permanent visa or special purpose visa. In the Commission's view, access to AAT review should be extended to refugee applicants. There is also very little practical opportunity for substantive judicial review of adverse assessments. While ASIO decisions are subject to judicial review, the ability of ASIO to withhold from an applicant and the court the information upon which it has relied means that challenging that information is virtually impossible. The practical difficulties in obtaining the necessary evidence and the restricted scope of procedural fairness in the context of ASIO security assessments as interpreted by Australian courts make judicial review an ineffective appeal avenue. The Commission recommends that the Australian Government explore options for strengthening substantive judicial review of adverse assessments, including options to ensure the provision of greater information to applicants or another appropriate person, through for example, the appointment of a Special Advocate.

Recommendation 2: 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 the purpose of conducting health identity and security checks. The security check for the purpose of release from

detention should be a summary assessment of whether an individual would pose an unacceptable risk to the Australian community. The assessment should be made when the individual is taken into immigration detention, or as soon as possible thereafter.

6 Indefinite detention

36. Australia's system of mandatory detention permits indefinite detention. There is no set time limit on the period a person may be held in detention, and people are not able to challenge the need for their detention in a court.³⁰
37. The Commission has, for many years, called for the introduction of independent judicial oversight of immigration detention to protect against breaches of fundamental human rights.³¹ The Commission is particularly concerned that currently the immigration detention of children is not subject to judicial oversight.
38. Under Australia's international human rights obligations, any person deprived of their liberty should be able to challenge the lawfulness of their detention. Article 9(4) of the ICCPR requires that this review be conducted by a court, while article 37(d) of the CRC mandates review before a court or another competent, independent and impartial authority.³² The United Nations Human Rights Committee has declared that for detention to be 'lawful' in this context, it must not only comply with domestic law but also not be arbitrary.³³
39. Accordingly, in order to guarantee the prohibition on arbitrary detention in article 9(1) of the ICCPR and article 37(b) of the CRC, judicial review of the decision to detain, or to continue to detain, is essential.³⁴ The court must have the power to review the lawfulness of detention under both domestic legislation and Australia's binding international obligations, including under article 9(1) of the ICCPR and article 37(b) of the CRC to not subject anyone to arbitrary detention. The court must also have the authority to order the person's release if the detention is found to be arbitrary.
40. Currently, in breach of its international obligations, Australia does not provide access to such review. While people in immigration detention may be able to seek judicial review of the domestic legality of their detention, Australian courts have no authority to order that a person be released from detention on the grounds that the person's continued detention is arbitrary, in breach of the ICCPR or the CRC.
41. The United Nations Human Rights Committee has found Australia in breach of article 9(4) of the ICCPR on a number of occasions. For example, in *A v Australia*, the United Nations Human Rights Committee found that the Migration Act precluded Australian courts from considering whether a person's detention was arbitrary or from ordering the release of any person from detention, in breach of article 9(4) of the ICCPR.³⁵ In *C v Australia, Bakhtiyari v*

Australia, Baban v Australia and *Shams v Australia*, the Committee confirmed its view that an inability to challenge detention that is incompatible with article 9(1) of the ICCPR will result in a breach of Australia's obligations relating to review of the lawfulness of detention.³⁶

42. The Joint Standing Committee on Migration (JSCM) has previously recommended that the Migration Act be amended to provide judicial review in respect of a decision to continue immigration detention. In December 2008, after receiving submissions from a diverse range of stakeholders, the JSCM published the first report of its inquiry into immigration detention in Australia.. The JSCM stated that it was not convinced that the necessary system of independent review could be satisfied by a series of departmental reviews. The JSCM recommended that in respect of a decision to continue immigration detention, 'oversight by a judicial body is warranted and appropriate as an important check on the integrity of the system'.³⁷
43. Under the New Directions policy, the Australian Government acknowledges that 'detention that is indefinite or otherwise arbitrary is not acceptable'. In the absence of judicial review of detention, the New Directions policy committed to 'regular review' of the length and conditions of detention. Once in detention, a person's situation should be reviewed by a senior DIAC officer every three months to ensure that their continued detention is justified. In addition, each person should have their detention reviewed by the Commonwealth Ombudsman every six months.
44. The Commission welcomed this announcement, but has since raised concerns about the lack of transparency surrounding the review processes, the timeframes in which the reviews are conducted, and the extent to which the review recommendations are implemented.³⁸ DIAC has informed the Commission that the Australian Government is considering ways of improving the review of the appropriateness of detention.³⁹ The Commission has encouraged the Australian Government to allocate adequate resources to allow for the three and six month reviews to be conducted on time for each person in detention, and to increase transparency surrounding the review processes and outcomes.

Recommendation 3: 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 *International Covenant on Civil and Political Rights*, the court must have the power to order the person's 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 *International Covenant on Civil and Political Rights*, which affirms the right to liberty and prohibits arbitrary detention.

7 Prolonged detention

45. Under the New Directions policy, immigration detention is to be used for the shortest practicable period. However, this has not been enshrined in legislation or fully implemented in practice. Many people are spending long periods of time in immigration detention in Australia. According to the most recent public figures issued by DIAC, 67.5% of people in detention had been detained for over six months, 1800 people had been detained for longer than one year and 29 people had been detained for over two years.⁴⁰
46. The prolonged and indefinite detention of people for immigration purposes may lead to violations of Australia's international human rights obligations. Prolonged detention can lead to breaches of Australia's obligations under article 9(1) of the ICCPR and article 37(b) of the CRC to ensure that no one is subjected to arbitrary detention.⁴¹ According to the United Nations Human Rights Committee, 'arbitrariness' includes elements of inappropriateness, injustice, lack of predictability and proportionality.⁴² This finding has been echoed by Australian courts.⁴³ Detention may be found to be arbitrary where it is prolonged or indefinite in circumstances which are inappropriate, are unjust or lack predictability or proportionality. The United Nations Human Rights Committee has found that prolonged detention for immigration purposes was not justifiable and amounted to arbitrary detention in breach of Australia's international human rights obligations in cases such as *A v Australia* and *Shams v Australia*.⁴⁴
47. Prolonged and indefinite detention may also amount to cruel, inhuman or degrading treatment, in breach of Australia's obligations under articles 7 and 10(1) of the ICCPR and article 37(a) of the CRC, because it can cause serious psychological harm. Australia has been found to be in breach of its obligations relating to cruel, inhuman or degrading treatment by subjecting people to prolonged indefinite immigration detention. For example, in *C v Australia*, the United Nations Human Rights Committee held that mandatory immigration detention amounted to cruel, inhuman or degrading treatment in circumstances where it was prolonged, arbitrary and contributed to a detainee's mental health problems, when the authorities were aware of this but they delayed releasing the person from immigration detention.⁴⁵
48. The Commission has serious concerns about the impacts of prolonged detention on mental health, as discussed in section 12 below. Prolonged detention has been shown to have a particularly negative impact on the mental health of children, as discussed in Part 4 below.
49. Over the past year, the Commission has found that a range of factors have contributed to asylum seekers being held in immigration detention facilities for lengthy periods, including:
 - the processing suspension imposed in April 2010 on asylum seekers from Afghanistan and Sri Lanka

- significant delays in the processing of claims for asylum
- delays with notification of decisions relating to refugee status for some asylum seekers in detention
- lengthy timeframes for security assessments conducted by ASIO
- the limited use of community-based alternatives to holding people in detention facilities.

50. The Commission is also concerned at the potential for the prolonged and indefinite detention of people who are stateless, people who have received adverse ASIO security assessments and people who have had their visas cancelled under s 501 of the Migration Act. These issues are discussed further below.

8 Prolonged and indefinite detention of asylum seekers and refugees

51. Australia receives very small numbers of asylum seekers, both by national and international standards. In 2009-10, 8164 people applied for protection in Australia: less than 1% of the total number of asylum seekers worldwide.⁴⁶ In the same financial year, asylum seekers who arrived in Australia by boat comprised less than 3% of the total migration intake.⁴⁷ Australia also accommodates small numbers of refugees. Australia hosted 21 805 refugees in 2010,⁴⁸ while developing countries such as Pakistan, Iran and Syria hosted 1.9 million, 1.07 million and 1 million refugees respectively.⁴⁹

52. Despite the relatively small number of people seeking refuge in Australia, most of the people held in immigration detention in recent years have been asylum seekers or refugees. The *Convention Relating to the Status of Refugees* (Refugee Convention)⁵⁰ defines a refugee as a person outside his or her own country due to a well-founded fear of persecution because of his or her race, religion, nationality, membership of a particular social group or political opinion and who is unable, owing to such fear, unwilling to return to that country.⁵¹ Under international law, as soon as a person in this situation crosses an international border, he or she is a refugee.

53. There is a strong presumption against the detention of refugees under international law.⁵² In addition, the mandatory detention of asylum seekers is inconsistent with UNHCR guidelines, under which there should be a presumption against the detention of asylum seekers – it should be the exception rather than the norm. Detention should only be resorted to in certain circumstances, and if there is evidence to suggest that other alternatives will not be effective in the individual case.⁵³

54. The Commission opposes the mandatory detention of both asylum seekers and refugees. However, it is of particular concern that significant numbers of recognised refugees have been held in immigration detention in Australia,

often for prolonged periods. This includes people who have been recognised as refugees by the UNHCR but who have not yet had their cases assessed in Australia; people who are waiting for ASIO security assessments; people who remain in detention following an adverse ASIO security assessment and people who have received a positive ASIO security assessment but are waiting for the finalisation of DIAC checks.

55. The Commission has serious concerns about aspects of Australia's system for processing refugee claims which are both causing confusion and frustration among asylum seekers in immigration detention and contributing to prolonged detention of asylum seekers and refugees.
56. Recent Commission visits to immigration detention facilities have revealed a palpable sense of frustration among many people that the process for determining refugee status in Australia is unreasonably lengthy, as well as unfair and disorderly. For example, people in detention have told the Commission:

They told us that we wouldn't be affected by the suspension, but we were. They told us that we wouldn't be moved, but we were. Some of us had a two-stage review process, but others of us have missed out. We feel as though all of the rule changes have affected us. We never thought Australia would be so unfair.⁵⁴

It is the uncertainty and indefinite nature that makes it so hard. We have no idea when we will be interviewed or if we will be accepted. We are the guardians and breadwinners for our families – the long delays make us suffer a lot.⁵⁵

The length of time for processes and decisions feels very uneven. It feels like Serco and DIAC are deliberately playing with our minds. They are kicking us around like a football – it's a game for them, they are just mucking around.⁵⁶

Most people here feel unable to express how they are feeling. We don't have a way to express it. Please, please ask that the process be quicker.⁵⁷

57. During recent visits to immigration detention facilities, the Commission has heard numerous concerns expressed by asylum seekers relating to the processing and assessment of their asylum claims. These concerns primarily relate to delays with processing; the quality and fairness of decision-making; communication about processes, timeframes, and progress with cases; and access to migration agents and the quality of representation provided by migration agents. These concerns fed into asylum seekers' perceptions that the processing of their claims was disorderly and unfair.⁵⁸
58. The Commission acknowledges that these concerns are based on asylum seekers' perceptions of the process and that they may or may not be fully borne out by the facts upon closer examination. Nevertheless, hearing such concerns from a significant number of asylum seekers is troubling and indicates the need for the Australian Government to ensure that ongoing steps are taken to ensure the quality, fairness and rigour of the process used to

assess people's claims for asylum and to assist asylum seekers in understanding these processes.

59. The Commission has serious concerns about delays in the processing of claims for asylum, particularly at the independent merits review (IMR) stage. For example, during a recent visit to Curtin IDC, the Commission met people who had been waiting between seven and ten months for their IMR interview. There are a number of factors that have caused delays with IMR interviews across the detention network, including issues relating to the remoteness of detention facilities. Primary causes relate to the significant increase in the number of cases and the limited number of IMR reviewers. While the number of reviewers has been increased since late 2010, the processing suspension created a large backlog of IMR cases. This should have been anticipated by the Australian Government and steps should have been taken earlier to increase the number of reviewers in preparation for managing that backlog. With the current number of cases and reviewers, it will still take months to clear the IMR backlog. Further reviewers should be appointed by the Australian Government to ensure that waiting periods for IMR interviews and decisions are minimised.
60. The Commission is also concerned about the system for scheduling IMR interviews. In March 2011, people in immigration detention, including those at Curtin, were informed that the Minister had appointed additional reviewers and that people who had not yet had an IMR and who had been in detention the longest would be given priority.⁵⁹ However, when the Commission visited Curtin IDC two months later, this new priority system had not been implemented there. Many people were extremely distressed and frustrated about this, perceiving the process to be unfair because asylum claims were not being assessed in order of people's length of detention. The Commission has since been informed that the new IMR priority system is being followed at Curtin IDC, but that factors other than length of detention – such as operational reasons or particular vulnerabilities – may also affect the order in which IMR interviews are conducted.⁶⁰
61. Other concerns that the Commission has heard, primarily during the recent visit to Curtin, include concerns about:
- The quality and fairness of decision-making. Specific concerns include allegations that decision records have contained factual inaccuracies on matters such as place of birth or the area a person lived in their country of origin; inconsistencies in decision-making with people in like circumstances receiving different decisions; and a perception that some decision-makers were biased.
 - Communication about processes, timeframes and progress with cases. Some people in detention have expressed frustration at the lack of meaningful updates from their DIAC case managers, and some have reported a lack of regular contact with case managers.

- Access to migration agents and the quality of representation. Some people in detention have expressed concern at the limited time they have to consult with their agent in advance of an interview; some people have complained of limited notice of their IMR interview date; concerns have been expressed about the difficulty of maintaining contact with their agent, particularly from a remote location; and a significant number of people have complained about the quality of assistance and representation provided by their agent.
62. Over the past twelve months, the Commission has become aware of instances where there have been delays of weeks and, in some cases, months in notifying asylum seekers in detention about decisions regarding their refugee status. Such delays may have the effect of prolonging people's detention and could lead to breaches of Australia's obligations not to subject anyone to arbitrary detention. DIAC has informed the Commission that new controls were introduced in December 2010, including interim policy guidelines which set maximum timeframes for notification of decisions. However, the Commission is concerned that there continues to be an unacceptable level of delay in the timeframes for notification of decisions.
63. The delays with processing asylum claims, and the impacts of those delays, would not be as severe if asylum seekers were not held in immigration detention facilities for the duration of processing of their claims. Under the New Directions policy, this should not be the case. Rather, detention is meant to be used for conducting health, identity and security checks, and once those checks are completed, 'continued detention while immigration status is resolved is unwarranted'. Thereafter, the presumption is meant to be that people will be allowed to live in the community unless they pose an unacceptable risk. The Commission has long been concerned that this policy is not being implemented in practice for most asylum seekers who arrive by boat, and continues to encourage the Australian Government to implement it.
64. During its visit to Curtin IDC, people in detention expressed distress about case managers telling them that they could return home through a 'voluntary removal' if they did not want to remain in detention. The Commission was particularly troubled to hear that this option had been suggested to recognised refugees who remained in detention while awaiting security clearances or other checks. This issue was also raised by people in detention at Villawood when the Commission visited in early 2011.⁶¹
65. The Commission has recommended that DIAC reconsider its approach to case managers' engagement with refugees in detention about the option of 'voluntary removal'. The Commission is concerned that the impacts of prolonged and indefinite detention in combination with the offer of reintegration assistance could potentially lead to refugees seeking 'voluntary removal' to their country of origin even though they may face persecution or risks to their safety upon return. Rather than suggesting that refugees may choose to return to their country of origin, case managers' efforts should be targeted towards

ensuring that people are removed from immigration detention facilities as quickly as possible.

9 Prolonged and indefinite detention of people who are stateless

66. The Commission has specific concerns relating to the prolonged detention of people who have been assessed by the Australian Government as not being refugees, but who are stateless or otherwise cannot be returned to their country of origin or habitual residence.
67. Despite having obligations to stateless persons as a party to the *Convention relating to the Status of Stateless Persons* and the *Convention on the Reduction of Statelessness*, Australia does not have a formal procedure for determining statelessness.⁶² Further, statelessness in itself is not a ground for claiming refugee status. Therefore, while some stateless persons who seek asylum in Australia will be recognised as refugees on other grounds and then granted protection visas, some will not. These people are left in limbo, with the only chance of a lasting resolution being the Minister for Immigration and Citizenship exercising his personal discretion to grant a visa. Such people may face prolonged and indefinite detention in the meantime, while Ministerial intervention is sought or while DIAC attempts to find a third country willing to accept them.
68. The Commission has raised concerns about this issue for several years and has urged the Australian Government to introduce 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 assessment process and access to sustainable outcomes such as permanent visas for stateless persons. This has become a matter of urgency, given the high number of stateless persons currently in immigration detention.
69. DIAC has informed the Commission that it is exploring options for case resolution for stateless persons who are found not to be refugees.

Recommendation 4: The Australian Government should ensure that durable solutions are provided for individuals who have failed in their applications for asylum and who cannot be returned to their country of origin or habitual residence, including for people who are stateless. People in this situation should not be subject to prolonged or indefinite detention; they should be removed from immigration detention facilities as soon as possible.

10 Prolonged and indefinite detention of people who have received adverse ASIO security assessments

70. The Commission has serious concerns about the prolonged and indefinite detention of people who have been found to be refugees but who have received adverse security assessments. People in this situation should not be returned to their country of origin according to Australia's *non-refoulement* obligations, and current government policy is that it is not appropriate for individuals who have received an adverse security assessment to live in the Australian community.⁶³

71. As of mid-July 2011, there were approximately 30 people in this situation across the immigration detention network.⁶⁴ When the Commission met some of these people on at Christmas Island, at Darwin and at Villawood, they told the Commission of the impact of their situation:

*Our lives are at a zero point. We have not been told why we have been rejected. We have not been told what will happen to us. We cannot fight against ASIO.*⁶⁵

*The only thing that we can do is to go on hunger strike or kill ourselves. We are powerless.*⁶⁶

*We need to be able to answer our children about when they can leave detention.*⁶⁷

72. The Commission has repeatedly raised concerns about people in this situation, urging the Australian Government to ensure that durable solutions are provided for these individuals and that they are removed from immigration detention facilities as soon as possible.⁶⁸ Securing a durable solution for people in this situation is particularly urgent when children are involved.

73. The Commission is concerned that there does not appear to be a clear framework for considering placement options for such people while their immigration status is resolved. Some people with adverse security assessments are detained in high-security immigration detention centres such as Villawood IDC, Northern IDC and Curtin IDC; extremely restrictive environments in which to hold people who could be facing a very long period in detention. In the Commission's view, alternative placement options should be considered for individuals who have received adverse assessments, including less restrictive places of detention and community detention with the imposition of conditions if necessary to mitigate any identified risks.

74. The DIAC response to the Commission's report regarding its 2011 visit to Villawood states that

[t]he government is actively exploring durable solutions for individuals with adverse security assessments that are consistent with Australia's international obligations, including its *non-refoulement* obligations. These solutions may include resettlement in a third country or safe return to their country of origin where country circumstances allow, where the risk of relevant harm occurring no

longer exists or where reliable and effective assurances can be received from the home country.⁶⁹

75. The Commission has serious concerns that relying on diplomatic assurances prior to returning a refugee to their home country could breach Australia's international *non-refoulement* obligations. The Australian Government must not involuntarily remove a recognised refugee who has an adverse assessment to their country of origin. Further, the Australian Government should not propose the 'voluntary removal' of people in this situation. The Commission is also concerned about the amount of time for which some of these people have been in detention while the Australian Government has been exploring durable solutions and urges the Australian Government to resolve the situation of the prolonged and indefinite detention of individuals with adverse security assessments as soon as possible.

Recommendation 5: The Australian Government should ensure that durable solutions are provided for individuals who have received adverse security assessments from the Australian Security Intelligence Organisation, and that they are removed from immigration detention facilities as soon as possible.

11 Prolonged and indefinite detention of people whose visas have been cancelled under section 501

76. The Commission is particularly concerned about the prolonged detention of people whose visas have been cancelled under s 501 of the Migration Act (s 501 detainees). Many of these people have lived in Australia for years, or even decades, and have strong ties to the Australian community including through family members, friends and jobs. Some have Australian partners or spouses, and some have children who are Australian citizens or were born in Australia.
77. Usually a person's visa is cancelled under s 501 because they have been convicted of a criminal offence. If a prison sentence was imposed, their visa is normally cancelled when they are at the end of serving their sentence. They are then transferred from prison to immigration detention. Some of them spend years in immigration detention while they challenge the decision to cancel their visa, while travel documents are arranged, while diplomatic assurances are sought from the country they will be returned to about their safety on return, or while a claim for a protection visa is assessed.
78. The majority of s 501 detainees are held at Villawood IDC. At the time of the Commission's visit to Villawood in February 2011, there were 48 people in detention at Villawood because their visas had been cancelled. Eight of those people had been detained for longer than two years; three of those eight people had been detained for longer than three years.⁷⁰ These lengthy periods of detention are extremely concerning.

79. Many s 501 detainees experience extremely restrictive conditions of detention at Villawood IDC and other immigration detention facilities. One man in detention at Villawood told the Commission: '*This is worse than prison. There we had more open space; I had a job; we had more education classes*'.⁷¹
80. Under the New Directions policy, mandatory detention applies to 'unlawful non-citizens who present unacceptable risks to the community'; detention in an immigration detention centre is 'only to be used as a last resort and for the shortest practicable time'; and detention should be in the 'least restrictive form appropriate to an individual's circumstances'.⁷² The Commission is concerned that these principles are not being applied on an individual basis for people whose visas have been cancelled under s 501. Rather, these people are subject to mandatory detention, are virtually always held in high-security immigration detention centres, and are often detained for prolonged periods of time.
81. While many s 501 detainees have been convicted of a criminal offence, once they are transferred to immigration detention they have completed any prison sentence imposed. The ordinary expectation, as with Australian citizens, is that they have been punished and rehabilitated by the correctional system. Thereafter, these individuals should not be automatically categorised as posing an unacceptable risk to the Australian community. Rather, the extent to which they might pose any continuing risk should be determined on a case-by-case basis through an assessment of their individual history and circumstances.
82. This concern has also been raised by the JSCM, which has stated that 'risk assessments for s 501 detainees should focus on evidence, such as a person's recent pattern of behaviour, rather than suspicion or discrimination based on a prior criminal record'.⁷³

Recommendation 6: People whose visas have been cancelled under s 501 should only be held in an immigration detention facility if they have been individually assessed as posing an unacceptable risk to the Australian community and that risk cannot be managed in a less restrictive way. Alternative placement options should be considered for such people, including less restrictive places of detention than immigration detention centres, and community detention with imposition of conditions necessary to mitigate any identified risks. Consideration of appropriate alternatives should begin as soon as DIAC becomes aware that an individual is likely to have their visa cancelled and be taken into immigration detention.

PART 2: The impacts of mandatory, prolonged and indefinite detention

12 The mental health impacts of prolonged and indefinite detention

83. The Commission has repeatedly found that mandatory, prolonged and indefinite detention causes considerable distress among people in detention.
84. The Commission is troubled about a number of key factors that, in combination, are placing extreme pressures on asylum seekers and refugees in detention facilities. These include the psychological impacts of being detained for long periods with no certainty about when they will be released or what will happen to them when they are; confusion about the refugee status assessment process and frustration about delays with processing; frustration and uncertainty about ASIO security assessment processes and delays; and the fact that they are informed that if they seek judicial review of their negative refugee assessment, they will remain in immigration detention for the duration of that process.
85. During monitoring visits conducted in 2010-11, the Commission spoke with detainees who expressed immense frustration and a lack of comprehension about why it was considered necessary to detain them for the duration of their immigration processing.⁷⁴ Some people told the Commission that being in detention had made them feel as if they were criminals; others said detention made them feel like animals.⁷⁵ On its recent visit to immigration detention facilities at Villawood, the Commission spoke with people who expressed disbelief and a sense of injustice that in a country like Australia, they could be detained indefinitely without the ability to challenge their detention before a judge. Many people spoke to the Commission of feelings of frustration, distress, demoralisation and despair after being detained for a long period of time, and many spoke of the uncertainty and anxiety caused by being detained for an indefinite period of time.
86. During recent visits, the Commission heard from people in detention about the psychological harm that prolonged detention was causing them. People at Villawood spoke of experiencing high levels of sleeplessness, feelings of hopelessness and powerlessness, thoughts of self-harm or suicide, and feeling too depressed, anxious or distracted to take part in recreational or educational activities. The Commission was troubled by the palpable sense of frustration and incomprehension expressed by many people. This appeared to have contributed to marked levels of anxiety, despair and depression, leading to high use of sedative, hypnotic, antidepressant and antipsychotic medications and serious self-harm incidents.⁷⁶
87. Conversations with people in detention over the past two years have demonstrated that the mental health impacts of prolonged and indefinite

detention contribute to high rates of self-harm. People in detention have expressed to the Commission their belief that some of the recent suicides by people in detention have occurred due to the mental health impact of prolonged and indefinite detention. Furthermore, people in detention are acutely aware that the impact of detention on their mental health may impact on their effective functioning and their capacity to make a contribution to Australian society if they are granted a protection visa. The Commission is concerned that for some people the mental health impacts of prolonged detention will lead to significant levels of mental health support being required for lengthy periods following release from detention.

88. Hundreds of people in detention have clearly articulated the impacts of mandatory, prolonged and indefinite detention in numerous conversations with the Commission over recent years. For example:

I am really frustrated, rejected so many times, no one is contacting me. I will get tired of this life. Maybe day will come when I don't have control of my feelings. It makes us crazy, hopeless.⁷⁷

If they tell us you will be here for three years, maybe it will be easier instead of always waiting for next month, next month and it never comes.⁷⁸

Everyone's problem is the same. We are all waiting here without knowing how much longer we might be here with our family waiting on the other side.⁷⁹

My hope has all gone now. I'm young but I'm feeling that my life is destroyed. And my thinking is destroyed. There were things that I used to be able to do that I can no longer do.⁸⁰

We feel that we have lost everything here – our hope, our health, our memories, our names, our ability to help our families, our minds. We are more than half way to dead now. We are all dying here, from the inside out. We see others who have gone mad and think that we are going there too.⁸¹

If I go mad in here, I'm no use to anyone. Not to Australian society if I'm allowed to stay, and not to my family either way. When I try to talk with my family I can't because I just choke up now. I cannot speak with them for the pain. Twice I have gone to kill myself and my friends have helped me to not do it. Please be our voice out of here.⁸²

And the people who get out after a long time, they are so depressed. They cannot learn or help themselves. It is hard for them. If they give us English classes when we are here, we will forget everything when we get out. The people who left here are mad now, they are not healthy people.⁸³

13 Self-harm and suicide in immigration detention facilities

89. The Commission has become increasingly alarmed over the past year about the high rates of self-harm across the detention network. The Commission is also deeply concerned about the level of suicidality across the immigration detention network. The Commission has raised these concerns in several of

its recent reports as well as directly with DIAC and the Minister for Immigration and Citizenship.⁸⁴

90. During visits to various facilities, the Commission has both met with people who have self-harmed and heard of numerous instances of self-harm. On its visit to Villawood earlier this year, the Commission heard about a number of self-harm incidents including voluntary starvation and ingestion of detergent and chemicals. At Villawood IDC the Commission met with people who had visible scars from self-harming, and with one person who had recently been hospitalised following serious self-harm. During its recent visit to Curtin IDC the Commission also heard of a number of serious self-harm incidents including two instances of mass voluntary starvation and a case where a person detained in the facility threw himself through a glass window.
91. Self-harm incidents are occurring across the immigration detention network. Between 1 July 2010 and early June 2011, there were 322 recorded instances of self-harm among people in immigration detention facilities, 564 episodes in which detainees threatened to self-harm, and 34 instances of attempted serious self-harm in detention.⁸⁵
92. The Commission is particularly concerned by the deaths of six men in Australia's immigration detention facilities in 2010 and 2011. This includes five apparent suicides: one at Scherger IDC, one at Curtin IDC and three at Villawood IDC. There have also been a significant number of reported suicide attempts across the detention network.
93. People in immigration detention facilities have spoken with the Commission about their serious concerns about both self-harm and suicide in detention. For example, people in detention have told the Commission:

*[It's] not something you always think about. It is just something that happens because pressure is all too much.*⁸⁶

*My room-mate...totally lost his mind...He was just walking around, not talking... He threw himself through the glass after that. It was only then that they took him seriously. There was a lot of blood. This happened 6 weeks ago and we don't know what has happened to him. They wouldn't take him seriously when he needed help earlier. I knew him before. He was very educated and learning English. He lost his mind when he got rejected.*⁸⁷

*No one came to kill themselves. They came here to live. Because of the situation they are pushed to suicide.*⁸⁸

*We are suffering emotionally terribly in detention. In six months three people have killed themselves in here. It is becoming a normal thing.*⁸⁹

*Everyone is in a similar mental state – thinking about dying.*⁹⁰

*The only thing that remains is that we can hang ourselves from a tree.*⁹¹

94. The Commission is concerned about the aftermath of the suicides that have occurred in the detention network. During the Commission's visits to Villawood

and Curtin, the Commission held discussions with staff and people in detention about the response to these deaths, ongoing factors that continue to pose risks of suicide attempts, and the adequacy of measures taken to mitigate those risks.

95. It appears that there were deficiencies in the response to the first death at Villawood IDC, which occurred in September 2010. In particular, there was delay in providing adequate counselling and psychological support to people in detention at Villawood IDC in the aftermath. The Commission has been informed that since that time steps have been taken to improve responsiveness and that such delays did not occur after the subsequent deaths at Villawood IDC.
96. Given that four of the five apparent suicides appear to have resulted from men hanging themselves, the Commission is concerned about the safety of the infrastructure across the detention network. The Commission is troubled that there does not appear to have been a comprehensive approach to safety across the detention network. The Commission acknowledges that it can be difficult to 'suicide-proof' an environment. However, the Commission believes that DIAC should ensure that a safety audit is conducted across all detention facilities and that all appropriate measures are taken to improve the physical environment to minimise the risk of suicide and self-harm. The Commission holds grave concerns about the ongoing risk of suicide in immigration detention facilities. The Commission has urged DIAC to consult with organisations that specialise in suicide prevention as well as with mental health professionals, including with members of the Detention Health Advisory Group, about measures that could be taken to mitigate the risk of further suicides across the detention network. In its response to the Commission's report of its 2011 visit to immigration detention facilities at Villawood, DIAC advised that it 'is working to engage expert advice to help mitigate the risk of further suicides within immigration detention ... through a Suicide Prevention Working Group' and that it is working 'to develop an appropriate tool to be used for the purpose of conducting regular safety audits across the detention network'.⁹² The Commission calls for these initiatives to be completed as a matter of urgency.
97. The Commission also remains seriously concerned about the ongoing self-harm that is occurring in immigration detention facilities. The prevention of self-harm in detention and psychological support for people at risk of self-harm are addressed by DIAC's Psychological Support Program policy (PSP policy). The Commission is concerned that the PSP policy has not been adequately implemented across the detention network. In particular, the Commission has been concerned during a number of detention visits to learn that many staff have not received PSP training. It is not appropriate that monitoring is done by Serco staff who do not have appropriate qualifications or training. There is a need for a national framework for the delivery of PSP training on a rolling basis to ensure that all relevant Serco, DIAC and IHMS staff are provided with initial and refresher training.

Recommendation 7: In relation to self-harm and suicide, DIAC should:

- Consult with organisations that specialise in suicide prevention, as well as mental health professionals including members of the Detention Health Advisory Group, for advice about measures that should be taken to mitigate the risk of further suicides across the detention network and implement these measures as a matter of urgency.
- Ensure that safety audits are conducted at all facilities in the detention network, and that all appropriate measures are taken to minimise the risk of suicide and self-harm.
- Ensure that there is a clear written policy in place at each detention facility setting out the procedures for responding to threats of self-harm and suicide and ensure that all relevant staff are provided with training on the policy and procedures.
- Ensure that all relevant staff have adequate Psychological Support Program training.

14 Critical incident response

98. The Commission is concerned at the occurrence of disturbances within immigration detention facilities, particularly the events on Christmas Island in March 2011 and at Villawood IDC in April 2011.
99. The Commission does not condone acts of violence or property destruction in immigration detention facilities. It is important to recognise, however, the context which preceded these disturbances. The Commission believes that the issues relating to the processing of claims for asylum described above have contributed to the recent unrest in immigration detention facilities. Many people had been held in detention for a year or more, with no end in sight, and without the ability to challenge their ongoing detention in a court. Many were acutely frustrated by the time being taken to process their refugee claims, serious delays with security assessments and a lack of regular updates on progress with cases. Some were feeling pressured to return to countries where they believed they faced persecution or danger. The significant uncertainty, frustrations and tensions experienced by people in detention may have contributed to the unrest that has been seen in immigration detention facilities in recent months.
100. The Commission's recent visits to detention facilities have led to a number of concerns about critical incident response within the detention network, including:
- The adequacy of staff training, particularly for Serco officers in the areas of negotiation techniques; de-escalation of incidents that could potentially turn into critical incidents; and, as discussed above, on the

monitoring and support of people in detention at risk of self-harm or suicide.

- At some detention facilities, the lack of a formal plan or policy setting out how staff should respond to threats of self-harm or suicide. For example, when the Commission visited Sydney Immigration Residential Housing in February 2011 there was no such plan or policy in place – this was despite the fact that in the previous months there had been three apparent suicides at the adjacent Villawood IDC. The Commission has urged DIAC to ensure that there is a clear written policy in place at each detention facility setting out procedures for responding to threats of self-harm or suicide. All relevant staff should be provided with training on the policy and procedures.
- The apparent lack of a nationally consistent written policy or procedure for conducting a critical incident review after an event such as a death or 'near miss' attempt in detention. The Commission has urged DIAC to formalise, in conjunction with Serco, a critical incident review policy and procedure to apply across the detention network.
- In some cases, the critical incident reviews that are being conducted are not occurring in a timely manner. For example, at the time of the Commission's visit to Curtin IDC in May 2011, while initial reviews had been conducted, full critical incident reviews had not been completed for an apparent suicide that occurred in March 2011 or a hunger strike involving a significant number of people in April 2011.
- The apparent lack of formal MOUs between DIAC and state and territory police and emergency services. The Commission was pleased to hear a recent report that this issue has now been raised at the National Standing Council on Police and Emergency Management.⁹³

101. The Commission also remains concerned about liaison and information sharing between DIAC, Serco and the Australian Federal Police before and during the use of force by the Australian Federal Police on Christmas Island, particularly during the March disturbances, and looks forward to the release of the Commonwealth Ombudsman's inquiry regarding the use of force at this time.

Recommendation 8: DIAC should ensure that a full critical incident review is conducted as soon as possible after a critical incident occurs within an immigration detention facility, that Memoranda of Understanding are agreed with state police and emergency services as soon as possible and that all relevant staff working in immigration detention facilities receive adequate training in critical incident response.

15 People who work in immigration detention facilities

102. The conditions within some immigration detention facilities may have a detrimental impact on staff as well as detainees, particularly on those who

respond to critical incidents. Staff who work within immigration detention facilities include employees of DIAC; detention services provider officers employed and subcontracted by Serco; health and mental health personnel employed by International Health and Medical Services (IHMS), the company contracted to provide onsite physical and mental health services to people in detention; and others contracted to provide particular services.

103. Staff in many immigration detention facilities work within significant resourcing constraints. In addition, some immigration detention facilities experience chronic understaffing. This is of particular concern in facilities where there has been ongoing tension and disturbances over recent months. Further, the Commission is concerned that the training provided to many people who work in immigration detention facilities is insufficient for the tasks that such staff are being required to carry out.
104. The pressure placed on staff working in immigration detention facilities could jeopardise their health, safety and wellbeing. The Union of Christmas Island Workers, following episodes of unrest this year, has expressed concern about its members who work within detention facilities on the island.⁹⁴ Perhaps most troublingly, in July a man who was employed as a security officer at Curtin IDC, and who had helped respond to the suicide by hanging of a detainee there, is reported to have committed suicide by hanging.⁹⁵
105. The Commission acknowledges that efforts are made to ensure that staff have access to counselling if required. The Commission urges the investigation of appropriate measures to support the health, safety and wellbeing of all people who work in immigration detention facilities.

PART 3: Immigration detention facilities and services



Entrance, Villawood IDC, February 2011.

106. The Commission's role in monitoring places of immigration detention enables the Commission to make observations regarding immigration detention facilities and services.⁹⁶ As noted above, over the past two years, the Commission has visited immigration detention facilities on Christmas Island and in Darwin, Leonora, Villawood, Curtin, Maribyrnong and Inverbrackie. The Commission has published reports regarding visits to Christmas Island, Darwin, Leonora and Villawood. A report of the visit to Curtin IDC which will be published in September 2011.⁹⁷ Reports can be accessed at the Commission's website.⁹⁸
107. This section outlines a range of the Commission's key concerns relating to:
- the location of immigration detention facilities
 - infrastructure and accommodation
 - communications in immigration detention
 - health and mental health services for people in detention
 - educational opportunities for people in detention
 - meaningful activities for people in detention
 - opportunities to leave the detention environment on external excursions.
108. Under international human rights standards, authorities should seek to minimise differences between life in detention and life at liberty in the design and delivery of detention services and facilities.⁹⁹ People are held in immigration detention under the Migration Act because they do not have a valid visa.¹⁰⁰ They are *not* detained because they are under police arrest or because they have been charged with or convicted of a criminal offence. The treatment of people in immigration detention should therefore be as favourable as possible, and in no way less favourable, than that of untried or convicted prisoners.¹⁰¹
109. Nevertheless, conditions of immigration detention in Australia remain, in many places, restrictive, punitive and prison-like.¹⁰² Some immigration detention facilities are overcrowded.¹⁰³ Some are located in very remote areas and in harsh physical environments characterised by extreme weather conditions.¹⁰⁴ Detainees in some other facilities have limited access to health and mental health care, restricted educational opportunities and few chances to leave the detention environment on excursions.¹⁰⁵
110. In the Commission's view, many of Australia's immigration detention facilities are not appropriate places in which to hold people, especially given the high numbers of people who remain in immigration detention for extended periods of time.

16 Detention in remote locations



Looking into Curtin IDC through perimeter fence, May 2011.



Car park outside fence of Leonora alternative place of detention, November 2010.

111. The Commission is concerned about the impacts of detaining people in extremely remote locations, including facilities at Christmas Island, Leonora in

the Western Australian desert, Curtin IDC in far north Western Australia and the Scherger RAAF base on Cape York Peninsula in far north Queensland.

112. People in detention frequently raise the impact of detention in remote locations with the Commission. For example:

*Everything is a problem. There is dust and dirt everywhere. The showers are not clean. It is so remote. How can this work? If you try living here in our situation for a month you will understand the problems.*¹⁰⁶

*We are cut off from the world and living in isolation.*¹⁰⁷

113. People detained in remote areas proximate only to small local communities often have few opportunities for visitors and excursions and limited access to services including health and mental health care, legal advice, and appropriate cultural and religious support.¹⁰⁸ For example, Curtin IDC has a regular capacity of 1200 and a surge capacity of 1500 people. The nearest town of Derby, approximately 40 kilometres to the south-east, has a local population of around 3000 people.¹⁰⁹ A range of challenges arise from the placement of such a large detainee population near a relatively small town, including providing adequate access to specialist medical care and ensuring that people in detention can get adequate access to legal assistance and communications facilities.
114. Further challenges arise in attracting and retaining sufficient numbers of qualified staff willing to be based in remote locations for extended periods and in sourcing adequate staff accommodation in such small communities.¹¹⁰ For example, during the Commission's recent visit to Curtin, the Commission heard that there were insufficient staff, due in part to a shortage of suitable staff accommodation nearby. This has also been a problem on Christmas Island.
115. In addition, holding asylum seekers in remote locations makes detention operations less visible, transparent and accessible to public scrutiny.¹¹¹ For groups based on the east coast of Australia, for example, travelling to Christmas Island is extremely time consuming and expensive. This limits the ability of bodies such as the Commission to visit these detention facilities on a regular basis, and makes the trip virtually impossible for most non-government organisations and community groups.¹¹²
116. Finally, the physical environment in the remote immigration detention facilities is often harsh. For example, at Leonora Alternative Place of Detention, the heat is often extreme, and there is a limited amount of grassy and shaded outdoor space and limited indoor recreation space within the facility. A number of the outdoor areas consist only of red dirt. Similarly, there are few trees and there is little grass inside the Northern IDC at Darwin. The combination of heat, dirt and lack of shade at this centre means there are few comfortable outdoor spaces.

117. In the Commission's view, if people must be held in immigration detention facilities, it is far preferable that these be located close to metropolitan areas. Urban detention facilities have many benefits over those in rural areas: they are more likely to be adequately staffed; they are closer to essential services; they are likely to provide greater opportunities for excursions; they more readily allow for visitors; and they provide easier access for scrutiny bodies such as the Commonwealth Ombudsman and the Commission.

Recommendation 9: People should not be held in immigration detention in remote locations. If people must be held in immigration detention facilities, they should be located in or near metropolitan areas.

17 Immigration detention infrastructure and accommodation



Electrified fence separating North and South compounds, Northern IDC, September 2010.

118. There is wide variation in the quality of infrastructure and the accommodation provided to detainees across the immigration detention network.

- Immigration detention centres (IDCs) are the most secure of Australia's immigration detention facilities.
- Immigration residential housing (IRH) facilities are closed detention facilities, but they have less intrusive security measures than IDCs. They provide more flexible accommodation including housing that can accommodate families.

- Immigration transit accommodation (ITA) facilities are closed detention facilities, but they have less intrusive security measures than IDCs.
 - There are a number of low security immigration detention facilities that are classified by DIAC as alternative places of detention. These include the Construction Camp on Christmas Island and facilities in Perth, Leonora, Darwin, Brisbane and Inverbrackie. People detained in such facilities remain under supervision and are not free to come and go.
 - Some immigration detainees are permitted to live in the community in what is known as 'community detention'. These people are generally not under physical supervision. However, legally they remain in immigration detention. There are conditions attached to community detention, which usually include requirements such as reporting to DIAC on a regular basis, sleeping at their stipulated residence every night, and refraining from engaging in paid work or formal study.
119. On its visits to immigration detention facilities over many years, the Commission has found the infrastructure and accommodation in some facilities inappropriate for the purpose of immigration detention, particularly given the prolonged periods of time for which some people are held in detention and the needs and vulnerabilities of many of these people. Detailed assessments of the immigration detention infrastructure and accommodation are contained in the Commission's reports on visits to immigration detention facilities, including;
- 2008 – [Immigration detention report](#) (summary of observations following visits to all immigration detention facilities)
 - 2009 – [Immigration detention and offshore processing on Christmas Island](#)
 - 2010 – [Immigration detention and offshore processing on Christmas Island](#); [Immigration detention in Darwin](#)
 - 2011 – [Immigration detention in Leonora](#); [Immigration detention at Villawood](#).
120. The Commission holds particular concerns about the infrastructure and accommodation in high-security immigration detention centres and in some alternative places of detention that are used for families and unaccompanied minors. The Commission has found some facilities to have harsh and prison like conditions. In many centres, high wire fences, a lack of green open space, walled-in courtyards, ageing buildings, pervasive security features, cramped conditions and a lack of privacy combine to create an oppressive atmosphere. Specific concerns include:
- The security-driven atmosphere in many immigration detention centres, created by the use of physical measures such as high wire

fencing and razor wire and surveillance measures such as closed circuit television.

- The ageing and inappropriate infrastructure in some centres, including accommodation in overcrowded dormitories with little privacy and nowhere to store personal belongings.
- The fact that some centres have few trees and little grass, contributing to there being inadequate outdoor recreation spaces.
- The inappropriate nature of some facilities for detaining families and unaccompanied minors, including facilities with very little appropriate indoor or outdoor recreation spaces.

Recommendation 10: The Australian Government should implement all of the recommendations made regarding immigration detention infrastructure and accommodation in Commission reports from 2008 onwards. The most significant of these recommendations are repeated below.

121. Following the Commission's most recent visits it has particular concerns about the infrastructure and accommodation at Christmas Island and Villawood, which are discussed in more detail below.

17.1 Christmas Island

122. The Commission has been critical of the conditions of accommodation for people in immigration detention on Christmas Island.¹¹³ At the time of the Commission's 2010 visit, people in detention at the Christmas Island IDC were accommodated in dormitories and tents which were overcrowded. Detainees living in these areas had virtually no privacy, little space to store their personal belongings and limited access to basic facilities such as showers, kettles, toasters and washing machines. People were being detained in such places for weeks or even months at a time. Furthermore, excessive security measures were employed at the centre, such as high wire fences, walkways enclosed in cage-like structures, CCTV surveillance, metal reinforced officer booths with perspex security screens, and metal grills on detainees' bedroom windows.¹¹⁴



Entrance, Christmas Island IDC, May 2010.

123. The Commission has repeatedly raised concerns about the Management Support Unit or the Red Compound at the Christmas Island IDC.¹¹⁵ The Red Compound looks and feels extremely harsh and punitive. The bedrooms are essentially small cells, with solid metal doors and grills on the windows. All furniture is hard and bolted to the floor. There are CCTV cameras in the bedrooms – including in the toilet and bathroom areas – which cannot be turned off. There is no outdoor space where detainees have an open view of the sky, and no open space where they can freely walk or run. The Commission is concerned that the Red Compound has been used on a number of occasions over the last two years.



Management Support Unit, Christmas Island IDC, May 2010.

124. There has been a substantial reduction in the number of people detained on Christmas Island since the Commission's 2010 visit.¹¹⁶ However, many of the Commission's concerns about accommodation on Christmas Island apply regardless of the number of people detained there. The Commission continues to recommend that the Australian Government stop using Christmas Island as a place for holding people in immigration detention. It does so for a range of reasons, including the island's remoteness and the nature of the infrastructure and accommodation in immigration detention facilities on the island.¹¹⁷

Recommendation 11: The Australian Government should stop using Christmas Island as a place in which to hold people in immigration detention.

17.2 Villawood

125. The Commission has raised serious concerns about the physical conditions at Villawood IDC for a number of years.¹¹⁸ The centre was not purpose built, its infrastructure is aging and dilapidated, and, in the Commission's view, much of it is inappropriate for the purpose for which it is being used. This places considerable strain on both detainees and staff.
126. The intrusive physical security measures at Villawood IDC create an environment that feels harsh and punitive. The centre is surrounded by high wire fences, some of which are alarmed or electrified; the internal compounds are separated by further high wire or thick metal fences; many areas are under camera surveillance; and there are static security guards stationed around perimeter fences.



External fences, Villawood IDC, February 2011.

127. The Commission's most serious concerns about infrastructure and accommodation at Villawood IDC relate to the physical conditions in Blaxland compound, the highest security section of the centre. This compound remains one of the most restrictive areas in the detention network. There are intrusive security measures including prison-like perimeter fences, razor wire and camera surveillance; a majority of detainees share crowded dormitory bedrooms with virtually no privacy; and a complex mix of detainees is held together in a very confined space. There is no dedicated space for educational activities, virtually no library, and limited access to outdoor recreational areas. The Commission has repeatedly recommended that Blaxland compound be demolished.¹¹⁹



Blaxland compound, Villawood IDC, February 2011.



Blaxland compound, Villawood IDC, February 2011.

128. Other compounds at Villawood IDC are also a source of concern for the Commission. At the time of the Commission's most recent visit, for instance, people detained in Fowler compound were sharing small bedrooms with two or three other people. They had very little space or privacy, and no lockable space to store their personal belongings.¹²⁰



Bedroom, Fowler compound, Villawood IDC, February 2011.

129. The Commission welcomed the announcement by the Australian Government in May 2009 that funding would be allocated for a major redevelopment of Villawood IDC, and welcomes efforts made since that time in the planning and design phase. Pending the major redevelopment, some smaller interim works have been undertaken at Villawood IDC.¹²¹ While the Commission welcomes these interim works, it remains of the view that the major redevelopment should be undertaken as soon as possible.¹²²

Recommendation 12: The redevelopment of Villawood IDC should be undertaken as soon as possible. It should include the demolition of Blaxland compound, ensure that people are detained in the least restrictive form of detention possible, and address the infrastructure concerns raised by the Commission in its 2008 *Immigration detention report*.

17.3 Residential housing and alternative places of detention

130. The Commission has welcomed the commitment in the New Directions policy that children, and where possible, their families, will not be detained in immigration detention centres. The Commission has visited a significant number of immigration residential housing complexes and alternative places of detention.
131. In the Commission's view, if people must be held in immigration detention facilities, they should be held in less restrictive facilities such as immigration residential housing complexes or alternative places of detention rather than high-security immigration detention centres, wherever possible.

132. However, the conditions of detention in some alternative places of detention are, in the Commission's opinion, not appropriate for use as immigration detention facilities, and are particularly unsuitable for families with children and unaccompanied minors. For example, this is the case at Leonora alternative place of detention which is a remote detention facility in a harsh physical environment, with limited recreational space.¹²³



Accommodation blocks, Leonora alternative place of detention, November 2010.

133. The Commission has also held concerns about the Construction Camp on Christmas Island which has been used to detain families and unaccompanied minors. Following the Commission's visit in 2010, it held significant concerns about the lack of open space in the Construction Camp, the fact that there is no open grassy area inside the facility, and the lack of indoor recreation space. People detained at the Construction Camp did have the opportunity to visit an adjacent oval and playground, although access to this area was completely restricted for a period of some months from late 2010 onwards.



Construction Camp immigration detention facility, Christmas Island, May 2010.

134. Similarly, the Commission did not believe that the Asti Motel alternative place of detention was an appropriate place to use as an immigration detention facility; largely due to the lack of both indoor and outdoor recreation space and that outdoor areas were all paved or concrete and had limited shade. The Commission is pleased that it is no longer being used.
135. In contrast, the Commission generally welcomed the standard of accommodation at the Darwin Airport Lodge alternative place of detention, though significant concerns remained about the adequacy of the recreational space available in the facility, especially given the high number of children detained there.¹²⁴



Offices and accommodation, Darwin Airport Lodge, September 2010.

136. Similarly, Sydney IRH provides a much less punitive physical environment than immigration detention centres. The facility is surrounded by residential style fencing and external areas are monitored by cameras and an alarm system. Sydney IRH is a purpose-built facility. Accommodation is in duplex houses which provide people in detention with a greater level of privacy and autonomy. Often people have their own bedroom, and they are able to cook their own meals. Perth IRH provides a similar standard of accommodation to that at Sydney IRH.¹²⁵



Accommodation, Sydney IRH, February 2011.

137. The Commission also recently visited Inverbrackie alternative place of detention in South Australia, where family groups are accommodated in residential-style housing. Many aspects of life in Inverbrackie alternative place of detention mirrored those in the wider community. For instance, people were responsible for cooking and cleaning inside their own homes and they could choose their own groceries. Several communal buildings were available for detainees to use for a variety of purposes and there was a considerable amount of open, grassed, shady space. The detention environment at Inverbrackie alternative place of detention appeared to the Commission to afford the people detained there a considerable degree more humanity than other immigration detention facilities.



Accommodation, Inverbrackie alternative place of detention, July 2011.

138. However, immigration residential housing complexes and alternative places of detention are still closed detention facilities. People are not free to come and go. They are only permitted to leave the facilities on escorted excursions. Despite the preferable physical conditions, many people may still experience psychological impacts as a result of the deprivation of their liberty. For example, the Commission met with a number of people who spoke about the detrimental impact of detention on its recent visit to the Sydney IRH.

Recommendation 13: If people must be held in immigration detention facilities, they should be held in less restrictive facilities such as Immigration Residential Housing complexes rather than high-security immigration detention centres, wherever possible.

18 Physical and mental health services

139. Under international human rights standards, all people have a right to the highest attainable standard of physical and mental health.¹²⁶ Each person in detention is entitled to medical care and treatment provided in a culturally appropriate manner and to a standard which is commensurate with that provided in the general community. This should include preventive and remedial medical care and treatment including dental, ophthalmological and mental health care.¹²⁷
140. During visits to immigration detention facilities over the past several years, the Commission has spoken with people in detention about the health and mental health care with which they are provided; viewed the onsite health facilities;

and spoken with staff of IHMS. The Commission has held serious concerns about the adequacy of physical and mental health services in some facilities visited over the past few years.¹²⁸

141. The Commission has repeatedly recommended that an independent body be charged with monitoring the provision of physical and mental health services in immigration detention, and that adequate resources to fulfil this function be allocated to that body.¹²⁹ While the Detention Health Advisory Group currently plays an important advisory role, it is not sufficiently resourced to monitor physical and mental health service provision in detention facilities on a regular and ongoing basis.

Recommendation 14: An independent body should be charged with the function of monitoring the provision of health and mental health services in immigration detention. The Australian Government should ensure that adequate resources are allocated to that body to fulfil this function.

18.1 Physical health services

142. During recent visits to immigration detention facilities, the Commission welcomed efforts by health staff to ensure that people in detention have access to appropriate services and treatment. The Commission met IHMS staff who appeared hardworking and committed and heard positive feedback from some people in detention about the assistance provided by health staff.
143. However, many people also complained to the Commission of the standard of health care they received in detention. For example, people have told the Commission:

*There are insufficient doctors and nurses. We have many diseases here, but they just give us water and Panadol. It takes three days to receive an appointment after you make a written request.*¹³⁰

*People who are sick and really need attention cannot get it. If you go to see them you get told no, fill in the form and wait.*¹³¹

*I waited 25 days to see someone after putting in a request.*¹³²

144. There are a number of issues relating to physical health care that detainees across the detention network have repeatedly raised with the Commission. These relate to:

- Delays with people in detention receiving an appointment to see a nurse or doctor.¹³³ These delays appeared to occur, in some facilities, because of the IHMS staffing level being inadequate to meet the needs of the number of detainees in the facility.¹³⁴
- Extremely limited access to dental, optical or other allied health services.¹³⁵

- Limited access to specialist care and lengthy delays in seeing a specialist after requesting an appointment.¹³⁶
- Instances where individuals have not been provided with prompt or appropriate treatment for a range of serious medical issues including kidney stones and shrapnel wounds.¹³⁷
- Delays in providing test results and information about progress with requests for treatment.¹³⁸

18.2 Mental health services

145. During its recent visits to immigration detention facilities, the Commission has noted the efforts being made by IHMS staff to provide mental health care to people in immigration detention. Some detainees told the Commission that appointments were readily available and that the mental health care was beneficial.¹³⁹ Others, however, spoke to the Commission of the prevalence of mental health issues in immigration detention and the inadequacy of the mental health treatment available. For example, people told the Commission:

*They don't check on us. They just give us sleeping pills.*¹⁴⁰

*These people are dying from the inside because of their depression.*¹⁴¹

*Most have mental problems – shaky hands, suicide thoughts, harm themselves, can't sleep, fighting...*¹⁴²

*Almost every night we have nightmares about death.*¹⁴³

*We tell the managers about our problems mentally, but we are told you will be ok because we have a hospital for people who go mental.*¹⁴⁴

146. As discussed above in section 12, the Commission has long held serious concerns about the detrimental impacts on people's mental health and wellbeing of being held in immigration detention facilities for prolonged and indefinite periods of time. These concerns have escalated over the past year as clear evidence has become available of the poor mental health of many people in detention, including high rates of self-harm and five apparent suicides in immigration detention facilities.
147. The Commission's observations regarding mental health have been informed by the presence of a consultant psychiatrist on the Commission's monitoring team for visits to immigration detention facilities at Darwin, Villawood and Curtin.
148. The Commission has a number of concerns regarding provision of mental health services across the immigration detention network.
149. The Commission's primary concern relates to the model of clinical governance of mental health services. In each of the facilities the Commission has recently visited, clinical responsibility fell on the mental health team leader, who was

usually a mental health nurse or a psychologist. In the Commission's view, this is not appropriate, given the high number of people being detained for prolonged periods, the mental health impacts of prolonged detention and the complex nature of the caseload in some facilities. Mental health services should be overseen by a psychiatrist who can provide onsite clinical supervision of staff and accept clinical responsibility for the provision of clinical care. DIAC has advised the Commission advised that it was considering this issue.¹⁴⁵ DIAC should ensure that this matter is addressed in a consistent way across the detention network as a matter of urgency.

150. Other concerns that the Commission holds regarding mental health service provision include:

- Inadequate staffing levels in a number of facilities, including those at Villawood and in Darwin.¹⁴⁶
- The lack of onsite IHMS mental health staff at immigration residential housing facilities.¹⁴⁷ DIAC has reported that it is reviewing this situation.¹⁴⁸
- The lack of onsite access to a psychiatrist in remote centres, such as those at Christmas Island and in Leonora and Curtin.¹⁴⁹
- That in some facilities, for example at Villawood, mental health services do not extend to active outreach into the accommodation compounds. This means that IHMS staff are unable to gain an accurate appreciation of the psychological environment within the centre; they may be unable to identify individuals at risk of psychiatric disorder and/or self-harm at an early stage and cannot adequately monitor the mental state of individuals who have been referred to them for treatment.¹⁵⁰ In its response to the Commission's report of its 2011 visit to Villawood, DIAC acknowledged the Commission's concerns about the lack of outreach services at that facility and 'reconfirmed the need for outreach services with IHMS'.¹⁵¹
- The high level of prescription and use of psychotropic medications, including antipsychotics and antidepressants, for their sedative effect in order to manage the high levels of sleeplessness among people in detention.¹⁵²
- That the PSP policy has not been adequately implemented across the detention network and that not all relevant staff working across the network have had PSP training.¹⁵³

Recommendation 15: In relation to the provision of physical and mental health services, DIAC should:

- Ensure that all people in immigration detention are provided with timely access to appropriate health and mental health services, including dental care and specialist care as required.

- Conduct a review of the IHMS staffing levels in all immigration detention facilities, and ensure as a matter of priority that there is a sufficient number of staff in each facility to meet the needs of the number of people in detention there.
- Overhaul the clinical governance framework for the delivery of mental health services across the detention network. This would involve a consultant psychiatrist overseeing mental health service delivery, providing onsite clinical supervision of staff and accepting clinical responsibility for the provision of clinical care.
- Ensure that active outreach work is conducted by IHMS mental health staff in the accommodation compounds of all immigration detention facilities.

18.3 Torture and trauma services

151. Under international human rights standards, survivors of torture and trauma should have access, without delay, to assessment and treatment by a qualified professional with expertise in the assessment and treatment of torture and trauma. Where an appropriately qualified professional is not on the staff in a detention facility, referral should be made to an external specialist agency.¹⁵⁴
152. Torture and trauma services are provided for people in immigration detention by specialist torture and trauma services. In metropolitan centres such as Villawood, Maribyrnong and Darwin IDCs, torture and trauma counselling is usually conducted outside of the immigration detention centre. However, in some remote centres such as Leonora and Curtin, the counselling is conducted within the detention facility.
153. The Commission has a number of concerns regarding access to torture and trauma services, including:
- The apparently low rate of referral to torture and trauma services for counselling in some facilities, including those at Darwin and Curtin, given the high number of people in detention who are likely to have experienced torture and trauma.¹⁵⁵
 - The low numbers of torture and trauma counselling staff in some facilities, given the high number of people in detention who are likely to have experienced torture and trauma.¹⁵⁶
 - The shortage of dedicated rooms in which counselling sessions can be conducted at some facilities.¹⁵⁷
154. The Commission is also concerned about the extent to which people who have experienced torture and trauma can be appropriately cared for in a detention environment. For example, on Christmas Island, one person in detention told the Commission: *'We cannot be staying in this situation for a long time. It is difficult to tolerate trauma. Trauma is being repeated here.'*¹⁵⁸

155. The aim of DIAC's Torture and Trauma Policy is to ensure that people who have experienced torture or trauma:

are encouraged and supported, wherever possible following consideration of health, character and security risks, to reside legally in the community while their immigration status is being resolved or, where this is not possible, in the least restrictive form of detention to minimise the potential for immigration detention to exacerbate any vulnerabilities associated with their previous experience of torture and trauma.¹⁵⁹

156. Under the policy, the continued detention of survivors of torture and trauma in an immigration detention centre is only to occur 'as a measure of absolute last resort where risk to the Australian community is considered unacceptable'.¹⁶⁰ Under the Residence Determination Guidelines, persons who may have experienced torture or trauma are to be prioritised for consideration of a Community Detention placement.¹⁶¹
157. Over the past two years, the Commission has had serious concerns regarding the extent to which these policies are being implemented. For example, the Commission heard from health services staff on Christmas Island in mid-2010 that some individuals identified as high priority torture and trauma cases had remained in detention on Christmas Island. The Commission has urged the Australian Government to provide adequate access to torture and trauma services, to ensure full implementation of the Torture and Trauma Policy, and full use of the community detention system, particularly for vulnerable groups including torture and trauma survivors.

Recommendation 16: DIAC should ensure that all people in detention who are survivors of torture and trauma have adequate access to specialist counselling services.

Recommendation 17: 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 immigration detention network. Under this policy, the continued detention of survivors of torture and trauma in an immigration detention centre is to occur only as a last resort where risk to the Australian community is considered unacceptable.

19 Educational opportunities

19.1 Children

158. The Commission has many serious concerns about holding children in immigration detention as discussed in Part 5 below. One of these relates to the provision of education. The CRC protects the rights of all children to education, to engage in play and recreational activities appropriate to their age, and to participate in cultural and artistic activities.¹⁶² Wherever possible,

the education of children in immigration detention should take place outside the detention facility, in the general school system.¹⁶³

159. Attending local schools provides children with the opportunity to enjoy their right to education as well as the chance to play and engage with other children in a 'normal' environment, outside the detention facility. During recent visits to immigration detention facilities, the Commission heard of the high importance placed on education by many children in detention. For example, one unaccompanied child, who was not allowed to attend external schooling at that time, told the Commission, *'it is very important for us to be in society. We are segregated. We don't learn anything here. We should be learning'*.¹⁶⁴
160. The availability of education to children in detention varies across the immigration detention network.
161. For example, at the time of the Commission's visit to Christmas Island in 2010, children aged 15 or under were able to attend the Christmas Island District High School on a daily basis. The Commission heard positive feedback from parents in detention about their children's attendance and participation in classes at the local school. Generally, however, 16 and 17 year olds (mostly unaccompanied minors) did not attend the local school on Christmas Island. Some older minors attended classes in two demountable buildings inside the detention facility but insufficient classes were being held to accommodate all children who wished to participate.
162. School-aged children detained at Leonora alternative place of detention and the Sydney IRH were permitted to attend local schools at the time of the Commission's visits to these places in November 2010 and February 2011 respectively.¹⁶⁵ However, children too young to attend primary school were not being provided with opportunities to participate in active learning and play activities outside the detention facility. In contrast, children detained at Inverbrackie alternative place of detention could attend local pre-schools in addition to local primary schools and high schools.
163. The Commission was very concerned that children detained at the Asti motel and the Airport Lodge in Darwin were unable to attend external schools for a protracted period in 2010. At the time of the Commission's visit in September 2010, there were 248 children (including unaccompanied minors) in immigration detention facilities at Darwin and none of them was attending an external school or kindergarten. While the majority had been in detention for less than three months, 50 children had been there for longer than three months.¹⁶⁶ Access to external education for children detained in immigration detention facilities in Darwin commenced in late October 2010.

Recommendation 18: Children of all ages should be permitted to attend school or participate in other appropriate educational programs outside the detention environment.

19.2 Adults



Educational space, Curtin IDC, May 2011.

164. Under international human rights standards, opportunities for English language instruction and further education, including technical and vocational training, should be provided for people in immigration detention where possible.¹⁶⁷ These opportunities are important both in providing people with a constructive way to spend their time in detention and in assisting people to improve their English communication skills. People who ultimately stay in Australia are likely to experience easier integration into the community and be better able to meaningfully contribute to society upon release from detention if they have had such opportunities.
165. The Commission has been concerned during recent visits to some immigration detention facilities about the limited availability of opportunities for adult education. For instance, during its 2010 visit to Christmas Island, the Commission was concerned about the limited access adults had to educational activities. The substantial increase in the number of people being held in each facility at the time of the Commission's visit had led to overcrowded classes and long waiting periods for people to attend lessons.¹⁶⁸
166. Similarly, when the Commission visited Leonora alternative place of detention, it heard numerous complaints from people in detention about the insufficient number of English classes for adults. Many people claimed that they were only able to attend one English class each week, and that often the level of instruction was not appropriate for them.¹⁶⁹

167. Furthermore, at Curtin IDC, detainees told the Commission that classes were overcrowded, sometimes to the extent that there were an insufficient number of seats to accommodate the people who wished to participate and people had to sit on the floor.¹⁷⁰

Recommendation 19: All people in immigration detention should be provided with access to a range of educational activities, including English language classes, conducted on a regular and frequent basis.

20 Meaningful activities for people in detention

168. International human rights standards require that people in immigration detention have access to materials and facilities for exercise, recreation, cultural expression and intellectual pursuits to utilise their time in detention in a constructive manner, and for the benefit of their physical and mental health.¹⁷¹ International standards provide that children in immigration detention in particular should be provided with opportunities to engage in recreational activities.¹⁷² The provision of regular, engaging and constructive activities is vital to people's capacity to cope in immigration detention, particularly when they are detained for long periods of time.
169. The Commission has welcomed efforts in some of the immigration detention facilities it has recently visited to provide detainees with opportunities to spend their time in detention in an appropriate and meaningful way. For example, at Leonora alternative place of detention, detainees could participate in sewing, knitting, arts and crafts and occasional cultural cooking sessions.
170. However, in some immigration detention facilities, opportunities to participate in engaging and constructive activities were limited. For instance, at Darwin, people in immigration detention did not have access to an appropriate library area; there was a lack of space for young children to play and most detainees did not have access to a gym.¹⁷³ At the time of the Commission's visit in 2010, there were limited reading materials available to detainees in the Construction Camp and Phosphate Hill facilities, and other recreational opportunities were limited across all facilities on the island due to overcrowding.¹⁷⁴ The Commission was concerned to hear that, at the time of its 2011 visit to Villawood IDC, there was a period for which Serco was not meeting its contractual requirements in relation to the provision of recreational activities.¹⁷⁵



Gym, Dormitory 3, Blaxland compound, Villawood IDC, February 2011.



Marquee used as recreational space, Curtin IDC, May 2011.

171. The limited availability of regular purposeful activities in some places of detention appears to have resulted in high levels of boredom, frustration and tension.¹⁷⁶ In some places, space constraints and a lack of recreational facilities and toys appeared to be creating tensions between children and

associated friction between parents.¹⁷⁷ Moreover, people at some facilities said the lack of activities was affecting their physical and mental health.¹⁷⁸

172. People in detention at some facilities told the Commission they would like to be provided with further opportunities to spend their time in detention in an engaged and constructive way.¹⁷⁹ Some people expressed a specific desire to engage in some form of constructive voluntary activity, either inside or outside the detention environment.¹⁸⁰
173. Meanwhile, other people in detention spoke of feeling too depressed or distracted to take part in activities. This was a particular issue for people who had been detained for long periods. For example, one man detained at Villawood IDC, acknowledged the activities available there but said: *'How can we participate when we are psychologically tired?'*¹⁸¹

Recommendation 20: DIAC should ensure that all people in immigration detention have access to:

- adequate outdoor recreation spaces including grassy and shaded areas
- adequate indoor areas for recreational activities
- a range of recreational activities conducted on a regular and frequent basis
- a freely accessible library area stocked with reading materials in languages spoken by people in detention
- opportunities to attend religious services in the community, should they wish to do so.

21 Opportunities to leave the detention environment on external excursions

174. The Commission has long expressed the view that people in immigration detention should be provided with regular opportunities to leave the detention environment through participation in external excursions. This can be vital in assisting people to cope with the deprivation of their liberty, particularly when they are detained for prolonged periods, and may attenuate the development of self-harming and suicidal behaviours.
175. During recent visits to immigration detention facilities, the Commission heard from many people in detention about the negative impact on them of the lack or infrequency of excursions. People – some of them young children – told the Commission:

*I want to be allowed to go outside to somewhere else.*¹⁸²

*We are going crazy without excursions.*¹⁸³

*We have been more than one year inside Curtin and we have no idea what it is like outside.*¹⁸⁴

*We are all forgetting what it is like to be out. We want to see what Darwin looks like. I'm forgetting the shape of a city.*¹⁸⁵

*If you let us go out once a week we will be very relaxed.*¹⁸⁶

176. The Commission welcomes efforts to provide some people in immigration detention with the opportunity to take part in escorted excursions, including to parks, libraries, shopping centres, recreational centres and museums.¹⁸⁷
177. There are, however, significant inconsistencies across the detention network in the frequency of excursions for detainees. When the Commission visited Darwin in September 2010, regular excursions were not being conducted for any of the people in detention there, with the exception of a small number of unaccompanied minors detained at Berrimah House.¹⁸⁸ Similarly, people detained at Villawood IDC had not been given the opportunity to participate in recreational excursions for over a year at the time the Commission visited that facility in February 2011.¹⁸⁹ In addition, no external excursions from Curtin IDC were conducted from the time the facility reopened in June 2010 until approximately one week before the Commission visited in May 2011.
178. In the Commission's view, there should be consistent standards for access to 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.

Recommendation 21: DIAC should ensure that people in immigration detention 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.

22 Communications



Telephones, Villawood IDC, February 2011.



Computers, Inverbrackie alternative place of detention.

179. It is critical for people deprived of their liberty to be able to communicate with the outside world, in order to maintain regular communication with family

members, friends and support networks, and to ensure effective contact with legal advisers and migration agents.

180. Under international human rights standards, people in detention should be able to enjoy regular contact with family, friends and community members, facilitated through visits, correspondence and access to telephones. They should also be provided with facilities to communicate and consult in private with legal representatives.¹⁹⁰
181. The Commission is concerned that there is inadequate access to communications facilities, including telephones and internet terminals, in many immigration detention facilities.
182. For example, at the time of the Commission's visit to Christmas Island in 2010, there was a serious shortage of telephones available for use by people in detention. In the Christmas Island IDC, there were at most four landline telephones available for use per compound, each of which accommodated over one hundred people. One compound, which accommodated 341 people, had no landline telephones at the time of the Commission's visit. At the Construction Camp facility, there were three telephones for the use of 418 people.¹⁹¹
183. The Commission has found similar problems in other detention facilities. For example, in one compound at the Northern IDC, there were two telephones for the use of 211 detainees at the time of the Commission's visit in September 2010.¹⁹² At Curtin IDC, there was only one incoming phone line available for use by 1433 people during the Commission's May 2011 visit.
184. Internet facilities are also limited in immigration detention facilities. For example, when the Commission visited Christmas Island in 2010, there were 23 internet terminals for the use of 1834 people at the Christmas Island IDC; 12 terminals shared by 418 people detained at the Construction Camp; and eight terminals shared by 164 people detained at the Phosphate Hill facility.¹⁹³ When the Commission visited Curtin IDC in May 2011, there were only 18 computers for the use of the 1433 people detained in the facility.
185. Limited access to functioning telephones and internet terminals is a particular problem at remote detention facilities such as those at Christmas Island and Curtin IDC, where detainees have very limited face-to-face access to legal or community support groups. For example, the Commission was concerned during its recent visit to Curtin IDC about the significant impact that the limited communications facilities there was having on people's ability to access legal assistance if they were seeking judicial review of decisions regarding their refugee status.
186. The Commission has heard from people in immigration detention facilities of the impact of limited communications. For example, people have said:

*I had to wait a month for a password to be issued to me for the internet. And the new arrivals don't have one yet. Some have been waiting a month; some a week.*¹⁹⁴

*They have made it so hard for a lawyer to call us. We have to make an appointment and it takes three days to organise appointment for lawyer to call us back.*¹⁹⁵

*In other camps you can use mobile phones. Why not allow this here, especially with how far we are away and the cost of calls?*¹⁹⁶

Recommendation 22: DIAC should ensure that all people in immigration detention have adequate access to communication facilities including internet facilities and telephones.

23 Monitoring conditions of immigration detention

23.1 Minimum standards

187. The Commission has repeatedly raised concerns about the lack of transparent and enforceable standards for conditions in immigration detention, and has called numerous times for minimum standards to be codified in legislation.¹⁹⁷ These should be based on relevant international human rights standards, in order to ensure that people in detention are treated in line with Australia's human rights obligations.
188. In DIAC's response to the Commission's most recent recommendation that minimum standards be enacted in legislation, DIAC stated that detention services are subject to an 'external scrutiny and accountability framework'; that people in immigration detention can access legal advice and representation; and that 'new contractual arrangements for detention services have a strong focus on the rights and wellbeing of people in immigration detention'.¹⁹⁸ However, DIAC also stated that it did
- not consider it necessary to enact standards in legislation in order to meet Australia's human rights obligations. While the large numbers of irregular maritime arrivals have increased the challenges in providing detention services, DIAC and its detention services provider always endeavour to meet relevant standards.¹⁹⁹
189. In the Commission's view, the most appropriate way to ensure that standards for detention conditions are adequately and consistently implemented is to embed minimum standards in legislation. This would be in line with UNHCR guidelines which require conditions of detention for asylum seekers to be prescribed by law.²⁰⁰
190. In the meantime, the Commission supports the recommendation made by the JSCM in 2009 that DIAC should make the contract standards available on its

website and report on detention service providers' compliance with the standards in its annual report.²⁰¹

Recommendation 23: Legislation should be enacted to set out minimum standards for conditions and treatment of detainees in all of Australia's immigration detention facilities, including those located in excised offshore places. The minimum standards should be based on relevant international human rights standards, should be enforceable and should make provision for effective remedies.

23.2 Independent monitoring

191. Regular independent monitoring of immigration detention facilities is essential in order to increase accountability and transparency, and to monitor to ensure that they meet internationally accepted human rights standards.
192. The Commission acknowledges positive efforts by DIAC to facilitate the Commission's visits to immigration detention facilities across the network, as well as visits by other monitoring bodies and non-government organisations.²⁰² The Commission also welcomes the increased transparency of DIAC's operations over the past few years.
193. However, the Commission remains concerned that there is minimal information available to the general public about the operation of Australia's immigration detention facilities and the people detained in them. At the time of writing, for example, the Detention Statistics Summary page of DIAC's website had been unavailable for some months.²⁰³
194. The Commission remains of the view that there is a need for a more comprehensive monitoring mechanism for Australia's immigration detention facilities, particularly those in remote locations. Currently, there is no monitoring body with all of the key features necessary to be fully effective: independence from DIAC; adequate funding to fulfil the role; the capacity to maintain an ongoing or regular presence at immigration detention facilities; a specific statutory power to enter immigration detention facilities; comprehensive public reporting for transparency; and the capacity to require a public response from government.
195. A more comprehensive monitoring mechanism to ensure that conditions in immigration detention meet human rights standards could be achieved through the ratification of the *Optional Protocol to the Convention against Torture* (OPCAT). The Commission is aware that the Attorney-General's Department is currently working towards the ratification and implementation of the Optional Protocol. The Commission urges the Australian Government to ratify and implement OPCAT as a matter of priority.

Recommendation 24: The Australian Government should ratify the *Optional Protocol to the Convention against Torture* and establish an independent and adequately resourced National Preventive Mechanism to conduct regular inspections

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

PART 4: Children in immigration detention



Child's painting, Leonora alternative place of detention (2010).

196. The Commission has repeatedly raised concerns about the mandatory detention of children, the number of children in immigration detention and the prolonged periods for which many children are detained.²⁰⁴
197. The Commission welcomes the movement of a significant number of families and unaccompanied minors from secure detention facilities into community detention since October 2010. Between 18 October 2010 and 27 July 2011, 735 children were moved into community detention.²⁰⁵
198. However, the Commission is concerned that a substantial number of children, including unaccompanied minors, remain in immigration detention. At 30 June 2011, 991 children were in immigration detention in Australia, including 478 in closed immigration detention facilities.²⁰⁶ The Commission remains opposed to the mandatory detention of children because it breaches Australia's international human rights obligations and creates a high risk of serious mental harm.

24 Mandatory detention of children

199. The CRC requires that a child should only be detained as a measure of last resort and for the shortest appropriate period of time.²⁰⁷ Australia's system of mandatory detention breaches this obligation. The mandatory detention of

children is also inconsistent with s 4AA of the Migration Act, under which children should only be detained as a measure of last resort.

200. In 2004, the Commission released *A last resort?*, the report of the National Inquiry into Children in Immigration Detention (the Inquiry). During the period of the Inquiry, large numbers of children were detained for lengthy periods in Australia's high security immigration detention centres.²⁰⁸
201. The Inquiry found that Australia's immigration detention system was fundamentally inconsistent with the CRC. In particular, the system failed to ensure that:
- detention of children is a measure of last resort, for the shortest appropriate period of time and subject to effective independent review
 - the best interests of the child are a primary consideration in all actions concerning children
 - children are treated with humanity and respect for their inherent dignity
 - children seeking asylum receive appropriate assistance to enjoy, to the maximum extent possible, their right to development and their right to live in an environment which fosters the health, self-respect and dignity of children in order to ensure recovery from past torture and trauma.²⁰⁹
202. The Inquiry also found that children in immigration detention for long periods of time are at high risk of serious mental harm.²¹⁰
203. Since the release of *A last resort?*, the Commission has welcomed positive changes including that children are no longer detained in high security immigration detention centres. However, children are still subjected to mandatory detention.
204. In 2005 the Migration Act was amended to insert s 4AA, affirming 'as a principle' that a minor should only be detained as a measure of last resort.²¹¹ The Commission welcomed this development. However, the Commission is concerned that s 4AA is not being adequately implemented.²¹² The Australian Government's policy is that all irregular maritime arrivals, including families with children and unaccompanied minors, are mandatorily detained on Christmas Island. This is despite the fact that the Migration Act does not require the mandatory detention of unauthorised arrivals in excised offshore places.²¹³ Children are also held in secure immigration detention facilities on the mainland unless they are moved into community detention.

25 Detention placement for children

205. While children are no longer held in Australia's high security immigration detention centres, there are many children in other closed immigration

detention facilities, including immigration residential housing, immigration transit accommodation, and alternative places of detention.

206. As discussed in section 17.3 above, while the physical environment at some such places is preferable to that inside high-security immigration detention centres, they are still detention facilities from which children and their families are not free to come and go. Children might be escorted to an external school during the day, or they might take part in supervised excursions, but during the remainder of their time they are restricted to the detention facility. In line with its obligations to only detain children as a last resort, the Australian Government should consider less restrictive alternatives before deciding to detain a child in a closed immigration detention facility. The detention of children in such facilities should only occur in exceptional circumstances.²¹⁴
207. The Commission has numerous concerns about the conditions of detention in some facilities, many of which impact upon children held in detention. The Commission's primary concerns include:
- The impact of detention in remote locations, including the harsh physical environment of some detention facilities, for example at Leonora.²¹⁵
 - Detention infrastructure and accommodation which is inappropriate for families and unaccompanied children due to a lack of open grassy spaces and inadequate indoor and outdoor recreation spaces, for example at Leonora, Darwin and the Construction Camp on Christmas Island.²¹⁶
 - The impact of overcrowding in some facilities, for example at the Construction Camp during 2010.²¹⁷
 - Inadequate provision of access to education for children in detention in some locations, including the Construction Camp and Darwin.²¹⁸
 - Inadequate provision of suitable recreational opportunities for children in detention in some facilities, including those at the Construction Camp, Darwin and Leonora.²¹⁹
208. As noted above, the Commission has welcomed the placement of significant numbers of families and unaccompanied minors into community detention. Prior to the October 2010 announcement that the majority of children would be placed into community detention by June 2011, the Commission had expressed serious concerns about the under-utilisation of community detention.²²⁰ The Commission urges the Australian Government to place all families and unaccompanied minors into community detention and to move towards such placement being routine practice within weeks of a family or unaccompanied minor who would otherwise be held in a secure immigration detention facility arriving in Australia.

26 Prolonged and indefinite detention of children

209. Over the past two years, the Commission has held serious concerns at the prolonged and indefinite detention of some children in immigration detention facilities. For example, at the time of the Commission's visit to the Sydney IRH in February 2011, all of the eight children there had been held in detention for longer than three months; seven had been in detention for longer than six months; and three had been in detention for longer than a year.²²¹ At the time of the Commission's visit to Leonora in November 2011, there were 66 children in the facility. More than 80% of these children had been detained for longer than three months; fifty children had been detained for longer than six months; and three had been detained for ten months.²²²
210. In addition, some children are facing indefinite detention. There are three children who remain in a closed immigration detention facility with no imminent prospect of release as their parents have received adverse ASIO security assessments.²²³ Holding children in immigration detention facilities for prolonged and indefinite periods is inconsistent with Australia's obligations under the CRC to hold children in detention only for the shortest appropriate period of time.²²⁴
211. The Commission is also concerned that the immigration detention of children is still not subject to judicial oversight to ensure its continuing legality and appropriateness. This is despite Australia being obliged under the CRC to provide for children in detention to challenge their detention before a court or other independent authority.²²⁵ The Commission has raised concerns about this for many years and continues to recommend legislative change to ensure that if children are detained, their detention is subject to judicial and other independent review mechanisms.²²⁶
212. It has been well demonstrated that prolonged and indefinite immigration detention can have significant adverse impacts on the health, safety and welfare of the children subject to detention and their families. During the Inquiry, the Commission found that prolonged detention in remote facilities prevented children from enjoying their right to the highest attainable standard of health.²²⁷ Significant numbers of children in immigration detention experienced psychiatric illnesses, such as depression and post-traumatic stress disorder, that were either caused or exacerbated by long-term detention.²²⁸ The Inquiry also found evidence that the detention environment contributed to developmental delay in some young children.²²⁹ Further, the Inquiry was presented with numerous examples of self-harm by children in immigration detention, particularly among longer-term detainee children.²³⁰
213. The Commission has spoken to many children and their families on recent visits to immigration detention facilities about their experiences of detention. A significant number of them expressed confusion, frustration and distress about their situation. For instance, one unaccompanied child in detention at Darwin told the Commission that, in detention, *'one day looks like a year. It looks like*

*the day is not going anywhere.*²³¹ Many parents were extremely worried about the effects of detention on their children, telling the Commission:

*My children come home from school and ask, "Why are they doing this to us Mum? Why are we still here?"*²³²

*Adults can tolerate [being in detention]. Children don't understand. It is hard for them.*²³³

*This has scarred [my daughter].*²³⁴

*No parent would want their children to have that environment.*²³⁵

*We want our kids to be happy. We want them to have a peaceful life.*²³⁶

214. Given the significant numbers of children remaining in immigration detention facilities, the Commission continues to recommend legislative changes to ensure that children will only be detained in the first place if it is truly a measure of last resort, and that if they are detained, it is for the shortest appropriate period of time and subject to independent and judicial review mechanisms.

27 Unaccompanied minors in immigration detention

215. Australia has specific international obligations relating to the care and protection of unaccompanied minors in immigration detention. The requirements to detain children only as a measure of last resort and only for the shortest appropriate period of time apply equally to unaccompanied minors.²³⁷ UNHCR guidelines also provide that unaccompanied minors should not be detained, particularly in isolated areas.²³⁸ Additionally, because of their particular vulnerability, the CRC requires the Australian Government to provide unaccompanied minors with special protection and assistance.²³⁹
216. The Commission has a range of concerns relating particularly to unaccompanied minors in immigration detention. Most significantly, the Commission is concerned that there continues to be an inherent conflict of interest in having the Minister or his DIAC delegate act as the legal guardian of unaccompanied minors in immigration detention. The Commission has repeatedly recommended that an independent guardian should be appointed for all unaccompanied minors in immigration detention.²⁴⁰ DIAC has informed the Commission that it acknowledges the 'perceived conflict of interest' and has informed the Commission that policy work is being progressed to improve the guardianship regime.²⁴¹
217. The Commission is concerned that in the absence of an independent guardian, there is no localised written policy within detention facilities setting out who is the delegated legal guardian and when that guardian should be consulted. DIAC officers and staff members of detention service providers in each detention location should be provided with a clear written policy setting out which DIAC officer has been delegated the Ministers powers of legal

guardianship of unaccompanied minors in that location, and how and when that guardian should be consulted.

218. DIAC has established a scheme whereby an independent observer is present at all interviews that unaccompanied minors undergo. The Commission has welcomed this scheme, but has had concerns that it is not uniformly applied throughout the detention network, with staff in some facilities being unaware of the requirement for independent observers.²⁴² DIAC should ensure that the policy of requiring an independent observer to be present in interviews involving unaccompanied minors is complied with in all locations where unaccompanied minors are held in immigration detention.

28 Child welfare and protection responsibilities

219. Under international human rights standards, Australia is obliged to take 'all appropriate legislative, administrative, social and educational measures' to ensure that children are protected from all types of violence, abuse, or neglect caused by a child's parent or any other person who is caring for the child.²⁴³ In the detention environment this means that DIAC and the detention services provider must take positive steps to ensure that children are protected from physical and mental violence, abuse and neglect in detention, irrespective of its source.
220. For many years, the Commission has raised concerns about the lack of coordination between DIAC and state and territory child welfare authorities regarding responsibilities for the welfare and protection of children in immigration detention.²⁴⁴
221. The Commission has repeatedly recommended that the Australian Government clarify the applicable laws and jurisdictions of relevant state and federal bodies; clarify through formal Memoranda of Understanding the respective roles and responsibilities of state and federal authorities; clearly communicate these roles and responsibilities to all relevant authorities; and ensure that there are clear policies and procedures in place regarding child welfare and protection concerns that may arise.²⁴⁵
222. The Commission has held particular concerns that there have not been localised written protocols in each detention facility setting out the procedure to follow in the case of concerns arising about the welfare or protection of a child in detention.²⁴⁶ In the Commission's view, all relevant DIAC officers and staff members of detention service providers should be provided with a localised protocol setting out the requirements, procedures and contact details for making child welfare and protection notifications.

Recommendation 25: The Australian Government should implement the outstanding recommendations of the report of the National Inquiry into Children in Immigration Detention, *A last resort?*. These include that Australia's immigration

detention laws should be amended, as a matter of urgency, to comply with the *Convention on the Rights of the Child*. In particular, the new laws should incorporate the following minimum features:

- There should be a presumption against the detention of children for immigration purposes.
- A court or independent tribunal should assess whether there is a need to detain children for immigration purposes within 72 hours of any initial detention (for example, for the purposes of health, identity or security checks).
- There should be prompt and periodic review by a court of the legality of continuing detention of children for immigration purposes.
- All courts and independent tribunals should be guided by the following principles:
 - detention of children must be a measure of last resort and for the shortest appropriate period of time
 - the best interests of children must be a primary consideration
 - the preservation of family unity
 - special protection and assistance for unaccompanied children.

Recommendation 26: The Australian Government should, as a matter of priority, implement the recommendations made by the Commission in *A last resort?* that:

- Australia's laws should be amended so that the Minister for Immigration and Citizenship is no longer the legal guardian of unaccompanied minors in immigration detention.
- An independent guardian should be appointed for unaccompanied minors in immigration detention.

Recommendation 27: In the absence of an independent guardian, DIAC officers and staff members of detention service providers in each immigration detention location should be provided with a clear written protocol setting out which DIAC officer has been delegated the Minister's powers of legal guardianship of unaccompanied minors in that location, and how and when that guardian should be consulted.

Recommendation 28: DIAC should pursue the adoption of Memoranda of Understanding with state and territory child welfare authorities regarding responsibilities for the welfare and protection of children in immigration detention.

Recommendation 29: DIAC should ensure that all relevant DIAC officers and staff members of detention service providers are provided with a localised protocol setting out the requirements, procedures and contact details for making child welfare and

protection notifications in relation to concerns that arise in respect of children in immigration detention in the location in which they work.

PART 5: Community-based alternatives

223. There are viable alternatives to mandatory and indefinite immigration detention. A range of community-based alternatives are being increasingly used in nations across the world. Such alternatives have proven to be effective means of managing people seeking protection and others whose immigration status is uncertain; many are cheaper than mandatory detention; and all are more humane. The Commission believes that Australia should follow this global trend and replace its system of mandatory and indefinite detention with effective community-based alternatives.

224. People in immigration detention facilities have spoken with the Commission about the possibility of community-based alternatives. They have said:

*They could monitor us in the community if they needed to, this happens in other countries.*²⁴⁷

*We are very hard working people. Let us out of here. We won't ask for Centrelink money. We will work hard. We will be good workers for the Australian community. All we need is a peaceful life.*²⁴⁸

29 Principles of community-based alternatives

225. Models of community-based alternatives are developed around some key principles. These include a presumption against detention; the use of individual screening and assessment processes; and a risk-based approach to the need for detention. One example of a system consistent with these principles is the CAP Model, or Community Assessment and Placement Model. Developed by the International Detention Coalition and drawing on two years of research undertaken in partnership with La Trobe University, CAP is a five-step decision-making model designed to prevent unnecessary immigration detention. The five steps incorporated by CAP are:

- Presume detention is not necessary.
- Screen and assess the individual case.
- Assess the community setting.
- Apply conditions in the community if necessary.
- Detain only as a last resort in exceptional cases.²⁴⁹

226. The CAP Model may be a useful tool with which to develop a system of community-based alternatives to mandatory and indefinite immigration detention.

227. There are a host of benefits associated with community-based alternatives. For example:

- Community based alternatives can be much cheaper than facility-based detention, especially the Australian model of prolonged and indefinite detention, often in remote locations. For example, in Canada, providing for asylum seekers living in the community has been costed at \$10-12 per person per day, compared with \$179 for detention.²⁵⁰ In Australia, the Community Assistance Support program, a service for certain vulnerable asylum seekers living in the community, has been costed at a minimum of \$38 per day, as opposed to a minimum of \$125 per day for detention.²⁵¹ Community-based alternatives also do not require the construction, maintenance and staffing of immigration detention facilities, which is especially expensive in remote locations.
- It can be much quicker and easier to process asylum seekers' claims for protection when they are living in the community in metropolitan areas, rather than in remote detention facilities.
- Community-based alternatives allow for much readier transition to life in the community for those asylum seekers who are permitted to stay in Australia. Notably, a significant majority of people who apply for protection in Australia are granted permanent protection visas.²⁵²
- Where people are found not to be owed protection and are to be returned to their country of origin, people living in the community are more willing to return than those living in detention.²⁵³ Returns are also less costly to effect from the community.
- Community-based alternatives pose far less dangers for immigration detainees and detention staff: they entail fewer risks to health, mental health, safety and wellbeing.²⁵⁴ Consequently, they are likely to lead to fewer claims for compensation and lower rates of suicide and self-harm.
- There are very low rates of absconding from community-based alternatives to detention.²⁵⁵
- There are community-based alternatives that allow for release from secure detention facilities while still enforcing immigration law and providing protection for the community. For example, community-based alternatives may be subject to conditions, such as travel restrictions, curfews, daily reporting to authorities and sleeping at a specified residence every night.

30 International approaches to community-based alternatives

228. A variety of systems are used worldwide as alternatives to mandatory and indefinite immigration detention. In Spain, for instance, asylum seekers who

enter the refugee determination process are either released into the broader community or accommodated in an open reception centre from which they are free to come and go, depending on their means. They are given a small monthly allowance and permitted to access medical and psychological services, a social worker, legal aid and educational opportunities. Asylum seekers can be housed in reception centres for up to six months, after which time they are assisted to find independent housing and employment or, if they are vulnerable, they may apply for an extension.²⁵⁶

229. Similarly, Sweden has a 'reception program' rather than a system of mandatory detention. A person seeking protection is issued with identification documents upon arrival which are used by immigration officials to track the person's case. After spending about one week in an initial transit or processing centre, asylum seekers will be released into the community and can use their documentation to access some basic services. They are permitted to work in a range of circumstances, and if they do, they must contribute to the costs of their food and accommodation.²⁵⁷
230. There are many alternatives in use that allow release from detention while protecting the community and maintaining the integrity of a country's immigration process. For example, in Canada, people may be released from immigration detention with conditions of bond or bail and incur negative financial consequences if they breach the conditions of their release.²⁵⁸ New Zealand employs a combined system incorporating detention and monitoring that uses reporting and residence requirements to manage people's cases rather than secure detention.²⁵⁹ If asylum seekers living in the community fail to comply with certain requirements, they are subject to arrest and detention.²⁶⁰

31 Community-based alternatives in Australia

231. The New Directions policy dictates that people should be detained in the least restrictive environment appropriate to their individual circumstances and that there should be a presumption that people will be permitted to reside in the community unless they pose an unacceptable risk to the Australian community.²⁶¹ There are already some positive and progressive community-based alternatives which correspond with this policy being used in Australia, including bridging visas and community detention.
232. Many asylum seekers who arrive by plane are not detained for prolonged periods, but receive bridging visas while their claims for protection are processed. Some bridging visas entail work rights, which allow asylum seekers to support themselves and their families in the community. The Commission supports the use of bridging visas as a community-based alternative.
233. The Commission has also consistently supported the use of community detention for vulnerable asylum seekers including families with children. As

noted above, since 2005, the Minister has been empowered under the Migration Act to make a Residence Determination, which allows a person in immigration detention to live in a specified residence in the community.²⁶² People in community detention remain in immigration detention at law but they are generally not under supervision and can move freely about in the community. Conditions may attach to a residence determination to mitigate any identified risks, such as curfews, travel restrictions and strict reporting requirements. In the Commission's view, if a person must be taken into immigration detention, in most cases the appropriate form of detention will be community detention.

234. The Commission welcomed the Minister for Immigration and Citizenship's announcement of 29 June 2011 that 513, or 58%, of children in immigration detention had been moved out of secure immigration detention facilities and into community detention.²⁶³ By 27 July 2011, 735 children had been moved in community detention.²⁶⁴
235. However, the Commission also remains concerned about the limited use of community-based alternatives in Australia. There is an urgent need for the Australian Government to implement the New Directions policy and make greater use of alternatives to holding people in high-security immigration detention facilities.
236. For example, bridging visas could – and under the Australian Government's own New Directions policy, should – be used more extensively to prevent the prolonged detention people who arrive by boat seeking asylum.
237. In addition, the Commission has repeatedly raised concerns about the under-utilisation of community detention nationally.²⁶⁵ A significant number of people remain in immigration detention facilities despite appearing to meet one or more of the criteria for community detention under the Residence Determination Guidelines.²⁶⁶ This includes people with significant medical issues, people with significant mental health concerns, people who have self-harmed and torture and trauma survivors. The Commission continues to urge the Minister and DIAC to make full use of community detention, particularly for people who meet the priority criteria under the Residence Determination Guidelines.²⁶⁷ The Commission is particularly troubled by the limited use of community detention as an alternative to facility-based detention for people with mental health concerns or backgrounds of torture or trauma.
238. The Commission believes there is considerable scope for Australia to expand and develop its use of community-based alternatives to mandatory and indefinite immigration detention. There is a wealth of international experience to draw from as well as successful initiatives already in place in Australia.

Recommendation 30: DIAC and the Minister for Immigration and Citizenship should make greater use of community-based alternatives to holding people in immigration detention facilities for prolonged and indefinite periods. This should include

alternatives to detention such as bridging visas, and alternative forms of detention such as community detention.

Recommendation 31: DIAC and the Minister for Immigration and Citizenship should make full use of community detention, particularly for people who meet the priority criteria under the Residence Determination Guidelines. This includes children and accompanying family members, people who may have experienced torture or trauma, people with significant physical or mental health concerns and people whose cases will take a considerable period to substantively resolve.

¹ Human Rights and Equality Opportunity Commission, *A last resort? National Inquiry into Children in Immigration Detention* (2004) (*A last resort?*), at http://www.humanrights.gov.au/human_rights/children_detention_report/index.html (viewed 5 August 2011).

² Human Rights and Equal Opportunity Commission, *Those who've come across the seas: Detention of unauthorised arrivals* (1998), at http://www.humanrights.gov.au/human_rights/immigration/seas.html (viewed 5 August 2011).

³ The Commission's submissions on immigration issues are available at <http://www.humanrights.gov.au/legal/submissions/index.html#refugees> (viewed 5 August 2011).

⁴ The Commission's reports on inspections of immigration detention facilities are available at http://www.humanrights.gov.au/human_rights/immigration/detention_rights.html#9_4 (viewed 5 August 2011).

⁵ The Commission's Reports to Parliament under the *Australian Human Rights Commission Act 1986* (Cth) are available at <http://www.humanrights.gov.au/legal/humanrightsreports/index.html> (viewed 5 August 2011).

⁶ See http://www.humanrights.gov.au/human_rights/immigration/index.html (viewed 9 August 2011).

⁷ See http://www.aph.gov.au/Senate/committee/immigration_detention_ctte/immigration_detention/tor.htm (viewed 9 August 2011).

⁸ See *International Covenant on Civil and Political Rights* (1966), art 9(1), at <http://www2.ohchr.org/english/law/ccpr.htm> (viewed 8 August 2011).

⁹ See *Convention on the Rights of the Child* (1989), art 37(b), at <http://www2.ohchr.org/english/law/crc.htm> (viewed 8 August 2011).

¹⁰ *Migration Act 1958* (Cth), s 189.

¹¹ *Migration Act 1958* (Cth), s 189(3).

¹² *Migration Act 1958* (Cth), s 196.

¹³ The Minister for Immigration and Citizenship can make a Residence Determination permitting a person in immigration detention to live in the community rather than a detention facility under s 197AB of the *Migration Act 1958* (Cth). The Minister also has the discretion to grant a visa, including a bridging visa, to a person in immigration detention when it is in the public interest to do so, according to s 195A of the *Migration Act 1958* (Cth).

¹⁴ The Department of Immigration and Citizenship's answers to questions on notice, received by the Joint Select Committee on Australia's Immigration Detention Network 10 August 2011, question 3. At http://www.aph.gov.au/Senate/committee/immigration_detention_ctte/immigration_detention/submissions.htm (viewed 11 August 2011).

¹⁵ *International Covenant on Civil and Political Rights*, note 8, art 9(1); *Convention on the Rights of the Child*, note 9, art 37(b).

¹⁶ See United Nations Human Rights Committee, *A v Australia*, Communication No 560/1993, UN Doc CCPR/C/59/D/560/1993 (1997), para 9.2, at <http://www.unhcr.org/refworld/docid/3ae6b71a0.html> (viewed 8 August 2011).

¹⁷ Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention* (15 January 2010), UN Doc A/HRC/13/130, para 59. At <http://daccess-ods.un.org/TMP/4851485.19277573.html> (viewed 8 August 2011).

¹⁸ Afghan man in detention, Curtin Immigration Detention Centre, May 2011.

¹⁹ Afghan man in detention, Curtin Immigration Detention Centre, May 2011.

²⁰ Afghan man in detention, Curtin Immigration Detention Centre, May 2011.

²¹ See, for example, 'UNHCR urges Australia to review policy of detaining asylum seekers' (Media Release, 1 February 2002), at

<http://www.un.org/apps/news/story.asp?NewsID=2785&Cr=australia&Cr1=asylum>; 'Changes to Australian detention arrangements' (Media Release, 19 April 2010), at

http://unhcr.org.au/unhcr/index.php?option=com_content&view=article&id=175&catid=35&Itemid=63;

United Nations Human Rights Committee, *Concluding observations of the Human Rights Committee: Australia*, UN Doc CCPR/C/AUS/CO/5 (2009), para 23, at

<http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR-C-AUS-CO-5.doc>; United Nations Committee

on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Australia*, UN Doc E/C.12/AUS/CO/4 (2009), para 25, at

<http://www2.ohchr.org/english/bodies/cescr/docs/AdvanceVersions/E-C12-AUS-CO-4.doc>; A Grover,

Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Mission to Australia, UN Doc A/HRC/14/30/Add.4 (2010),

pp 21-24, at <http://www.unhcr.org/refworld/docid/49faf7652.html>;

United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Australia* (2011), see paras

28, 42, 49, 78, 86.123, 86.127, 86.131 and 86.132, at

<http://www.ohchr.org/EN/HRBodies/UPR/PAGES/AUSession10.aspx>; United Nations Commission on

Human Rights, *Report of the Working Group on Arbitrary Detention: Visit to Australia* (2002), UN Doc E/CN.4/2003/8/Add.2, see Executive Summary, at

<http://www2.ohchr.org/english/issues/detention/visits.htm>; United Nations Committee on the Rights of

the Child, *Concluding Observations: Australia* (2005), UN Doc CRC/C/15/Add.268, para 62, at

<http://www.unhcr.org/refworld/publisher.CRC..AUS.45377eac0.0.html> (all viewed 8 August 2011).

²² See C Evans, *New Directions in Detention – Restoring Integrity to Australia's Immigration System* (Speech delivered at the Centre for International and Public Law Seminar, Australian National University, Canberra, 29 July 2008), at

<http://www.minister.immi.gov.au/media/speeches/2008/ce080729.htm> (viewed 8 August 2011).

²³ Above.

²⁴ See for example Department of Immigration and Citizenship, *Questions and Answers - Impact of the High Court of Australia's decision on Refugee Status Assessment (RSA) clients* (2011), at

<http://www.immi.gov.au/visas/humanitarian/onshore/protection-obligations-determination.htm> (viewed

8 August 2011); Department of Immigration and Citizenship, *Changes to refugee status determination - Questions and answers* (2011), at

<http://www.immi.gov.au/visas/humanitarian/onshore/protection-obligations-determination.htm> (viewed 8 August 2011).

²⁵ See para 45 of this submission.

²⁶ See, for instance, Australian Human Rights Commission, *2010 Immigration detention in Darwin*, section 5, at http://www.humanrights.gov.au/human_rights/immigration/idc2010_darwin.html (viewed 8 August 2011).

²⁷ See Part 3: Immigration detention facilities and services in this submission.

²⁸ *New Directions in Detention*, note 22.

²⁹ Australian Human Rights Commission, *2011 Immigration detention at Villawood*, section 8.2, at

http://www.humanrights.gov.au/human_rights/immigration/idc2011_villawood.html (viewed 8 August 2011).

³⁰ *Migration Act 1958* (Cth), s 474.

³¹ See, for example, Australian Human Rights Commission, *Submission to the Senate Standing Committee on Legal and Constitutional Affairs Inquiry Migration Amendment (Immigration Detention Reform) Bill 2009*, section 12, at http://www.humanrights.gov.au/legal/submissions/2009/20090731_migration.html; Australian Human Rights Commission, *Submission to the Joint Standing Committee on Migration Inquiry into Immigration Detention in Australia* (2008), pp 13-15 and 24-25, at http://www.humanrights.gov.au/legal/submissions/2008/20080829_immigration_detention.html (both viewed 15 June 2011).

³² *International Covenant on Civil and Political Rights*, note 8, art 9(4); *Convention on the Rights of the Child*, note 9, art 37(d).

³³ In *A v Australia*, note 16, at para 9.5, the United Nations Human Rights Committee said:

court review of the lawfulness of detention under article 9, paragraph 4 [of the ICCPR], which must include the possibility of ordering release, is not limited to mere compliance of the detention with domestic law. While domestic legal systems may institute differing methods for ensuring court review of administrative detention, what is decisive for the purposes of article 9, paragraph 4, is that such review is, in its effects, real and not merely formal. By stipulating that the court must have the power to order release 'if the detention is not lawful', article 9, paragraph 4, requires that the court be empowered to order release, if the detention is incompatible with the requirements in article 9, paragraph 1, or in other provisions of the [ICCPR].

³⁴ The CRC allows for review by 'other competent, independent and impartial authorit[ies]' than courts. However, it is not clear whether any such authority that can make enforceable orders currently exists in Australia. In the Commission's view, the most appropriate authority to review the detention of children is a court.

³⁵ *A v Australia*, note 16, para 9.5.

³⁶ United Nations Human Rights Committee, *C v Australia*, Communication No 900/1999, UN Doc CCPR/C/76/D/900/1999 (2002), para 8.3, at <http://www.unhcr.ch/tbs/doc.nsf/0/f8755fbb0a55e15ac1256c7f002f17bd?Opendocument> (viewed 28 July 2011); United Nations Human Rights Committee, *Bakhtiyari v Australia*, Communication No 1069/2002, UN Doc CCPR/C/79/D/1069/2002 (2003), para 9.4, at <http://www.unhcr.ch/tbs/doc.nsf/0/8662db397d948638c1256de2003b3d6a?Opendocument> (viewed 28 July 2011); United Nations Human Rights Committee, *Baban v Australia*, Communication No 1014/2001, UN Doc CCPR/C/78/D/1014/2001 (2003), para 7.2, at <http://www.unhcr.org/refworld/docid/404887ee3.html> (viewed 28 July 2011); United Nations Human Rights Committee, *Shams v Australia*, Communication Nos 1255,1256,1259,1260,1266,1268,1270,1288/2004, UN Doc CCPR/C/90/D/1255, 1256, 1259, 1260, 1266, 1268, 1270 & 1288/2004 (2007), para 7.3, at http://www.bayefsky.com/pdf/australia_iccpr_t5_1255-56-59-60-66-68-70-88_2004.pdf (viewed 28 July 2009).

³⁷ Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning – First report of the inquiry into immigration detention in Australia* (2008), para 4.110, at <http://www.aph.gov.au/house/committee/mig/detention/report/fullreport.pdf> (viewed 28 July 2011). In making this statement, the Committee noted testimony given to the inquiry by the Commonwealth Ombudsman, Professor John McMillan.

³⁸ See, for example *2011 Immigration detention at Villawood*, note 29, section 6; Australian Human Rights Commission, *2010 Immigration detention on Christmas Island* (2010), section 10, at http://humanrights.gov.au/human_rights/immigration/idc2010_christmas_island.html (viewed 2 August 2011).

³⁹ Department of Immigration and Citizenship, *Response to the 2011 Australian Human Rights Commission Statement on Immigration Detention in Villawood*, p 2. At http://www.humanrights.gov.au/human_rights/immigration/idc2011_villawood_response.pdf (viewed 8 August 2011).

⁴⁰ Of a total of 6729 people in immigration detention at 20 May 2011. See Department of Immigration and Citizenship, *Immigration Detention Statistics Summary* (20 May 2011), at http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-20110520.pdf (viewed 19 June 2011).

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- ⁴¹ *International Covenant on Civil and Political Rights*, note 8, art 9(1); *Convention on the Rights of the Child*, note 9, art 37(b).
- ⁴¹ See *A v Australia*, note 16, para 9.2.
- ⁴² See *Van Alphen v The Netherlands*, Communication No 305/1988, UN Doc CCPR/C/39/D/305/1988 (1990), para 5.8, at <http://www1.umn.edu/humanrts/undocs/session39/305-1988.html> (viewed 8 August 2011); *A v Australia*, above, para 9.2.
- ⁴³ See, for example, *MIMIA v Al Masri* (2003) 126 FCR 54, [152].
- ⁴⁴ *A v Australia*, note 16, para 9.4; *Shams v Australia*, note 36, para 7.2.
- ⁴⁵ *C v Australia*, note 36, para 8.4.
- ⁴⁶ United Nations High Commissioner for Refugees, *Asylum Levels and Trends in Industrialised Countries, First Half 2010* (2011). At <http://www.unhcr.org/statistics/asylum-levels&trends-first-quarter-2010.zip> (viewed 8 August 2011).
- ⁴⁷ Commonwealth, *Official Committee Hansard: Senate Legal and Constitutional Affairs Legislation Committee – Estimates* (23 May 2011), p 16 (Andrew Metcalfe, Secretary, Department of Immigration and Citizenship). At <http://www.aph.gov.au/hansard/senate/committee/s39.pdf> (viewed 8 August 2011).
- ⁴⁸ United Nations High Commissioner for Refugees, *2010 Global Trends* (2011), Statistical Annex, Table 1, at <http://www.unhcr.org/4dfa11499.html> (viewed 8 August 2011).
- ⁴⁹ Above, p 14.
- ⁵⁰ *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 150, (entered into force 22 April 1954), at <http://www2.ohchr.org/english/law/refugees.htm> (viewed 8 August 2011). See also *Protocol Relating to the Status of Refugees*, 606 UNTS 267 (entered into force 4 October 1967), at <http://www2.ohchr.org/english/law/protocolrefugees.htm> (viewed 8 August 2011).
- ⁵¹ *Convention Relating to the Status of Refugees*, above, art 1(a).
- ⁵² Above, art 31(1) and (2).
- ⁵³ United Nations High Commissioner for Refugees, *UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers* (1999), guideline 3. At www.unhcr.org.au/pdfs/detentionguidelines.pdf (viewed 8 August 2011).
- ⁵⁴ Afghan man in detention, Curtin Immigration Detention Centre, May 2011.
- ⁵⁵ Afghan man in detention, Curtin Immigration Detention Centre, May 2011.
- ⁵⁶ Iranian man in detention, Curtin Immigration Detention Centre, May 2011.
- ⁵⁷ Afghan man in detention, Curtin Immigration Detention Centre, May 2011.
- ⁵⁸ See, for example, *2011 Immigration Detention at Villawood*, note 29, section 8.3.
- ⁵⁹ Australian Government, *Mainland detention centres: a notice to immigration detention clients* (17 March 2011). At http://www.newsroom.immi.gov.au/media_releases/913 (viewed 4 August 2011).
- ⁶⁰ Information provided by Independent Protection Assessment Office.
- ⁶¹ *2011 Immigration Detention at Villawood*, note 29, section 8.5.
- ⁶² *Convention relating to the Status of Stateless Persons* (1954), at <http://www2.ohchr.org/english/law/stateless.htm> (viewed 2 August 2011); *Convention on the Reduction of Statelessness* (1961), at <http://www2.ohchr.org/english/law/statelessness.htm> (viewed 2 August 2011).
- ⁶³ Australia has binding *non-refoulement* obligations under the *Convention Relating to the Status of Refugees*, the *International Covenant on Civil and Political Rights*, the *Convention on the Rights of the Child*, and the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984), at <http://www2.ohchr.org/english/law/cat.htm> (viewed 8 August 2011). See notes 8, 9 and 50. See also *Response to the 2011 Australian Human Rights Commission Statement on Immigration Detention in Villawood*, note 39, p 5.
- ⁶⁴ Figures provided by the Department of Immigration and Citizenship, current as of 12 July 2011.
- ⁶⁵ Man in detention at Villawood Immigration Detention Centre who received an adverse security assessment, February 2011.
- ⁶⁶ Man in detention at Villawood Immigration Detention Centre who received an adverse security assessment, February 2011.
- ⁶⁷ Woman, who received an adverse security assessment, in detention at Sydney Immigration Residential Housing with her husband, who also received an adverse assessment, and their children, February 2011.

⁶⁸ See *2010 Immigration detention on Christmas Island*, note 38, section 10; *2011 Immigration detention at Villawood*, note 29, section 8.4.

⁶⁹ *Response to the 2011 Australian Human Rights Commission Statement on Immigration Detention in Villawood*, note 39, p 5.

⁷⁰ Figures based on statistics provided by Department of Immigration and Citizenship, current as of 23 February 2011.

⁷¹ Man in detention in Blaxland compound at Villawood Immigration Detention Centre, whose visa had been cancelled under s 501, February 2011.

⁷² *New Directions in Detention*, note 22.

⁷³ See *Immigration detention in Australia: A new beginning*, note 37, p 53.

⁷⁴ *2011 Immigration detention at Villawood*, above 29, section 9.

⁷⁵ Comments made by, among others, man in detention in Hughes compound, Villawood Immigration Detention Centre and man in detention in Fowler compound, Villawood Immigration Detention Centre, February 2011.

⁷⁶ *2011 Immigration detention at Villawood*, note 29, section 11.2(a).

⁷⁷ Afghan man in detention, Curtin Immigration Detention Centre, May 2011.

⁷⁸ Sri Lankan man in detention, Curtin Immigration Detention Centre, May 2011.

⁷⁹ Afghan man in detention, Curtin Immigration Detention Centre, May 2011.

⁸⁰ Man in detention in Fowler compound, Villawood Immigration Detention Centre, February 2011.

⁸¹ Afghan man in detention, Curtin Immigration Detention Centre, May 2011.

⁸² Afghan man in detention, Curtin Immigration Detention Centre, May 2011.

⁸³ Man in detention in Fowler compound, Villawood Immigration Detention Centre, February 2011.

⁸⁴ *2010 Immigration detention on Christmas Island*, note 38, section 19.2; *2010 Immigration detention in Darwin*, above 26, section 8.2; *2011 Immigration detention at Villawood*, note 29, section 11.3.

⁸⁵ Statistics provided to the Commission by the Department of Immigration and Citizenship, covering the period 1 July 2010-9 June 2011.

⁸⁶ Afghan man in detention, Curtin Immigration Detention Centre, May 2011.

⁸⁷ Afghan man in detention, Curtin Immigration Detention Centre, May 2011.

⁸⁸ Man in detention in Fowler compound, Villawood Immigration Detention Centre, February 2011.

⁸⁹ Man in detention in Fowler compound, Villawood Immigration Detention Centre, February 2011.

⁹⁰ Man in detention in Fowler compound, Villawood Immigration Detention Centre, February 2011.

⁹¹ Afghan man in detention, Curtin Immigration Detention Centre, May 2011.

⁹² *Response to the 2011 Australian Human Rights Commission Statement on Immigration Detention in Villawood*, above 39, pp 8-9.

⁹³ 'Police open gates to detention centres', *PS News*, 9 August 2011, at http://www.psnews.com.au/Page_psn2772.html (viewed 12 August 2011).

⁹⁴ See 'Claims Christmas Island staff in danger', *ABC News*, 22 July 2011, at <http://www.abc.net.au/news/2011-07-22/malaysia-deal/2805558> (viewed 8 August 2011).

⁹⁵ See "'Living hell hole" still taking a toll', *Sydney Morning Herald*, 12 July 2011, at <http://www.theage.com.au/national/living-hell-hole-still-taking-a-toll-20110712-1hbr4.html> (viewed 8 August 2011).

⁹⁶ See, for example, Australian Human Rights Commission, *2009 Immigration detention and offshore processing on Christmas Island*, at

http://humanrights.gov.au/human_rights/immigration/idc2009_xmas_island.html (viewed 8 August 2011); *2010 Immigration detention on Christmas Island*, note 38; *2010 Immigration detention in Darwin*, note 26; Australian Human Rights Commission, *2011 Immigration detention in Leonora*, at

http://www.humanrights.gov.au/human_rights/immigration/idc2011_leonora.html (viewed 8 August 2011); *2011 Immigration detention at Villawood*, note 29.

⁹⁷ The Commission visited immigration detention facilities on Christmas Island in May-June 2010, in Darwin in September 2010, Leonora in November 2010, Villawood in February 2011 and Curtin in May 2011. The President of the Commission, Catherine Branson QC, also made a short visit to detention facilities at Inverbrackie in July 2011. Reports of the Commission's visits are available at:

http://www.humanrights.gov.au/human_rights/immigration/index.html (viewed 5 August 2011).

⁹⁸ See http://www.humanrights.gov.au/human_rights/immigration/index.html (viewed 5 August 2011).

⁹⁹ See Human Rights and Equal Opportunity Commission, *Immigration Detention Guidelines* (2000), section 1.4(a), at http://www.hreoc.gov.au/human_rights/immigration/idc_guidelines2000.html (viewed 22 April 2011).

¹⁰⁰ *Migration Act 1958* (Cth), ss 13, 14, 189.

¹⁰¹ See *Immigration Detention Guidelines*, note 99, section 1.1.

¹⁰² *2010 Immigration detention on Christmas Island*, note 38, section 17.1(a) and (e); *2010 Immigration detention in Darwin*, note 26, section 6.1; *2011 Immigration detention at Villawood*, note 29, section 10.1(a) and (b).

¹⁰³ See, for example, *2010 Immigration detention on Christmas Island*, above, sections 17.1(b), 17.2(b) and 17.3(b); *2011 Immigration detention at Villawood*, above, section 10.1(b).

¹⁰⁴ *2010 Immigration detention on Christmas Island*, above, sections 17.1(d) and 17.2(b); *2010 Immigration detention in Darwin*, note 26, section 6.1; *2011 Immigration detention in Leonora*, note 96, section 6.

¹⁰⁵ *2010 Immigration detention on Christmas Island*, above, sections 19, 22.1 and 22.3; *2010 Immigration detention in Darwin*, note 26, sections 8, 9.2 and 9.3; *2011 Immigration detention in Leonora*, note 96, sections 8, 9.2 and 9.3; *2011 Immigration detention at Villawood*, note 29, sections 11 and 13.

¹⁰⁶ Iranian man in detention, Curtin Immigration Detention Centre, May 2011.

¹⁰⁷ Sri Lankan man in detention, Curtin Immigration Detention Centre, May 2011.

¹⁰⁸ *2009 Immigration detention and offshore processing on Christmas Island*, note 96, section 2; *2010 Immigration detention on Christmas Island*, note 38, section 6; *2011 Immigration detention in Leonora*, note 96, section 6.

¹⁰⁹ The most recent Australian census counted 3093 people usually resident in Derby. See Australian Bureau of Statistics, *2006 Census QuickStats: Derby (Urban Centre/Locality)*. At <http://www.censusdata.abs.gov.au/ABSNavigation/prenav/LocationSearch?collection=Census&period=2006&areacode=UCL507000&producttype=QuickStats&breadcrumb=PL&action=401> (viewed 8 August 2011).

¹¹⁰ See for example *2011 Immigration detention in Leonora*, note 96, section 6.

¹¹¹ *2009 Immigration detention and offshore processing on Christmas Island*, note 96, section 10; *2010 Immigration detention on Christmas Island*, note 38, Part E.

¹¹² *2009 Immigration detention and offshore processing on Christmas Island*, above, section 10.2 and endnote 99; *2010 Immigration detention on Christmas Island*, above, section 25.

¹¹³ *2009 Immigration detention and offshore processing on Christmas Island*, above; *2010 Immigration detention on Christmas Island*, above.

¹¹⁴ *2009 Immigration detention and offshore processing on Christmas Island*, above, section 12.1; *2010 Immigration detention on Christmas Island*, above, section 17.1(a).

¹¹⁵ See Australian Human Rights Commission, *2008 Immigration detention report: Summary of observations following visits to Australia's immigration detention facilities*, section 13.5, at http://humanrights.gov.au/human_rights/immigration/idc2008.html (viewed 8 August 2011); *2009 Immigration detention and offshore processing on Christmas Island*, above, section 12.1; *2010 Immigration detention on Christmas Island*, above, section 17.1.

¹¹⁶ At various times during the Commission's visit to Christmas Island in 2010, there were between 2421 and 2435 people in immigration detention on the island, whereas at 30 June 2011, there were 1102 people in immigration detention on the island. Figures provided by Department of Immigration and Citizenship, current as of 27 May 2010; Department of Immigration and Citizenship's answers to questions on notice, received by the Joint Select Committee on Australia's Immigration Detention Network, note 14, question 3.

¹¹⁷ *2010 Immigration detention on Christmas Island*, note 38, recommendation 1; *2009 Immigration detention and offshore processing on Christmas Island*, note 96, recommendation 3; *2008 Immigration detention report*, note 115, section 13.

¹¹⁸ Australian Human Rights Commission, *Summary of Observations following the Inspection of Mainland Immigration Detention Facilities 2007*, at http://humanrights.gov.au/human_rights/immigration/idc2007.html (viewed 8 August 2011), section 21; *2008 Immigration detention report*, above, section 13; *2011 Immigration detention at Villawood*, note 29.

¹¹⁹ See *2008 Immigration detention report*, above, sections 3, 10 and 11.1; Australian Human Rights Commission, *Submission to the Parliamentary Standing Committee on Public Works* (2009), section 4, at http://humanrights.gov.au/legal/submissions/2009/20090918_villawood_immigration.html (viewed 8 August 2011); *2011 Immigration detention at Villawood*, above, section 10.1(a).

¹²⁰ *2011 Immigration detention at Villawood*, above, section 10.1(b).

¹²¹ These interim works include the installation of a new visitors' building and additional interview rooms for Hughes and Fowler compounds; refurbishment of the Murray Unit; and refurbishment of the visitors' area and outdoor courtyards in Blaxland compound. See *2011 Immigration detention at Villawood*, above, section 10.1(a).

¹²² Further detail about the Commission's visits to Villawood Immigration Detention Centre can be found in *Summary of Observations following the Inspection of Mainland Immigration Detention Facilities 2007*, note 118, section 21; *2008 Immigration detention report*, note 115, section 13; *2011 Immigration detention at Villawood*, note 29.

¹²³ See *2011 Immigration detention in Leonora*, note 96, section 6.

¹²⁴ See *2010 Immigration detention in Darwin*, note 26, section 6.2.

¹²⁵ See *2008 Immigration detention report*, note 115, section 12.1(b).

¹²⁶ See *International Covenant on Economic, Social and Cultural Rights* (1966), art 12, at <http://www2.ohchr.org/english/law/cescr.htm> (viewed 8 August 2011); *Convention on the Rights of the Child*, note 9, art 24.

¹²⁷ See *Immigration Detention Guidelines*, note 99, section 13.

¹²⁸ *2011 Immigration detention at Villawood*, note 29, section 11; *2011 Immigration detention in Leonora*, note 96, section 8; *2010 Immigration detention in Darwin*, note 26, section 8; *2010 Immigration detention on Christmas Island*, note 38, section 19; *2009 Immigration detention and offshore processing on Christmas Island*, note 96, section 12.5; *2008 Immigration detention report*, note 115, sections 10.2, 10.3 and 13.2.

¹²⁹ See *2010 Immigration detention on Christmas Island*, above, section 19; *2010 Immigration detention in Darwin*, above, section 8; *2011 Immigration detention in Leonora*, above, section 8.

¹³⁰ Afghan man in detention, Curtin Immigration Detention Centre, May 2011.

¹³¹ Sri Lankan man in detention, Curtin Immigration Detention Centre, May 2011.

¹³² Sri Lankan man in detention, Curtin Immigration Detention Centre, May 2011.

¹³³ *2010 Immigration detention on Christmas Island*, note 38, section 19.1; *2010 Immigration detention in Darwin*, note 26, section 8.1.

¹³⁴ *2011 Immigration detention at Villawood*, note 29, section 11.1(a); *2008 Immigration detention report*, note 115, section 12.1(b).

¹³⁵ *2010 Immigration detention on Christmas Island*, above, section 19.1; *2010 Immigration detention in Darwin*, note 26, section 8.1; *2011 Immigration detention in Leonora*, note 96, section 8.1.

¹³⁶ *2010 Immigration detention on Christmas Island*, above, section 19.1; *2010 Immigration detention in Darwin*, section 8.1; *2011 Immigration detention in Leonora*, above, section 8.1.

¹³⁷ *2010 Immigration detention in Darwin*, above, section 8.1.

¹³⁸ Above.

¹³⁹ *2010 Immigration detention on Christmas Island*, note 38, section 19.2(b).

¹⁴⁰ Afghan man in detention, Curtin Immigration Detention Centre, May 2011.

¹⁴¹ Afghan man in detention, Curtin Immigration Detention Centre, May 2011.

¹⁴² Afghan man in detention, Curtin Immigration Detention Centre, May 2011.

¹⁴³ Afghan man in detention, Curtin Immigration Detention Centre, May 2011.

¹⁴⁴ Afghan man in detention, Curtin Immigration Detention Centre, May 2011.

¹⁴⁵ *Response to the 2011 Australian Human Rights Commission Statement on Immigration Detention in Villawood*, note 39, p 8.

¹⁴⁶ *2011 Immigration detention at Villawood*, note 29, section 11.2; *2010 Immigration detention in Darwin*, note 26, section 8.

¹⁴⁷ *2011 Immigration detention at Villawood*, above, section 11.2(c); *2008 Immigration detention report*, note 115, section 12.1(a) and (b).

¹⁴⁸ *Response to the 2011 Australian Human Rights Commission Statement on Immigration Detention in Villawood*, note 39, p 8.

¹⁴⁹ *2010 Immigration detention on Christmas Island*, note 38, section 19.2.

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- ¹⁵⁰ 2010 *Immigration detention in Darwin*, note 26, section 8; Villawood, section 11.2.
- ¹⁵¹ *Response to the 2011 Australian Human Rights Commission Statement on Immigration Detention in Villawood*, note 39, p 9.
- ¹⁵² 2011 *Immigration detention at Villawood*, note 29, section 11.2.
- ¹⁵³ See para 97 of this submission.
- ¹⁵⁴ See *Immigration Detention Guidelines*, note 99, section 14.4.
- ¹⁵⁵ 2010 *Immigration detention on Christmas Island*, note 38, section 19.3; 2010 *Immigration detention in Darwin*, note 26, section 8.2.
- ¹⁵⁶ 2010 *Immigration detention on Christmas Island*, above, section 19.3.
- ¹⁵⁷ Above; the Commission also observed that this was an issue at Curtin Immigration Detention Centre during its May 2011 visit.
- ¹⁵⁸ Interview with group of men in detention, Christmas Island Immigration Detention Centre, May 2010.
- ¹⁵⁹ Department of Immigration and Citizenship, *Identification and Support of People in Immigration Detention Who are Survivors of Torture and Trauma* (April 2009), p 3.
- ¹⁶⁰ Above.
- ¹⁶¹ See also Minister for Immigration and Citizenship, *Minister's Residence Determination Power Under s. 197AB and s. 197AD of the Migration Act 1958: Guidelines* (2009), para 4.1.4.
- ¹⁶² *Convention on the Rights of the Child*, note 9, arts 28 and 31. See further *A last resort?*, note 1, chapters 12, 13 and 15.
- ¹⁶³ See *Immigration Detention Guidelines*, note 99.
- ¹⁶⁴ Unaccompanied minor in detention at Darwin Airport Lodge, September 2010.
- ¹⁶⁵ 2011 *Immigration detention in Leonora*, note 96, section 9.1(a); 2011 *Immigration detention at Villawood*, note 29, section 12.
- ¹⁶⁶ 2010 *Immigration detention in Darwin*, note 26, section 9.1, endnotes 38 and 39.
- ¹⁶⁷ *Immigration Detention Guidelines*, note 99, section 6.6.
- ¹⁶⁸ 2010 *Immigration detention on Christmas Island*, note 38, section 22.2.
- ¹⁶⁹ 2011 *Immigration detention in Leonora*, note 96, section 9.1(b).
- ¹⁷⁰ Men in detention told the Commission of this arrangement during its visit to Curtin Immigration Detention Centre, May 2011.
- ¹⁷¹ See *Immigration Detention Guidelines*, note 99, section 7.2.
- ¹⁷² The importance to children of play is recognised by the *Convention on the Rights of the Child*. Additionally, UHNCR guidelines say that if a child is detained, provision should be made to their recreation and play, which is essential to mental development and will alleviate stress and trauma. See *Convention on the Rights of the Child*, note 9, art 31; *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*, note 53, guideline 6.
- ¹⁷³ 2010 *Immigration detention in Darwin*, note 26, section 9.2.
- ¹⁷⁴ 2010 *Immigration detention on Christmas Island*, note 38, section 22.
- ¹⁷⁵ 2011 *Immigration detention at Villawood*, note 29, section 15.
- ¹⁷⁶ See, for example, 2011 *Immigration detention in Leonora*, note 96, section 9.2.
- ¹⁷⁷ See, for example, 2010 *Immigration detention in Darwin*, note 26, section 9.2.
- ¹⁷⁸ See, for example, 2011 *Immigration detention in Leonora*, note 96, section 9.2.
- ¹⁷⁹ See, for example, 2010 *Immigration detention on Christmas Island*, note 38, section 22.1; 2011 *Immigration detention in Leonora*, above, section 9.2.
- ¹⁸⁰ 2011 *Immigration detention in Leonora*, above, section 9.2.
- ¹⁸¹ 2011 *Immigration detention at Villawood*, note 29, section 15.
- ¹⁸² 10-year-old-girl in detention, Darwin Airport Lodge, September 2010.
- ¹⁸³ Man in detention in Fowler compound, Villawood Immigration Detention Centre, February 2011.
- ¹⁸⁴ Sri Lankan man in detention, Curtin Immigration Detention Centre, May 2011.
- ¹⁸⁵ Man in detention, Northern Immigration Detention Centre, September 2011.
- ¹⁸⁶ Man in detention in Hughes compound, Villawood Immigration Detention Centre, February 2011.
- ¹⁸⁷ 2011 *Immigration detention in Leonora*, note 96, section 9.3; 2011 *Immigration detention at Villawood*, note 29, section 13.
- ¹⁸⁸ At the time of the Commission's visit to immigration detention facilities at Darwin, there were no excursions at all for irregular maritime arrivals detained at the Northern Immigration Detention Centre,

for anyone detained at the Airport Lodge or for unaccompanied minors detained at the Asti Motel. Family groups at the Asti were being taken on infrequent excursions to a local park. Each family was able to participate once every few weeks. *2010 Immigration detention in Darwin*, note 26, section 9.3.

¹⁸⁹ *2011 Immigration detention at Villawood*, note 29, section 13.

¹⁹⁰ See *Immigration Detention Guidelines*, note 99, section 4.

¹⁹¹ *2010 Immigration detention on Christmas Island*, note 38, section 21.1.

¹⁹² *2010 Immigration detention in Darwin*, note 26, section 10.

¹⁹³ *2010 Immigration detention on Christmas Island*, note 38, section 21.1.

¹⁹⁴ Iranian man in detention, Curtin Immigration Detention Centre, May 2011.

¹⁹⁵ Sri Lankan man in detention, Curtin Immigration Detention Centre, May 2011.

¹⁹⁶ Sri Lankan man in detention, Curtin Immigration Detention Centre, May 2011.

¹⁹⁷ See, for example, *2010 Immigration detention on Christmas Island*, note 38, Part E; *2009 Immigration detention and offshore processing on Christmas Island*, note 96, section 10; *2008 Immigration detention report*, note 115, section 6; *Submission to the Joint Standing Committee on Migration Inquiry into Immigration Detention in Australia*, note 31, para 114.

¹⁹⁸ *Response to the 2010 Australian Human Rights Commission Report on Immigration Detention on Christmas Island*, note 39, p 20.

¹⁹⁹ Above.

²⁰⁰ See *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*, note 53, guideline 10.

²⁰¹ See Joint Standing Committee on Migration, *Immigration detention in Australia: Facilities, services and transparency* (2009), p 57. At <http://www.aph.gov.au/house/committee/MIG/detention/report3/fullreport.pdf> (viewed 8 August 2010), p 100.

²⁰² These include the Commonwealth Ombudsman, the Australian Red Cross and the United Nations High Commissioner for Refugees.

²⁰³ Department of Immigration and Citizenship, *Detention Statistics*, at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/statistics/> (viewed 12 August 2011).

²⁰⁴ See, for example *2008 Immigration detention report*, note 115, section 14; *2009 Immigration detention and offshore processing on Christmas Island*, note 96, section 11; *2010 Immigration detention on Christmas Island*, note 38, Part C; *2010 Immigration detention in Darwin*, note 26, section 7; *2011 Immigration detention in Leonora*, note 96, section 7.

²⁰⁵ The Department of Immigration and Citizenship's answers to questions on notice, received by the Joint Select Committee on Australia's Immigration Detention Network 10 August 2011, note 14, question 42.

²⁰⁶ Above, question 4.

²⁰⁷ *Convention on the Rights of the Child*, note 9, art 37(b).

²⁰⁸ See *A last resort?*, note 1, chapter 3.

²⁰⁹ Above, Executive Summary, Part A, Major Finding 1.

²¹⁰ Above, chapter 9 and Executive Summary, Part A, Major Finding 2.

²¹¹ *Migration Act 1958* (Cth), s 4AA.

²¹² See *2009 Immigration detention and offshore processing on Christmas Island*, note 96, section 11.2; *2010 Immigration detention on Christmas Island*, note 38, section 12.

²¹³ See *Migration Act 1958* (Cth), ss 189(3) and 189(4).

²¹⁴ See further *A last resort?*, note 1, sections 4.3.2 and 6.6; United Nations High Commissioner for Refugees, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum* (1997), guidelines 7.6 and 7.7, at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ae6b3360> (viewed 26 April 2011).

²¹⁵ *2011 Immigration detention in Leonora*, note 96, section 6.

²¹⁶ Above, section 6; *2010 Immigration detention on Christmas Island*, note 38, section 14.2; *2010 Immigration detention in Darwin*, note 26, sections 6.2 and 6.3.

²¹⁷ *2010 Immigration detention on Christmas Island*, above, section 17.3.

²¹⁸ Above, section 14.1; *2010 Immigration detention in Darwin*, note 26, section 9.1.

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- ²¹⁹ 2010 Immigration detention on Christmas Island, note 38, section 14.2; 2010 Immigration detention in Darwin, above, section 9.2; 2011 Immigration detention in Leonora, note 96, section 9.2.
- ²²⁰ 2010 Immigration detention on Christmas Island, above, section 13.2.
- ²²¹ 2011 Immigration detention at Villawood, note 29, section 12.
- ²²² 2011 Immigration detention in Leonora, note 96, section 7.
- ²²³ See section 10 of this submission.
- ²²⁴ Convention on the Rights of the Child, note 9, art 37(b).
- ²²⁵ Above, art 37(d). See also *International Covenant on Civil and Political Rights*, note 8, art 9(4).
- ²²⁶ See *A last resort?*, note 1, chapters 6 and 17; 2009 Immigration detention and offshore processing on Christmas Island, note 96, section 11.5; 2010 Immigration detention and offshore processing on Christmas Island, note 38, section 12.
- ²²⁷ *A last resort?*, note 1, section 10.5.
- ²²⁸ Above, section 9.4.2.
- ²²⁹ Above, section 9.4.1
- ²³⁰ Above, section 9.4.3.
- ²³¹ Unaccompanied minor in detention, Darwin Airport Lodge, September 2010.
- ²³² 2011 Immigration detention in Leonora, note 96, section 7.
- ²³³ 2010 Immigration detention and offshore processing on Christmas Island, note 38, section 14.
- ²³⁴ Woman in detention, Sydney Immigration Residential Housing, February 2011.
- ²³⁵ 2011 Immigration detention at Villawood, note 29, section 12.
- ²³⁶ Above.
- ²³⁷ Convention on the Rights of the Child, note 9, art 37(b).
- ²³⁸ *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, note 215, guidelines 7.6 and 7.7. See also *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*, note 53, guideline 6.
- ²³⁹ Convention on the Rights of the Child, note 9, art 20.
- ²⁴⁰ See, for example, *A last resort?*, note 1; 2008 Immigration detention report, note 115; 2009 Immigration detention and offshore processing on Christmas Island, note 96; 2010 Immigration detention on Christmas Island, note 38; 2010 Immigration detention in Darwin, note 26; 2011 Immigration detention at Villawood, note 29.
- ²⁴¹ *Response to the 2011 Australian Human Rights Commission Statement on Immigration Detention in Villawood*, note 39, p11.
- ²⁴² 2011 Immigration detention at Villawood, note 29, section 12.
- ²⁴³ See Convention on the Rights of the Child, note 9, art 19(1).
- ²⁴⁴ See, for example *A last resort?*, note 1, chapter 5.
- ²⁴⁵ See 2009 Immigration detention and offshore processing on Christmas Island, note 96, section 11.6; 2011 Immigration detention at Villawood, note 29, section 12; 2011 Immigration detention in Leonora, note 96, section 7; 2010 Immigration detention in Darwin, note 26, section 7; 2010 Immigration detention on Christmas Island, note 38, section 15.
- ²⁴⁶ 2010 Immigration detention in Darwin, note 26, section 7; 2011 Immigration detention in Leonora, note 96, section 7; 2011 Immigration detention at Villawood, note 29, section 12.
- ²⁴⁷ Man in detention his wife and children, Sydney Immigration Residential Housing, February 2011.
- ²⁴⁸ Afghan man in detention, Curtin Immigration Detention Centre, May 2011.
- ²⁴⁹ See further International Detention Coalition and La Trobe Refugee Research Centre, *There are Alternatives: A handbook for preventing unnecessary immigration detention* (2011). At <http://idcoalition.org/cap/handbook/> (viewed 8 August 2011).
- ²⁵⁰ Costs calculated in Canadian dollars. United Nations High Commissioner for Refugees, *Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants*, p 60. At <http://www.unhcr.org/refworld/docid/4dc935fd2.html> (viewed 8 August 2011).
- ²⁵¹ *There are Alternatives*, note 249, box 12.
- ²⁵² See, for example, figures at J Phillips, *Asylum seekers and refugees: what are the facts?*, Department of Parliamentary Services Background note (22 July 2011). At www.aph.gov.au/library/pubs/bn/sp/AsylumFacts.pdf (viewed 8 August 2011).
- ²⁵³ *There are Alternatives*, note 249, section 4.3.3 and endnotes 51-54.

²⁵⁴ See above, section 5.

²⁵⁵ Recent research indicates that less than 10% of asylum applicants abscond when released to proper supervision and facilities, or, in other words, 90% of asylum applicants comply with their conditions of release. See *Back to Basics*, note 250, Executive Summary; *There are alternatives*, above, sections 3.2 and 5.1 and box 12.

²⁵⁶ *There are Alternatives*, above, box 8.

²⁵⁷ Above, box 9.

²⁵⁸ Above, box 14.

²⁵⁹ New Zealand Department of Labor, *A summary of the Immigration Bill as passed at third reading* (2010). At <http://www.dol.govt.nz/actreview/update/immigration-bill-third-reading-summary.asp>, viewed 9 August 2011. See also above, box 2.

²⁶⁰ *There are Alternatives*, above, box 2.

²⁶¹ *New Directions in Detention*, note 22.

²⁶² *Migration Act 1958* (Cth), s 197AB.

²⁶³ Minister for Immigration and Citizenship, 'Government meets commitment on Community Detention' (Media Release: 29 June 2011), at

<http://www.minister.immi.gov.au/media/cb/2011/cb167699.htm> (viewed 8 August 2011); Minister for

Immigration and Citizenship, Doorstop Interview (Darwin, 29 June 2011), at

<http://www.minister.immi.gov.au/media/cb/2011/cb167721.htm> (viewed 8 August 2011).

²⁶⁴ The Department of Immigration and Citizenship's answers to questions on notice, received by the Joint Select Committee on Australia's Immigration Detention Network 10 August 2011, note 14, question 42.

²⁶⁵ The Commission has repeatedly raised concerns about underuse of community detention. See, for instance, *2010 Immigration detention on Christmas Island*, note 38, sections 11 and 13.2; *2011 Immigration detention at Villawood*, note 29, section 7.

²⁶⁶ At the time of the Commission's visit to Curtin Immigration Detention Centre in May 2011, only one man in detention there had been referred for a Residence Determination. Similarly, at the time of the Commission's visit to immigration detention facilities at Villawood, only three people who had been detained at Villawood Immigration Detention Centre and Sydney Immigration Residential Housing had been referred for a Residence Determination. See *2011 Immigration detention at Villawood*, note 29, section 7. See also *Minister's Residence Determination Power Guidelines*, note 162.

²⁶⁷ Under the Residence Determination Guidelines, children and their accompanying family members, persons who may have experienced torture or trauma, persons with significant physical or mental health concerns, persons whose cases will take a considerable period to substantively resolve, and other cases with unique or exceptional characteristics are to be given priority consideration for Community Detention. See *Minister's Residence Determination Power Guidelines*, above, para 4.1.4.