Immigration Detention

Human Rights Commissioner's 1998-99 Review

Contents

Introduction

Background

In May 1998 the Commission published its report *Those who've come across the seas: detention of unauthorised arrivals*. That report dealt with two broad topics. The first was the Australian policy of holding in detention all but a tiny minority of unauthorised arrivals. The Commission advised the Parliament that the practice contravenes international law. The second topic was the conditions of detention and the treatment of detainees. The findings and recommendations made under this heading were based on observations and interviews in three of the four immigration detention centres (Maribyrnong IDC in Melbourne excepted) and on information obtained in the course of dealing with 58 complaints against the Department of Immigration and Multicultural Affairs (DIMA) since 1990.

During the period of the Commission's investigations the immigration detention centres were managed by DIMA and operated on its behalf by Australian Protective Services, a federal government agency. At the end of 1997 detention service provision was privatised. The new provider/operator is Australasian Correctional Management (ACM). In light of the change of operator the Commission undertook to review the conditions of and treatment in detention over the year following publication of its report in May 1998. This report details the Commission's review findings.

Conduct of this review

The review was conducted by the Human Rights Commissioner, the Director of the Commission's Human Rights Unit, a Human Rights Unit Policy Officer, the Senior Investigation/Conciliation Officer (Human Rights) and an Investigation/Conciliation Officer (Human Rights). The review covered only the four then-existing immigration detention centres

- Port Hedland Immigration Reception and Processing Centre, WA
- Villawood Immigration Detention Centre, Sydney NSW
- Perth Airport Immigration Detention Centre, WA
- Maribyrnong Immigration Detention Centre, Melbourne Victoria.[1]

Detainees were advised in advance of each visit by Commission staff and a general invitation was published to contact the Commission for a confidential appointment, including for the purpose of making a complaint. In addition a group of detainees was randomly selected by the Commission for individual invitations to speak in confidence with the Commission officers on a list of topics: accommodation, information provided, medical services, education for children, recreation, religious practice, legal assistance, interpreters, security, participating in running the centre and complaints. The Commission's officers were also able to speak briefly with some IDC staff and at length with DIMA and ACM managers.

The Human Rights Commissioner inspected each centre and was briefed by managers and by the Director, Detention Section, DIMA or her delegate.

Summary of findings

Overall the Commission has been impressed with the efforts of both DIMA and ACM to enhance the physical conditions, the opportunities for activities and the support services in detention. Very substantial improvements have been made in a wide range of areas. The criticisms made by detainees and recorded here were generally made in an overall context of satisfaction with their treatment and the conditions.

> *I have no complaints about ACM or Australian immigration. It is a good camp here, people are looked after properly. ACM officers are good to us and speak nicely to us. I have nothing to complain about. When I ask for help, people try to help me* (Port Hedland detainee, October 1998).
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> *The problem is that I've been detained for a long time. It's been such a long time since I was free. However, as regards the room itself, it's quite okay and the conditions are good* (Port Hedland detainee, October 1998).
>
> *The management of detention is very good. They organise everything for the detainees* (Villawood Stage Two detainee, September 1998).

A number of recent improvements are particularly noteworthy:

- the transfer of long-term detainees from Perth IDC
- the removal of women and children from Villawood Stage One and the rapid transfer of any women detained at Perth IDC
- the introduction of the HRAT (High Risk Assessment Team) system at all centres to reduce the risk of self-harm by detainees
- the efforts made by ACM managers and staff at Port Hedland IRPC during 1998 to build links with the local community in the interests of detainees
- the role of the catering manager at Port Hedland IRPC in supplying ingredients, organising culturally-specific cooking groups and providing celebratory food
- the involvement of ASETTS in the treatment of torture/trauma survivors at Perth IDC
- the many improvements to the comfort, utility and aesthetics of the Perth IDC

- the introduction of excursions: for children at Villawood, all detainees at Port Hedland (except those in separation detention) and those playing soccer at Perth IDC

- the detainee/ACM consultative committee organised by the nurse at Perth IDC (the Combined Consultative Committee for Cordial Cohabitation)

- expansion of ESL classes at Port Hedland IRPC and Maribyrnong IDC.

The program improvements noted during inspections in 1998 are attributable in large part to the transfer of detention service provision to ACM and the opportunity that transfer created for DIMA to design and impose immigration detention standards. The Commission notes, however, that programs which work well when detainee populations are low work less well when numbers are higher and even less effective when, as is currently the case, some centres are over-crowded. Staffing formulae, staff training, program and service provision all need to be designed to work well when centre populations are at capacity. There is no cause for complacency as yet that this objective has been achieved.

The Commission remains dissatisfied with progress on some matters:

- the refusal to advise new arrivals of their right to request legal assistance (Section 2)

- the failure of the detainee handbook to advise detainees of the existence, role and contact details of the Human Rights and Equal Opportunity Commission (Section 2)

- the failure to employ interpreters and the failure to use interpreters at all times when needed, for example during induction at all centres and during medical appointments at Maribyrnong IDC (Sections 2 and 7)

- inadequate phone lines at Villawood IDC resulting in inadequate incoming access for lawyers and others needing to contact detainees (Sections 3 and 4)

- overcrowding at Villawood Stage One and long-term detention in overcrowded facilities with inadequate recreational facilities, no opportunity for classes or other productive activities, inadequate telephone access and no provision for privacy at Villawood Stage One and Perth IDC (Section 5)

- holding of distressed and disturbed detainees in Villawood Stage One where offenders and violent detainees are also held (Section 5)

- progressive tightening of security, including curfews, additional musters and increased transfer security, in response to a number of escapes (Section 6)

- possibly inappropriate limits on expenditure on health care, especially dental and psychiatric care and the possibility that some medical staff and contractors are constrained by budget or contract pressures at the expense of their patients' well-being (Section 7)

- failure to provide schooling for all children at Port Hedland IRPC, except attendance with adults at ESL classes (Section 9).

It is also disturbing that the proposed redevelopment of the Villawood site, scheduled to commence in 1999, has been indefinitely delayed. Villawood Stage One, in particular, is unsuitable for use as a detention centre.

As this review further details, while generally the ACM policy of encouraging personal interactions between staff and detainees is viewed very positively, these increased interactions need to be handled sensitively and even-handedly by officers, particularly where there is inter-personal conflict or the detainee has special needs (Section 12). There appears, too, to be inadequate resourcing for detainees to be represented on and participate fully and effectively in Detention Advisory Committees (Section 13). Full and effective participation would require

- provision of an agenda in advance of meetings
- detainees being able to add agenda items
- support for detainee meetings to advise their representatives and receive feedback
- genuine detainee selection of representatives
- equivalent numbers of detainee representatives as for other sectors
- translation of minutes into community languages and circulation throughout the detainee population.

Finally there is insufficient clarity on the role of the Detention Advisory Committees. The Commission's view is that their role should be to

(a) consider proposals for improving conditions of detention
(b) monitor the provision of services in immigration detention centres
(c) review the application of disciplinary penalties
(d) consider complaints from detainees, legal representatives and non-government agencies
(e) consider reports from inspectors
(f) monitor and advise on compliance with international minimum standards on the conditions of and treatment in detention.

The Commission's visits to and interviews in IDCs took place before 31 May 1999. Increased over-crowding and disturbances since then, most notably at Maribyrnong and Port Hedland, may have changed the general satisfaction of detainees and the Commission's own assessment of conditions and treatment.

The Human Rights Commissioner and Commission officers will maintain a program of inspections of each IDC at least annually.

1. Underlying principles

Immigration detention is not a prison or correctional sentence. The *Migration Act 1958* (Cth) prescribes a regime of immigration detention for persons who have not been arrested or detained on a criminal charge. Accordingly, the treatment of immigration detainees shall be as favourable as possible and in no way less favourable than that of untried prisoners. Since immigration detainees are not held as criminal suspects or because they represent a risk to community safety, and because of their vulnerability, the most lenient detention regime is appropriate, such as the adoption of international minimum standards applicable to juveniles. The primary concern of immigration detention authorities should be one of care for the well-being of detainees.

Regardless of the administrative allocation of duties pertaining to the custody of immigration detainees, the Australian Government through the Department of Immigration and Multicultural Affairs retains full responsibility for ensuring that the human rights of detainees are fully respected and protected at all times and that an effective remedy is available in the event of breach. The human rights of immigration detainees are set out in the Commission's *Immigration Detention Guidelines* (March 2000).

The *Guidelines* elaborate what is required to ensure that every immigration detainee is at all times treated in a humane manner and with respect for his or her inherent dignity. In the case of those aged under 18 years the treatment in addition must take into account the needs of a person of the detainee's age.

2. Accommodation

Objective

The objective of minimum international standards relating to accommodation in detention – including shelter, clothing, ablutions, exercise and food – is to ensure the detainees' safety and well-being and to promote respect for essential privacy and the inherent dignity of the human person.

Evaluation

Accommodation

The refurbishments undertaken at Port Hedland IRPC have significantly improved the environment for detainees and rendered the centre more comfortable (by the installation of air-conditioning) and safe (especially as regards the fire and cyclone risks). Planned kitchen renovations will continue that process. The common areas at Port Hedland are not comfortable, however, with only moulded plastic chairs provided throughout.

ACM at Perth IDC, as proposed by Recommendation 5.11 of *Those who've come across the seas*, has made efforts to improve amenities in the common areas with fresh paint, murals and other decoration (most done by detainees), installing shade sails in the exercise yard and comfortable seating both indoors and outdoors.

The Villawood IDC is acknowledged by all parties - DIMA, ACM and HREOC - to be unsuitable. The Government has proposed to replace the centre with a purpose-built centre. However, plans seem to have stalled recently.

ACM has addressed one of HREOC's concerns about Villawood Stage One by removing all women and children (Recommendation 5.2). Children are not detained at Perth IDC and women are now not held there for long periods (Recommendation 5.9).

Overcrowding at Villawood Stage One (up to 100 detainees in what the Commission recommended would properly accommodate only 25) remains a concern. Some detainees are sleeping on mattresses on the floors between bunks in the two dormitories. There are only 3 toilets in Stage One, the exercise yard is very small and there is seating in the dining room for only about 40 detainees. There is no opportunity for privacy in Stage One including during ablutions (non-government organisations state that there are no doors on the toilets). Even one of the dormitories is under video surveillance.

> *Stage 1 is overcrowded that it has become a chicken farm, therefore drama and problems happen each day* (Villawood Stage One detainees' petition, 3 November 1998).

Efforts to address the overcrowding have been undertaken with the commissioning of Manning Block in the Stage Two compound as a transitional block with higher security than the rest of Stage Two and by transferring detainees to other centres, notably Port Hedland IRPC.

Stage One is unfit for long-term stays (Recommendation 5.1 of *Those who've come across the seas*). Conditions are inferior – especially while numbers are high – to those in an average police lockup or watchhouse where stays in excess of a few days are very rare. ACM continues to hold men in Stage One for lengthy periods including those due to be removed from Australia, offenders in the process of being deported and men believed to be at risk of self-harm or escape. The Commission concurs with the assessment of the Commonwealth Ombudsman's office that Stage One is not a suitable environment for distressed detainees.

> *A broader issue is whether the current arrangement for transferring persons with psychological problems to Stage 1 is the best strategy. Stage 1 is currently quite crowded and contains a wide mix of people – including many with criminal pasts. This environment may be less suitable for people already under stress*

> (undated proposal for a framework for dealing with complaints of assault in IDCs, Senior Assistant Ombudsman, Melbourne, quoted with approval).

The Commission met an Indian man held in Stage One for 10 months and a Ghanaian held there just short of a year.

While numbers exceed 25 detainees, confinement of detainees in Villawood Stage One for longer than one month fails to treat them with humanity as required by ICCPR article 10. 'Protective confinement' of detainees in Villawood Stage One at all is potentially cruel treatment contrary to ICCPR article 7.

Perth IDC, while fresher, cleaner and safer than Villawood Stage One, is similarly invasive of privacy and restrictive of movement. It is also unsuitable for long-term detention (*Those who've come across the seas*, Recommendation 5.7). Longer-term detainees are transferred to other centres, principally to Port Hedland IRPC, when possible.

> *The accommodation here is good but it is too small. In the room I am sleeping in there are ten people. If it was for a week or a month it would be bearable. But we stay here for a long time – six months to a year. There is no privacy here. I was told if it is too unpleasant I can transfer to Port Hedland – but I don't know where it is or anything about it* (Perth detainee, October 1998).

> *Because it's a very small area, it is not suitable. There are people who have been living here for over 20 months. It's small and we can't have any activities* (Perth detainee, October 1998).

Smaller rooms at Maribyrnong IDC and Port Hedland IRPC permit detainees a measure of privacy. Depending on the total population, a single woman could be allocated a room to herself and families can be accommodated together.

Ablutions

By May 1999 one of the bathrooms at Port Hedland IRPC was designated for women only. This is an advance on the situation observed in October 1998 when all bathrooms – toilets, basins and showers – were unisex and there were no doors on the shower cubicles. Women can now bolt the door to the women's bathroom behind them.

> *The bathroom and toilets are not kept very clean. All the accommodation is combined with men and women using the same bathrooms and toilets* (Port Hedland detainee, October 1998).

Cleaning of bathrooms has also been an issue at Perth and Maribyrnong IDCs.

> *The toilet is unhygienic and crowded. There are different cultures here and some don't use toilet paper. It is cleaned in the morning but there is a mess everywhere* (Perth detainee, October 1998).

> *You guys are coming today so they cleaned the bathrooms three times and sprayed with perfume. This should be done all the time* (Maribyrnong detainee, November 1998).

Daily steam cleaning with a pressure hose commenced at Perth IDC on 14 September 1998 in response to detainee complaints.

In Villawood Stage One the toilet and ablution facilities are inadequate for the number of detainees and privacy is compromised. The Commission received information early in 1999 that one of the 3 toilets was blocked for more than 3 days including a weekend during a period when at least 90 men were detained there.

At Perth IDC the 3 toilets are shared by about one-third that number. There are no screens or curtains on shower cubicles but the Commission was advised that this suggestion would be considered.

At Maribyrnong IDC

> *There are 51 men, four toilets and four showers. Sometimes people are standing waiting. There's no space. There are doors on the showers but some don't stay closed properly* (Maribyrnong detainee, November 1998).

Clause 9.7 of the *Immigration Detention Guidelines* provides that "Each immigration detainee should be provided with toiletries, ablution facilities and sanitary installations which are necessary for health and cleanliness, enable detainees to comply with their physical needs in privacy and are appropriate to the climate". **Privacy is severely compromised for detainees in the Villawood Stage One, Maribyrnong and Perth IDCs.**

Meals

At Maribyrnong and Villawood IDCs the catering is contracted to a firm using a menu designed by a consultant nutritionist and rotated monthly. The Commission received many complaints about the quality and the quantity of food provided. Some 40 Villawood Stage One detainees complained in a petition that food is reused on subsequent days. At Maribyrnong IDC the Commission received the following complaints.

> *The food doesn't meet our needs. We go to the mess but we eat very little. Sometimes friends bring food we like and we eat well* (Maribyrnong detainee, November 1998).

> *I'm a vegetarian. It's a big problem. What they are preparing is eggs and fish and sometimes they just remove those from my plate and don't replace it* (Maribyrnong detainee, November 1998).

> *The food is too different from what I am used to. They cook a lot of beef, which we don't eat. They cook vegetarian but it's not very appetising* (Maribyrnong detainee, November 1998).

> *Lunch today is only the third barbecue. It's because you guys are here. Why can't they have it more often? Organising the barbecue today is deceptive, as if it's something they do all the time* (Maribyrnong detainee, November 1998).

At Perth IDC an ACM employee does the cooking. During the Commission's visit the regular cook was on leave and the replacement was the subject of many complaints. ACM acknowledged to the Commission that on the weekends the food is "admittedly not so flash" because food is left for detainees to prepare or reheat themselves.

> *There is not enough food. People ask me to give them more. If I do that there might not be enough food for everyone. The quality of the food is good but the quantity is not enough* (Perth detainee/kitchenhand, October 1998).

> *Food now is number 1 not good and number 2 it's not enough*. *So a few hours after lunch we're hungry again* (Perth detainee, October 1998).

> *The chef works to a budget and portions are controlled to ensure everyone is served. If there are leftovers, people can return for seconds* (ACM management, Perth IDC, October 1998).

In contrast, at Port Hedland IRPC the catering manager makes every effort to accommodate the tastes of different cultures. In October 1998, with only 25 detainees, most were eating meals cooked by a chosen member of their own ethnic/culture group. At that time there was high praise for the quality of the food. By May 1999, with 431 detainees, menu choices were reduced to two only: Halal and Asian. However, cooking duties continued to be rotated to ensure variety.

Meal times are concentrated into day shift hours with breakfast from 7am or 8am; lunch at midday or 12.30pm and dinner at 5pm or 5.30pm. During the latter part of 1998 supper, consisting of bread and jam (sometimes cheese) or biscuits, tea and coffee, was introduced at Port Hedland (until midnight), Villawood (at 9pm) and Maribyrnong (at 9.30pm) to combat hunger. At Port Hedland IRPC a fourth full portion is provided to parents so that children can be fed when hungry between 6pm and 8am if necessary. At Perth IDC detainees can have bread/toast and cereal as well as hot drinks 24 hours a day provided there are adequate supplies.

> *Supper is a small cup of milk and two small biscuits – if you can get there in time before they're all gone. Apart from that there is no food from 5.30pm until breakfast* (Maribyrnong detainee, November 1998).

At Maribyrnong IDC detainees also complained about the lack of time allowed to eat.

> *Half an hour for 60 or 70 detainees is not enough. You spend 20 minutes [of that time] in the queue* (Maribyrnong detainee, November 1998).

A diabetic at Maribyrnong IDC and another at Perth IDC both reported that the meals provided were unsuitable. Baked beans in a sugar-based sauce was mentioned at Maribyrnong IDC, for example.

Clause 8.1 of the *Immigration Detention Guidelines* provides that "Each immigration detainee shall be provided with sufficient food of nutritional value and quantity adequate for health and strength, of wholesome quality and well prepared and served". Except at Port Hedland IRPC, detainees complain that this requirement is not satisfied, particularly as to quantity and the quality of preparation.

Clothing

Clothing where needed is supplied by non-government agencies: Red Cross in Perth, St Vincent de Paul in Villawood. Detainees can also purchase clothes. The provision of suitable clothing is the responsibility of detention authorities. Clause 9.5 of the *Immigration Detention Guidelines* provides in part that "Where an immigration detainee does not have his or her own suitable clothing, he or she should be provided with clothing, underwear and footwear suitable for the climate and facilities to keep them clean and fit for use".

3. Security and discipline

Objective

International minimum standards under this heading are concerned to ensure safe custody of detainees with the least possible restriction. Disciplinary offences must be reasonably related to the lawful and reasonable objectives of the detention authorities including, most obviously, prevention of escapes, the safety of other detainees and staff and the prevention of self-harm. Penalties for disciplinary breaches must be proportionate and not applied arbitrarily. In the immigration detention context there must be an appropriate balance struck between the culture of care and attention to detainees' well-being and the need to reduce the risk of escape. Given the low risk to the community in the event of an escape, an intrusive high security regime could not be justified.

Evaluation

Security

Achievement of the balance between security and care is undermined by the contractual arrangements between DIMA and ACM. The balance is upset when a monetary penalty is imposed for every escape but implementation of the Immigration Detention Standards is a matter of contract compliance only. The increasing emphasis on security – multiple musters, night curfews, the commissioning of Manning Block at Villawood – can be traced to the imbalance in these contractual arrangements.

> *The security here is for a criminal or a killer. Detainees here are friendly people and harsh treatment can really affect them* (Perth detainee, October 1998).

> *It's run like a gaol with ID number, belt when being escorted (which is humiliating), van with bars and uniformed officers. But we're not supposed to be prisoners. Nobody should be treated inappropriately because of the problem minority* (Perth detainee, October 1998).

> *Criminals also stay with us. Management is treating even the refugees as criminals. They put us in the same place. They've put extra security to here. Otherwise [ie were it not for the offenders being detained in IDCs] they do not need [it]. Always they are counting people* (Maribyrnong detainee, November 1998).

Observation rooms

The Commission had been greatly concerned by the nature of the observation room at Perth IDC. Many of these concerns have now been addressed. The observation room now has a blue light (left on permanently, but dim to permit sleep), no window, two beds, a closed-circuit TV camera and an observation window in the door. The Commission was informed by centre managers that it is used "only for suicidal detainees" and "only overnight". However, the Commission met with a detainee who said he had been living in the observation room – which was kept locked during the night – because he suffers from an infectious disease.

> *I was shut in there 6 hours until about lunchtime without access to a toilet. I knocked several times. The excuse was they looked at the camera and saw me sleeping and after that they had escorts on and were short staffed* (Perth detainee, October 1998).

The Commission met another detainee who claimed to have been held in the observation room for a week following an escape attempt. The centre managers stated that this detainee had spent 3 to 4 weeks in Canning Vale Remand Centre (a State prison) following his attempt.

> *I escaped and they put me in solitary confinement for two days. Then they moved me to Canning Vale Remand Centre for two months. There was no trial. I was just brought back here after two months. When I came back to the centre I spent a week in the observation room.*
>
> *Solitary is very bad. There is no toilet there. To go to the toilet we have to knock on the door. Sometimes there is no answer. I have pissed myself many times. There is no radio or nothing* (Perth detainee, October 1998).

Due to the lack of toilet facilities, confinement in the observation room at Perth IDC violates human dignity contrary to ICCPR article 10.

The Maribyrnong IDC observation room – or 'short stay room' – has an ensuite bathroom, window with flyscreen, standard electric lighting, call button and bed (with room for a second if needed). ACM at Maribyrnong IDC prefers to call on a 'buddy' to stay with any detainee kept for any period in this room. On the eve of the Commission's visit one detainee had spent the night in the observation room with a friend following an incident in which he broke a window.

The Port Hedland IRPC observation room is used for cooling off detainees involved in scuffles, assaults or other violence. It was also allegedly used to isolate two long-term Chinese detainees during the extraction from the centre of a group of Somalis, perhaps to prevent them intervening.

Searches

One positive change following the takeover by ACM has been the dropping of random room searches while detainees are sleeping as proposed by Recommendation 6.4 of *Those who've come across the seas*.

Musters

A regressive step has been the expansion of musters at Villawood and Perth IDCs. Musters and headcounts differ from name checking as practised by APS (and, between musters, by ACM) in that all detainees must be present at the one time and remain there until the count is completed. With a population the size of Villawood Stage Two this can take 30 minutes or more and there are 3 musters every day. For Manning Block detainees there are 6 musters daily.

At Perth IDC detainees muster twice daily in the exercise yard before moving into the dining room for meals. Meal queue name checks were also the standard at Port Hedland IRPC at the time of the Commission's visits. Those who are too ill to attend will be visited in their rooms. At Maribyrnong IDC checks are less formal: detainees deposit their ID cards as they collect cutlery for meals.

Transfers

Although DIMA advised the Commission in May 1999 that decisions on security measures during transfers are made "on a case by case basis",[2] it is clear to the Commission that some measures are applied universally. In Perth IDC, for example, airport transfers always involve at least the use of a specially designed belt with a hand hold loop on each side, called a 'stirrup belt'.[3] A detainee judged an escape risk will be handcuffed instead.

> *They've introduced a new thing. They make you wear a special belt when you go outside. One officer each side holding it. And they were lifting me up and I couldn't walk properly. It's humiliating to walk like this on the street. Since someone tried to escape they said everyone has to wear it* (Perth detainee, October 1998).

In November 1998 ACM was trialing the stirrup belt at Maribyrnong IDC. At that time ACM estimated that one escort in 100 involved the use of handcuffs.

The universal use of restraints during transfers offends clause 10.1 of the *Immigration Detention Guidelines* which provides that "Any use of restraint should be commensurate with an assessment of the individual's likelihood and capacity to abscond".

Application of force

In May 1999 the Commission was informed that, at Villawood IDC, a nurse or medical officer checks every detainee upon whom handcuffs have been used once they are removed. In November 1998, the Commission was told that every use of handcuffs at Maribyrnong IDC requires a follow-up check by a nurse as well as a report to ACM head office, DIMA on site and DIMA head office. In October 1998 at Port Hedland IRPC, the Commission was advised that the nurse only checks those with a visible injury. Managers undertook to formalise a rule that all detainees should be checked following any application of force. These checks should be undertaken by the nurse or medical officer without a security officer present.

The failure to have every detainee against whom force has been applied medically checked at Port Hedland IRPC offends clause 18.4 of the *Immigration Detention Guidelines* which provides that "Where force has been applied or restraint used against an immigration detainee, the detainee should be examined in private by a medical officer as soon possible and under no circumstances any later than 12 hours after the incident". A medical check in the presence of security staff also contravenes that clause and compromises the purpose of the check.

Non-consensual medication

The Commission was assured that non-consensual medication is only ever applied by or at the direction of a medical officer. However, it seems that the

detainee's well-being is not necessarily the only factor taken into account.[4] Port Hedland IRPC managers advised of a case in which a Somali woman was given an intra-muscular injection of a mild tranquiliser to make her removal from Australia easier. The Commission is also aware of the use of tranquilisers during removal from Australia of detainees at Villawood IDC.

Any use of medication without consent which is not medically indicated purely in the interests of the detainee's well-being offends clause 18.8 of the *Immigration Detention Guidelines* which provides that "Chemicals, such as sedatives, should not be used as an instrument of restraint" and potentially violates the ICCPR article 7 prohibition of degrading treatment.

4. Physical and mental health

Objective

Underlying international minimum requirements for the provision of physical and mental health services is the recognition that detainees are largely dependent on the detention authorities for all aspects of their care. The *Immigration Detention Guidelines* require prompt and effective treatment of injuries and illnesses detected on admission or arising or caused during detention. This must include illness caused by the fact of detention and its indeterminacy, including stress-related illnesses and depression.

The indeterminate nature of detention and the fact that it is 'total detention' mean, too, that treatment must be provided for conditions that are liable to deteriorate during the period of detention. The aim must be at least to halt deterioration.

Overall the aim of centre health provision must be to achieve for each individual balanced physical and emotional health and to minimise the long-term impacts of detention. Health services must acknowledge that detention itself can materially damage the physical and mental health of detainees. If people are to be held in detention then the detention authorities must take full responsibility for the consequences to detainees' health. Examples provided to the Commission include stress-related grinding of teeth during sleep with consequent tooth and gum pain, depression and anxiety in some cases leading to self-mutilation and attempted suicides, stress-related headaches, ulcers, loss of appetite and eating disorders.

Evaluation

Health care

ACM made health care an early priority and overall the provision for physical health is of a high standard.

> *The medical care is very good. We have nothing to complain about* (Villawood Stage Two detainee, September 1998).
>
> *ACM will make an appointment. I'm happy with the service* (Port Hedland detainee, October 1998, population 25).

A referral to a specialist outside the centre is a matter for the medical officer or nurse. It is possible that budgetary considerations influence some such decisions.

> *It is not that easy to get medical care. When I first arrived I had a bad backache. I asked if it was possible to go to the hospital and get an X-ray. Until now they have not taken me to the hospital. They only took me to a medical examination to satisfy themselves as far as they were concerned. It was not for what I was asking. I have this backache from when I was originally beaten with rifle butts [outside Australia]. The pain is getting better but my back still aches* (Perth detainee, October 1998).
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> *If someone needs to go to the hospital or dentist, to make an appointment with a GP takes a month [ie even to get a referral]. Then when they take you to the dentist they use handcuffs and belts* (Maribyrnong detainee, November 1998).

Transport to keep an appointment is dependent on staff availability to provide an escort. Numerous detainees complained of missed or postponed appointments due to the lack of escort staff.

The provision of dental care is questionable. The referral decision is taken out of the medical officer's jurisdiction to some extent with dental treatment being limited to fillings and extractions unless funded by the detainee himself or herself.

> *Two guards took me to the dentist and came into the room where I was being treated and stood on both sides of the chair. The guards looked at the X-ray. I told the dentist that I did not want the tooth taken out. The guards said just take it out. I asked the dentist to check my gums as they had been hurting. He did not do this as the guards made me stand up and go* (Perth detainee, October 1998).[5]
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> *I have a pain in my teeth and no-one takes notice of me. I have complained about my teeth for the past one and a half months. I have been taken to the doctor and the dentist and they have changed my toothbrush and toothpaste. They told me to write to the Department as they can't pay for my teeth. When I complain they give me Panadol. I can't go on taking these. I want to be cured. I can't contact my father. If I could he would send me the money to fix my teeth. I was taken to the dentist once and he told me that he could remove teeth or give me braces to stop the pain. They told me that braces are too expensive and they can't do that* (Perth detainee, October 1998).

> *I complained about my teeth – painful – but they've done nothing. They just give Panadol. I've never seen a dentist* (Perth detainee, October 1998).

> *I had toothache. They took me to the dentist who said I had to use a special toothpaste. But ACM nurse refused to supply it and said to get it from the community or the Red Cross* (Maribyrnong detainee, November 1998).

Diagnosis and treatment of torture/trauma survivors remains inadequate. ACM's policy is to employ rather than contract most medical personnel. Although experience with torture/trauma and/or mental health qualifications are usually stipulated as desirable (but not essential), the policy means that there is little call upon the expertise of the torture/trauma specialists in the community.

> *One of us tried to hang himself but people heard him and they got him out. We were all depressed. My brain's in a continual state of turmoil* (Maribyrnong detainee, November 1998).

The Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS) in Sydney would treat Villawood detainees but refuses to do so in the detention setting because it is not conducive to therapy. ACM refuses to allocate officers to escort detainees to the STARTTS premises.

Maribyrnong IDC has an arrangement with the Foundation for Survivors of Torture and now denies access to the centre by the Refugee Mental Health Service.

> *Can we get the Foundation here? I have asked. A lot of the boys have asked. But they say no-one from the Foundation comes here. But the doctor is so hopeless, is he going to do this for me?* (Maribyrnong detainee, November 1998).

The Association for Service to Torture and Trauma Survivors (ASETTS) in Perth is, of course, very remote from the Port Hedland IRPC but has been called in for detainees at Perth IDC. ASETTS is not funded to treat immigration detainees, however, and is called on sparingly. The IDC nurse informed the Commission that he advises staff at Perth IDC "not to open that box"; that is, not to encourage detainees to give vent to their feelings related to past torture/trauma because the detention environment is stressful enough to cope with. At the date of the Commission's October 1998 visit, 3 of the 33 Perth detainees were being treated by ASETTS. The Commission spoke with one of the 3 who was very happy with this service.

The failure to treat torture/trauma promptly and effectively in detention violates detainees' rights under article 14 of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or*

***Punishment*,[6] article 12 of the *International Covenant on Economic, Social and Cultural Rights*[7] and, in the case of child victims, article 39 of the *Convention on the Rights of the Child*.**[8] Clause 14.4 of the *Immigration Detention Guidelines* articulates what is required by these treaties by stipulating that **"**Survivors of torture and trauma shall 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 of the centre, referral should be made to an external specialist agency."

Medical staff

All IDCs now have some on-site medical personnel as proposed by Recommendation 10.2 of *Those who've come across the seas*. Most are ACM employees. At Villawood IDC there is a full-time GP, a psychologist and a counsellor who are all on-site 5 days a week.

At Perth IDC there is a full-time nurse with psychiatric nursing qualifications. However, this person is also responsible for general welfare, liaison between detainees and other staff and the organisation of recreation, classes and the detainees' library. He also convenes and minutes the monthly C6 meetings with detainee representatives.

At Port Hedland IRPC in May 1999 there were five nurses and a counsellor. In October 1998 the counsellor had no training for this position having transferred from a corrections centre where she was a security officer. In May 1999 none of the five nurses had a mental health qualification.

A local GP from the Hedland community conducts a weekly clinic at Port Hedland IRPC and is on call. A similar arrangement is made with a GP in Perth (attending twice weekly for 1 to 2 hours; locum on call as needed). The absence of a full-time GP is of particular concern at Port Hedland IRPC where the population currently exceeds 600 detainees.

At Maribyrnong IDC two nurses share a 7 hours a day, 7 days a week roster between them. One of the nurses has mental health qualifications. In addition, a counsellor works 5 full days a week and a GP holds two clinics weekly. A locum is on call at other times. A male masseur works in the centre two days a week and a female student will treat any women requiring massage. Some Maribyrnong detainees were nevertheless dissatisfied with the diagnostic process or with their treatment.

> *I'm having a lot of problems with the doctor. I get persistent headaches. The doctor says it's because I'm cooped up here for a long time. It's not something that medicine can heal. I've had them for eight months. In the beginning they gave me medication for it. Now it's stopped. That's when he said it's because I'm cooped up here. And he won't give me anything for it* (Maribyrnong detainee, November 1998).[9]

> *The medical treatment is not adequate. Only a generic tablet is given. Nothing is done to cure the person. I've got a few things wrong with me. The doctor looked at me last week and said I'm underweight but 'it's enough for me to live'* (Maribyrnong detainee, November 1998).

> *The doctor who comes here is controlled by the ACM. He doesn't give the impression of having compassion for us or wanting to cure us. We always need an interpreter to talk. But we've never had one. Last three weeks I've been having loss of sensation on the left side of my face but he thinks I'm saying I've got pain. He prescribed a drug. I worked as a pharmacist and I know this drug. It's not the thing for my condition. He prescribed the same drug for all seven people who saw him that day* (Maribyrnong detainee, November 1998).

Dental and other specialist (including optical) care is provided by community-based providers.

In the Commission's view ACM's failure to employ a full-time GP and a full-time qualified psychologist at Port Hedland IRPC while the population exceeds 400 including a high proportion of new arrivals and a high proportion of asylum seekers offends clause 16.4 of the *Immigration Detention Guidelines* which provides that centres should have "the number of specialists, including educators, vocational instructors, counsellors, social workers, medical professionals and mental health professionals necessary to provide services commensurate with those available to people with similar needs in the general community".

Protective measures

During the Commission's October 1998 visit to Port Hedland IRPC detainees were not being supplied with sun protection. Following a recommendation that sunscreen and hats should be supplied the Commission was advised in May 1999 that this had been done. Similarly by May 1999 at Villawood IDC umbrellas were said to be available for detainees' use during wet weather. At Perth IDC detainees requested and were supplied with insect repellant.

Smoking

Perth detainees complained about denial of access to the exercise yard, the only area where smoking is permitted, from 10.30pm until sometimes as late as 9.30am. They also complained that the opening hours are irregular and wondered why the morning shift cannot open the yard as early as 7am.

On the other hand, Villawood Stage One detainees complained that ACM failed to prevent smoking in the dormitories.

Detainees at risk

A significant innovation introduced at all IDCs by ACM is the HRAT (High Risk Assessment Team) process. The HRAT team is constituted by centre managers, supervisor(s), medical staff and counsellor(s) and meets regularly to review the well-being of detainees considered to be at risk of suicide, other self-harm, causing harm to others or escape. Any member of staff and any detainee can bring a detainee to the attention of HRAT. At Port Hedland IRPC, the Commission was told, HRAT meets twice weekly. The team develops a 'risk treatment plan'. Measures include closer observation in the compound, monitoring by the nurse or counsellor, confinement to an observation room and staged release from confinement into the compound. When a detainee is confined for his or her own protection, that confinement is supposed to be reviewed daily, if not more frequently.

5. Children in detention

Objective

The underlying objective of the international law relating to children is a recognition of their special vulnerability and their susceptibility to be permanently damaged by childhood events. Children require special measures of protection.

Under the UN *Convention on the Rights of the Child* Australia must, in all its actions towards children, including asylum seeker children, make their best interests a primary consideration (article 3). An unaccompanied asylum seeker child must be afforded "special protection and assistance" by the government (article 20). In the case of children in Australia, Australia must "take all appropriate measures to promote physical and psychological recovery" of all those who are victims of torture or any other form of cruel, inhuman or degrading treatment or punishment or of armed conflict regardless of their nationality (article 39).

Evaluation

Children's rights

Decision making relating to the detention of children or their release on Bridging Visas must make their best interests a primary consideration (*Convention on the Rights of the Child* article 3.1). The Convention further stipulates that children are not to be separated from their parents (article 9.1) and are only to be held in detention as a measure of last resort and for the shortest appropriate period of time (article 37(b)). The issue whether to detain or release must be a child focussed one. When the child's rights are taken into account, release will be required in almost every case. The child's right not to be separated from his or her parents necessarily means that the parents must also be released unless there are compelling reasons of health or security

which require one or both parents to be detained. At present the law does not permit this.

Parenting

When parents must be detained the authorities have a duty to minimise the harm of detention to the children. The authorities must support the parents to provide the best possible parenting. This support needs to recognise the emotional state of the parents as detainees and possibly as torture/trauma survivors and thus needs to compensate the child as far as possible for parenting deficits. The support provided must also be culturally-appropriate so as to be truly accessible.

The Commission was informed that, at Villawood IDC, ACM organised for a child nutritionist to attend the centre to advise parents. This is an excellent initiative which could usefully become a regular event. Nothing of this kind was provided at Port Hedland IRPC to October 1998 for a family with 2 children held in detention for 5 years or for a woman who had recently become pregnant. By May 1999 there were 20 children in detention at Port Hedland IRPC.

Children's well-being

At Villawood IDC in 1998 children were benefiting from a number of ACM programs

- decision not to hold children in Stage One
- 6 weekly excursions
- plans to utilise open ground outside the compound for children's games.

At Port Hedland IRPC in 1998 children/families enjoyed quite frequent excursions such as to the local swimming pool. With the dramatic increase in the detainee population it has not been possible to continue excursions with anything like the same frequency.

6. Education

Objective

All children have a right to education. Education in childhood is essential for each child's future prospects and sets the foundations for life-long learning. Education cannot be suspended during a child's detention. The child must not be penalised in this respect by the exigencies of his or her family's situation or the decisions of his or her parents.

Adults, too, should have an opportunity to enhance their skills and use their time usefully in detention.

Evaluation

School for child detainees

Contrary to the obligations undertaken by Australia in ratifying the UN *Convention on the Rights of the Child* school attendance is not compulsory in the IDCs. Also contrary to the Convention children are not formally taught their own culture or language.

> *The Immigration Detention Standards require the children's education to be based on the State curriculum. Therefore, education cannot be provided in the child's own language, nor can cultural classes be offered* (DIMA managers, Villawood IDC, September 1998).

The Port Hedland IRPC initiative to enrol two children in a school outside the centre is applauded by the Commission and implements Recommendation 11.4 of *Those who've come across the seas*. This was only possible with the assistance of the local Catholic primary school because State schools will not accept detainee children whose presence in Australia is unauthorised. Unfortunately the 1999 intake of children at Port Hedland not only do not attend school outside the centre but are not provided with schooling inside it. The only classes for them are the English language classes offered to all detainees.

The Villawood initiative to employ a pre-school teacher for 10 hours a week is also welcomed. Also at Villawood Stage Two 2 part-time primary teachers are available for a total of 60 hours a week. Most children at Villawood attend classes and some mothers attend with them.

The failure to provide compulsory primary schooling for detainees of primary school age violates those children's rights under article 28 of the *Convention on the Rights of the Child*. The failure to provide instruction in the language and culture of the child detainees violates their right to non-discriminatory education under article 2 of the Convention and to an education which aims to develop respect for the child's cultural identity, language and values under article 29.1(b) of the Convention.

ESL classes

ACM has substantially improved the provision of English language classes, especially at Port Hedland IRPC where there is a full-time teacher assisted by the counsellor. The teaching quality, however, was criticised by some detainees.

> *Sometimes they show me the books and when I don't know how to read it the teacher just goes to teach other people* (long-term Port Hedland detainee, October 1998).

At Perth IDC there is one English class each week (1.5 to 2 hours). This was the only class offered at the time of the Commission's October 1998 visit. The

IDC nurse was seeking to introduce a more advanced English class, physical education and art therapy as well from early 1999.

> *I don't go to the English classes. I don't know whether there are such classes. I haven't heard about it. I haven't spoken to ACM about it. I didn't know about that. Nobody told me or asked me to participate* (Perth detainee, October 1998, held 4 weeks).

> *There are English classes one hour per week. I attend the lesson but I understand very little because she speaks everything in English. We need someone who speaks both* (Perth detainee, October 1998, held 8 months).

English classes at Maribyrnong IDC are offered 24 hours a week.

Vocational training

Vocational training is contrary to DIMA policy which treats all detainees as people who will ultimately be removed from Australia.

> *I've been here eight months and still nothing happens to me. So why don't they make some factory, some training on manufacturing, something we can make while we must stay here. I've lost eight months of my life and I haven't made anything. They should give us some training so we have a profession when we go out from detention* (Perth detainee, October 1998).

7. Recreation and work

Objective

The objective here is to provide sufficient work (which may include formal study) of a useful nature and sufficient recreational opportunities of interest to keep detainees actively employed for a normal working day, to maintain mental and physical fitness and to stave off boredom and despair.

Evaluation

> *We don't do anything. We awake, sit down somewhere and the day is over. We only have one TV and video and we are so many people. We can't share* (Maribyrnong detainee, female section, November 1998).

Recreational facilities

ACM has upgraded the facilities at all centres, in some cases very substantially, as proposed in Recommendations 12.3 and 12.4 of *Those who've come across the seas*. ACM is largely guided by detainee preferences and attempts to meet requests.

> *Atari game, use computer, TV, films. That's how we spend our time. We can have outside also: tennis, soccer, basketball. Last week we went and played soccer in a closed place. They took much care of us* (Perth detainee, October 1998).

Exercise

Some exercise equipment has been installed at all centres, including a punching bag in Villawood Stage One. Provision is made for team sports where space permits, including a volleyball net in the Villawood Stage One exercise yard and painted cricket stumps in the Perth IDC exercise yard.

Excursions

The regular excursions provided at Port Hedland IRPC during 1998 (when the population hovered around 30) are not occurring currently (population 600+) or at least not with the same frequency. The only excursion option for Perth detainees is to play soccer. Games are held monthly at an indoor hall with 6 or 7 detainees participating. Excursions are not available at Villawood (except for children) or Maribyrnong IDCs.

Passive pursuits

> *The books are very old and we've read them all. We've watched all the videos. ACM has not bought any new books* (Port Hedland detainee, October 1998).

Computer games (and wordprocessing packages) are now available at all centres on donated computers. The Commission recommended substantial upgrades to all centre libraries and there was improvement at Port Hedland IRPC by May 1999. The Perth IDC nurse obtains foreign language books on loan from the State Library.

> *What we need is Arabic material to read: books and newspapers. We've got computers, TV. If we need some sports things I think everything is available. We receive Arabic newspapers every week but we need Arabic books* (Perth detainee, October 1998, held 4 weeks).

> *Yes there is a library and, strange, there are some Arabic books. A doctor has given us Arabic books. There are many books in Arabic* (Perth detainee, October 1998, held 8 months).

The Maribyrnong IDC library is particularly deficient in books and even newspapers in the detainees' languages.

Every effort is made at all centres to maintain a good supply of new videos in the major languages spoken. The Port Hedland IRPC obtains videos from Perth and organised for a local publican with a satellite dish to video every

game in the 1998 (soccer) World Cup which detainees could view the following day.

Work

At all detention centres there are opportunities for detainees to work for reward, although not nearly enough for all to participate at once.

At Port Hedland IRPC there are an estimated 40 jobs which are available on one or two week rotations. They include cooking, kitchenhand, cleaning, yard hand, garbage collection. Each job attracts a number of points which can be 'spent' in the centre canteen or, when available, on a shopping excursion to the mall at South Hedland (not available as of May 1999).

At Villawood the 'pay' for a 10 to 12 hour working week is a phonecard valued at $10, $15 or $20.

At Perth IDC there are 15 positions available, mostly cleaning. Cleaning attracts 2 points a day while kitchenhand and weekend cook earn 6 points a day. A $10 phonecard can be purchased with 12 points and a packet of cigarettes costs 8 points. Toiletries, clothing, chocolate, soft drinks and other goods can also be purchased in this way.

The Commission suggested other jobs that could be created for suitably qualified detainees including teachers' aide and child care. A Perth detainee has offered himself as an interpreter and another suggested a librarian could be appointed. Detainees may also be able to assist with the clerical work associated with operating the centre.

The provision of work opportunities on a roster basis generally satisfies the *Immigration Detention Guidelines*. However, the rewards for work done are inadequate and offend clause 7.5 which provides that the work available should be "paid". The Commission suggests that payments roughly equivalent to what prisoners earn should be introduced. ACM should work to create more job opportunities in all centres.

Health and safety

NGO representatives have reported that a kitchen worker at Villawood suffered burns on the job and was released from detention with walking difficulties but no compensation. **The failure to provide workers compensation offends clause 7.7 of the *Immigration Detention Guidelines* which provides that "Provision should be made to indemnify immigration detainees against industrial injury, including occupational disease".**

8. Religion and culture

Objective

Every detainee must be free to believe without harassment or discrimination. In addition every detainee must be free to manifest his or her religion or belief and enjoy his or her language and culture in community with the other members of his or her group as far as can reasonably be accommodated.

Evaluation

Every effort is made by ACM to accommodate religious and cultural practices as proposed in Recommendations 13.1 and 13.2 of *Those who've come across the seas*. A room is set aside for use as a mosque where a room can be spared. Where that is not possible – Perth IDC and Villawood Stage One, for example – an area of a dormitory is set aside for that purpose. Musters are said to be timed to avoid Muslim prayer times. Ramadan is respected with meals available after sunset. Halal, vegetarian and other meals are provided as required. Celebratory meals are often provided at Port Hedland IRPC.

Religious leaders are invited into the centres as requested by detainees. Members of minority religions, however, tend to miss out.

> *We are free to practise our religion. I am a Christian and would like to go to a mass. I am the only Christian and Catholic in the centre. A priest has not come to visit me* (Perth detainee, October 1998).

> *We can't do the rituals of our religion. On Fridays we light incense sticks but the officers come and say it's a very bad smell and we can't do it. Incense is the essential thing when you're meditating or praying* (Maribyrnong detainee, November 1998).[10]

Generally detainees were satisfied with the respect accorded their religious beliefs and practices. Complaints were treated seriously by managers when raised by the Commission although it is acknowledged that not all requests can be met. They include

- no provision for meals after sunset on self-imposed fasting days (Port Hedland IRPC)
- no access to local mosque for Friday prayers (Port Hedland IRPC).

9. Information to detainees

Objective

Information and knowledge are basic to the existence of rights, the fairness of processes and the provision of services. Detainees should be informed in a language they understand about the reason for their detention and for any

transfer, the relevant legal and administrative procedures they face, their legal rights and how to access them, the detention regime and the services provided.

To ensure that the information provided becomes the detainee's knowledge, the detainee has a right to information provided in a way he or she understands. This at a minimum requires

- information to be provided in the first language of the detainee unless the detainee is fluent in English
- if the topic is a technical one (for example medical or legal) the information must be provided in the detainee's first language even if he or she is fluent in conversational English
- the person providing the information should be prepared to answer questions on the information both at the time of its provision and subsequently
- the person providing the information should be available to repeat the information as required by the detainee.

Ideally the information should be provided both orally and in writing.

Evaluation

Information provision generally

The provision of information by ACM to detainees upon induction has been uneven. During the Commission's review copies of a brief flyer, in English only, have sometimes been available in the reception area of each centre.

> *Me personally when I came I didn't get any information. They just gave me some letters to sign. I just signed them very quick. I don't know what I signed* (Perth detainee, October 1998).

> *Yes the same. Now we understand we signed a code of conduct. They didn't use an interpreter. A lot of people don't know what's allowed and what's not allowed. We didn't receive a handbook* (Perth detainee, October 1998).

Regardless of the availability of the proposed handbook in community languages there remains the need to provide information orally, both for those speaking other languages and for those illiterate in any language.

> *The Algerians seem to have real problems. They don't know why they are here and no-one has explained this to them. The problem was they did not call the right interpreter for the Algerians. They become depressed because they do not know why they are here* (Perth detainee, October 1998).

At Port Hedland IRPC the Commission was advised by managers that induction is done orally, "using TIS", in groups rather than individually. While this may be 'efficient' it does not ensure that each individual receives and understands the

information provided. It is difficult to understand how group inductions could be conducted in the group's language(s) unless an interpreter is flown from Perth for the purpose. There are no on-site interpreters at Port Hedland IRPC although several of the officers are bilingual. The information provided tends to confirm the Commission's perception that the authorities rely on the detainees themselves to pass on information. One detainee interviewed in October 1998 advised that her husband, who speaks a little English, received an induction, provided in English only, intended for both of them.

Detainees interviewed at all centres overall confirmed that induction is uneven. Not everyone had received a flyer and not everyone understood the information being provided. Detainees are more likely to obtain the information they need about the centre from other detainees or from officers and managers in the course of their detention.

> *When I first came here they gave me two forms to fill in. Two sheets of paper were handed to me in English. These were not much use because I don't speak English. There was no interpreter. They just read the information to me in English. When I asked my friends, my friends explained it to me. The forms that were read to me about behaviour were explained from other detainees who are interned here* (Perth detainee, October 1998).

The failure to use interpreters to convey information to which detainees have a right contravenes basic standards of detention practice. Clause 2.1 of the *Immigration Detention Guidelines* provides "Immigration detention authorities should inform immigration detainees, within a reasonable period from the date of detention and in a language and in terms they understand, of the reasons for their detention and their rights in connection with detention, including the right to legal assistance and advice and to the services of an interpreter when needed."

Detainees are especially critical of the failure to provide clear information on processes and progress.

> *There is a lot of gap between Immigration and the community here. There is no trust in the Department. The Department should brief them about the process and what's happening to them* (Villawood Stage Two detainee, September 1998).

> *Things are not explained. They don't say how long it will take or what will happen next. My lawyer talks to me frequently but he doesn't know either what's happening* (Maribyrnong detainee, November 1998).

Handbook

ACM operated for 18 months without an induction handbook, partly because the handbook required DIMA approval. The induction handbook, at the date of writing, has not yet been translated into the major community languages.[11]

The handbook provides clear information on the key operating systems in the centre including meal hours, visiting hours and rules, the Code of Conduct, how to make outside contacts and to contact the DIMA centre manager. However, there is no information on rights under Australian law including the right to make a protection visa application, the right to request legal advice or the right to obtain the services of an interpreter.

Clause 2.4 of the *Immigration Detention Guidelines* provides that the handbook should cover

- the right to request legal assistance and the contact details of legal firms and services contracted to provide legal assistance – this is not included
- the right to communicate in confidence with the Commonwealth Ombudsman and the Human Rights and Equal Opportunity Commission and the addresses of each – only the Ombudsman is referred to
- the right to communicate with the diplomatic or consular representatives of the State of origin or nationality – this is not included
- detainees' rights and responsibilities in detention - covered with the exceptions listed here
- the detention centre's rules and procedures including disciplinary procedures and procedures for making complaints - covered.

Clause 13.7 of the *Immigration Detention Guidelines* further provides that the detainee should be informed of the health issues which are likely to affect him or her. The handbook does not include this information. However, the handbook does cover "the health care services available to him or her in immigration detention" as also provided by clause 13.7.

The current version of the detainee handbook does not meet minimum standards.

Interpreters

Reliance on interpreters has also been uneven. At Maribyrnong IDC the nurses advised the Commission that they "try to do without an interpreter". They only contact one when the doctor feels he cannot understand the patient. Consequently the ability for medical staff to obtain an adequate medical history when assessing and diagnosing illness, whether physical or psychological, may be significantly impaired.

If we want to speak to the doctor we don't have an interpreter which is a problem. We have to communicate in broken English. We can't talk in detail about what the problem is. One word like 'pain' has to cover a multitude of ailments (Maribyrnong detainee, November 1998).

When the counsellor comes she doesn't bring an interpreter so I'm unable to tell her my problems (Maribyrnong detainee, November 1998).

A matter that is disturbing is that when they deport people they don't do it with an interpreter. They come and arrest people at any time, even in bed, like criminals. This is a kind of torture. If taken by force with no explanation we get the wrong message. All people think the worst and feel threatened. It is a matter of communication and language. We are human beings and can understand. If something needs to be explained it should be done through an interpreter (Perth detainee, October 1998).

The incident with the Algerian happened during the lunch. He doesn't speak a word of English. They caught him. He was screaming. He thought he was being deported. He was injured. We said you need to use an interpreter (Perth detainee, October 1998; the Algerian detainee was feared to be at risk of self-harm and was being taken to a medical appointment).

If I want to say anything, for example about my periods, the nurse goes and gets one of the boys to interpret. I feel awkward. They don't seem to understand I may feel awkward talking about personal or embarrassing things to one of the other detainees. So now I don't make any demands unless it's essential (Maribyrnong detainee, November 1998).

Information on legal rights

The Commission's concern under this head centres on unauthorised boat arrivals held in separation detention at the Port Hedland Immigration Reception and Processing Centre. In *Those who've come across the seas*, the Commission identified many of the conditions of separation detention as in some respects akin to incommunicado detention. They included

- no access by mail to any individual or organisation in the Australian community
- community organisations and individuals not permitted to initiate contact
- allowed one phone call and that has to be to the home country
- no TV, radio, newspapers, magazines or books[12]
- no contact with detainees in other parts of the centre
- periods of segregation lasting an average of 33 days with examples including 3 months, 4 to 5 months and, in one case, 6 months.[13]

The report summarised the 'incommunicado-like' aspects of separation detention as "indeterminate segregation without explanation, being locked in the accommodation block [that is, inside the building] during the period of segregation with little exercise [that is, outside], restricted access to phones and no access to information about the outside world through newspapers and radio".[14]

The reasons for separation detention which are specified in the Government's response to the Commission's report are "health and quarantine reasons". The Government response does not mention the other reasons for separation detention which are, in the Commission's view,

- to ensure that the new arrivals give untainted and uninfluenced information as to their reasons for coming to Australia
- to ensure new arrivals do not learn, as they would from other detainees, of their rights to make an application for a protection visa, to request legal assistance and advice and to request access to their consular representative [15] and hence
- to minimise the chance of new arrivals making such applications and requests so that their expeditious removal from Australia is more likely.

Migration Act 1958 (Cth) section 256 requires the provision of legal assistance upon request. Section 193 requires all detainees to be notified of their right to make such a request with the exception of those who have arrived unlawfully by boat or plane (ie without a valid visa). In their case the Act does not require the authorities to notify the detainee of the right to make such a request. The Department's position is that the legislation prevents its officers notifying unauthorised arrivals of their rights. In the Commission's view, it does not. The Government's position is that the effect of the legislation is consistent with international law. In the Commission's view, it is not.

The Commission's view is that this situation is wrong in law and principle. Article 9.4 of the *International Covenant on Civil and Political Rights* (ICCPR) requires that all detainees have an opportunity to challenge their detention in a court of law. Article 14.1 requires the court to be "competent, independent and impartial" and the hearing to be "fair and public". 'Fairness' must at least require that the individual has an opportunity to present his or her case effectively by reference to Australian law and in accordance with Australian procedures. For unauthorised arrivals with little or no understanding of Australia's Migration Act and, typically, very little English language comprehension, effective presentation requires the assistance of an independent advocate with expertise in migration and refugee law. In other words, compliance with ICCPR articles 9.4 and 14.1 requires that detainees have ready access to independent legal advice and assistance.

Elaborating ICCPR article 9 and 10 are the UN *Standard Minimum Rules on the Treatment of Prisoners* (1957) and the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (1988). Standard Minimum Rule 94 states that people in administrative detention shall be

accorded treatment which is *not less favourable* than that of untried prisoners. The Body of Principles makes explicit the right to be advised of the right to request legal counsel. Principle 13 provides

> Any person shall at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights.

Principle 17 provides

> (1) A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after his arrest and shall be provided with reasonable facilities for exercising it.
>
> (2) If a detained person does not have a legal counsel of his own choice, he shall be entitled to have legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

The failure to inform unauthorised arrivals of the right to request legal advice breaches ICCPR article 10.1 in that it is a failure to treat the detainee with humanity.

10. Legal assistance and advice

Objective

'Fairness' in the determination of the claims of immigration detainees to be permitted to stay in Australia is a fundamental requirement of international law. It must at least require that the detainee have an opportunity to present his or her case effectively by reference to Australian law and in accordance with Australian procedures. For detainees with little or no understanding of Australian law and, typically, very little English language comprehension, effective presentation requires the assistance of an independent advocate with expertise in migration and refugee law.

Evaluation

Access

During the Commission's October 1998 visit to Port Hedland IRPC the DIMA manager advised that he did not require requests for legal assistance or access to a lawyer to be in writing and was committed to organising contact within 24 hours of receiving a request. Detainees were not expected to pay for outgoing faxes or phone calls to lawyers. Despite the isolation of Port Hedland, therefore, phone and fax contact was actively facilitated and there were no detainee complaints on this score.

At Villawood a very different situation prevails because of the paucity of phone lines to the centre. Incoming calls, including those from lawyers, are not

forwarded between 11am and 1pm, 4pm and 6pm and after 8pm. In fact, at most hours the lines are engaged.

> *There are 150 detainees here but only two telephones. Nobody can contact us. That's the only way that we can make contact. If a solicitor asks us to contact him at 8.30am, we have to wait 1 hour at the phone to make sure we get the call. The phones are always busy* (Villawood Stage Two detainee, September 1998).

The inadequacy of phone lines imposes restrictions on detainees' access to their lawyers.

Quality

Australia's obligations to people presenting in the territory claiming to be at risk of persecution are set out in four international treaties to which Australia is a party.

Convention Relating to the Status of Refugees (Refugee Convention) article 33 prohibits States Parties from returning ('refouling') a refugee to the frontier of a country where his or her life or freedom would be threatened.

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) article 3 provides "No State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". The right of such a person to resist expulsion is not made dependent upon him or her satisfying the Refugee Convention definition of 'refugee'.

International Covenant on Civil and Political Rights (ICCPR) article 7 also imposes a non-refoulement obligation. Article 7 provides that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". The UN Human Rights Committee has pointed out that, in relevant circumstances, placing a person at risk of torture or cruel, inhuman or degrading treatment or punishment by another country will be a breach of article 7 as much as if the first country had committed the act of torture itself. "States Parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement".[16] The protection of article 7 is afforded both to refugees and also to others who are at risk but do not satisfy the Refugee Convention definition of 'refugee' (like CAT article 3). The same argument must be applicable to the ICCPR article 6 protection of the right to life.

Convention on the Rights of the Child (CROC) article 22 provides comprehensive and special protection for children who are refugees or who are seeking refugee status. They are to "receive appropriate protection and humanitarian assistance in the enjoyment of [their CROC rights and also other human rights and humanitarian instruments to which the State Party is a

party]". Thus CROC article 22 explicitly includes Australia's obligations to asylum seeker children under the Refugee Convention and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).[17]

Like the ICCPR, CROC protects children from torture and other cruel, inhuman and degrading treatment and punishment (article 37) and recognises the child's inherent right to life (article 6). Again there is an obligation not to expel, return or extradite a child to another country where he or she will be subjected to or at risk of being subjected to torture or other cruel, inhuman or degrading treatment or punishment or of death.

A number of positive actions are implicitly required if Australia is to avoid breaching its obligations of non-refoulement. In particular, Australia must have an effective procedure to determine the validity of an asylum seeker's claim to be a refugee and of any protection visa/humanitarian category applicant's claim to be at risk of violation of his or her ICCPR article 6 and 7 rights by a third country.[18]

In this process, and while an unlawful non-citizen is within the jurisdiction, Australia must respect his or her human rights. ICCPR article 2 states "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant".[19]

As the Human Rights Committee has stated, "In general the rights set forth in this Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness".[20]

ICCPR article 14 sets out what is required of an effective process for assessing a person's claims to be a refugee or to resist expulsion on the ground of risk to life or security of person. Everyone has the right to have the determination of his or her rights in a suit at law made "in a fair and public hearing by a competent, independent and impartial tribunal".

Some detainees were sceptical of the fairness of the RRT procedure because of the perceived inadequacies of the IAAAS scheme. Lawyers providing services under the Immigration Advice and Application Assistance Scheme (IAAAS) are selected by DIMA and are not funded to undertake country research or to attend the RRT hearing. Concern was expressed about the adequacy of the advice and assistance provided.

> *Since June 1997 when I opposed my lawyer and complained, I haven't had any lawyer to stand by me. Everything I told him, he wasn't interested. He said to the court that I had no documents. But I had a lot. The High Court may have to provide me with a representative. But is this representative going to fight for my rights or sit down with the government lawyer and come to a conclusion?* (Perth detainee, October 1998).

> *People are full of confidence with Legal Aid because they go with you to the Federal Court. They are very experienced and they'll go one step more. But only up to RRT with IAAAS. After that I have to pay for it myself. It's a matter of luck whether you get Legal Aid or another lawyer and that's a matter of confidence regardless of whether you're successful or not* (Villawood Stage Two detainee, September 1998).

11. Other outside contacts

Objective

Underlying international law on outside contacts for detainees is the recognition that a person in incommunicado detention is much more vulnerable to 'disappearance', torture and the over-bearing of his or her will. In the context of immigration detention the exposure of ill-treatment and denial of legal rights remains an objective. Another objective is the detainee's well-being. This is enhanced when he or she is able to

- maintain contact with family members
- maintain contact with other members of his or her religious, language and/or cultural group
- keep in touch with developments both international and domestic
- obtain welfare and other assistance and advice from non-government organisations.

This objective must be interpreted in the context that immigration detainees are not convicted criminals serving a penal sentence.

Evaluation

Visits

At Port Hedland IRPC visiting hours are virtually unrestricted – 9am to 9pm. However, the isolation of the Centre ensures few visitors attend.

At Villawood IDC visiting hours are more restricted: 9.30 to 11.30am, 1.30 to 4.30pm and 6.15 to 7.30pm (Stage Two) or 6.30 to 7.30pm (Stage One). The evening hours, in particular, have been the subject of many complaints since ACM brought closing time forward from about 9pm. Detainees complain that visitors who work can find it difficult to arrive before 7pm and those arriving later can be turned away.

> *The visitors' time has been reduced. Also, visitors have to fill out a form and this can take 30 minutes. So, sometimes they have to leave without seeing us* (Villawood Stage Two detainee, September 1998).

Villawood visitors require 100 'identification points' (for example, using a passport and driver's licence) before being admitted. It is not clear why this is necessary. ACM has refused to extend evening visiting hours because the shift changeover is at 8pm. Thus staffing constraints limit visiting opportunities and incoming phone contacts at Villawood.

Clause 4.1 of the *Immigration Detention Guidelines* provides that "Each immigration detainee shall be entitled to enjoy contact at least weekly with his or her families, friends and the community. Contact shall be facilitated through visits, correspondence and access to telephones." **The combination of restricted visiting hours and low phone to detainee ratios at Villawood IDC means that outside contact for Villawood detainees is unjustifiably impeded.**

The visiting hours at Perth IDC were 9.30 to 11.30am, 2.30 to 5pm and 6.30 to 8pm at the time of the Commission's visit in October 1998. Maribyrnong IDC hours are the same with the exception of evening hours which were 7 to 9pm in November 1998.

Phones

At Port Hedland IRPC in October 1998 there was only one phone available for outgoing calls by detainees and two for incoming calls. This was adequate when the population was 25. By May 1999 the population totalled 431 (including more than 80 people in separation detention with no phone access). It was recognised at this time that the single outgoing phone was inadequate and plans were made to add a second.[21] **The isolation of Port Hedland IRPC and the fact that there is only one telephone for 635 detainees combine to unjustifiably impede outside access for Port Hedland detainees.**

At Villawood Stage One there are three phones for detainee use with many complaints received about the inadequacy of that number for 80 to 100 detainees and the failure of staff to ensure reasonable access by preventing 'hogging'. When this matter was raised with ACM and DIMA the Commission was advised that phone availability is left to detainees to sort out themselves and that Telstra has decided against installing new lines at Villawood.[22]

At the Perth IDC the only phone for detainee use was in a hallway. Detainees complained about the noise and lack of privacy and were successful in having their suggestion for a second phone to be located in the exercise yard implemented.

At Maribyrnong IDC there is one public phone in the female/family section and two outgoing and one incoming phones in the male section. On the date of the Commission's visit in November 1998 the Maribyrnong IDC population was 63, 17 of whom were women. (The capacity is 80.)

Detainees are not permitted the use of mobile phones.

Night curfews, permanently in place at Villawood Stage One (11.30pm to 6.30am) and Manning Block, Villawood (8pm to 7am) and introduced elsewhere in 1999 during a security review following a number of escapes, inhibit phone contact with family overseas (in different time zones). ACM advises that release from the dormitory to make a phone call during curfew hours can be arranged in advance for all detainees.

Newspapers

ACM at all centres goes to some lengths to obtain newspapers in community languages. Overall there is a good range.

Internet

Detainees at Villawood have requested internet access so that they can undertake country research to support their protection visa applications. Not all IAAAS providers undertake this research. DIMA, however, has advised that internet access is "not considered appropriate".[23] Consequently the ability of a detainee to obtain and put before Australian authorities current evidence of the alleged risks of persecution in his or her country of origin is impaired.

12. Staffing

Objective

The rationale here is that each centre needs to be staffed by personnel with the appropriate skills to care for a multi-cultural population which could include people suffering the effects of torture and/or trauma. There must be personnel in sufficient numbers and with the necessary skills to provide what care is needed. There must also be processes in place to deal with those abusing their powers, including by making arbitrary orders or decisions or by racial or sexual harassment.

Evaluation

> *Sometimes we don't know what will happen to us today. We can lose control. These things happen. Officers should be able to tolerate and co-operate in these circumstances* (Maribyrnong detainee, November 1998).

Numbers and training

At Port Hedland IRPC in October 1998 the staff:detainee ratio was 1:2 (11 staff per shift to 25 detainees). That ratio dropped back to a more realistic 1:11 once the population exceeded 400. Unfortunately none of the new, temporary staff brought in from correctional centres had done the IDC training course.

> *Some officers do disturb or interfere with detainees. Some came from prisons. They still use the prison system. For example, when detainees argue or fight the officers don't try to find out what's going on. Rather they grab them and pin their arms* (Maribyrnong detainee, November 1998).

At Maribyrnong IDC on the date of the Commission's visit, 8 security staff on day shifts were responsible for 63 detainees, a ratio of 1:8.

Responsibilities

> *Staff have become more approachable and detainees now realise they're not like APS. A smaller proportion come from a custodial [ie prison] background. This has been the biggest change – to encourage staff to interact with detainees* (ACM management, Perth IDC, October 1998).

> *Villawood is run like a global village. Communication is important: both staff to detainees and management to staff. We closely monitor people's attitudes. Security is bound up in the interaction between staff and detainees* (ACM manager, Villawood, September 1998).

Some detainees expressed the view that ACM's 'case management' approach, which encourages staff to interact with detainees at a personal level, has sometimes had the effect of staff responding negatively.

> *Some officers treat you badly. Some officers are very nice* (Villawood Stage One detainee, September 1998).

> *The ACM should not break their own rule and harassing the people here. That's drive us to lose control of our emotions* (Villawood Stage One detainee's petition, 3 November 1998).

> *Even if you want to come at 1am to get some water or make a telephone call, they will not open the gate for you. Some officers when they see you, they turn their backs* (Villawood Stage One detainee, September 1998).

> *It is difficult to get an interpreter. It depends on the officers on duty. A good officer will get an interpreter for you* (Perth detainee, October 1998).

> *Everything depends on the mood of the officers. If you ask one officer you might get it. Or sometimes you wait two shifts to get it* (Perth detainee, October 1998).

> *With some of the ACM officers you feel free. But with some you feel as if they've got something against you. Some people came to visit me and the officers didn't call me* (Maribyrnong detainee, November 1998).

> *APS was better because they would not treat us badly even when they're in a bad temper. ACM will treat us not good when they're in a bad temper. It depends on the mood of the officer at the time* (Port Hedland detainee, October 1998).

The Commission's view is that more personal interaction and enhanced communication between detainees and staff is an excellent advance. The risk of increased capriciousness should be averted by appropriate training and supervision.

13. Accountability

Objective

In Australia detention is the most severe intrusion upon individual liberty which is available to governments. Transparency in all respects is ultimately the only safeguard of the rights and well-being of detainees. The system should maximise openness and accountability to as wide a range of independent agencies and community representatives unconnected with either the detaining authority, DIMA, or the detention service provider, ACM.

Detainees' concerns and complaints must be taken seriously and should also be available beyond the detention authorities themselves subject to respecting detainees' confidentiality where required.

Evaluation

Complaints

The provision of a complaints mechanism at each centre is a very welcome innovation and implements Recommendation 15.2 of *Those who've come across the seas*. There is a secure box at each centre for deposit of detainees' complaints.

> *I write what I want and we give it to the director. When I submit a complaint they will call me and speak to me about it. I was happy. They treated my complaint fairly* (Perth detainee, October 1998).

> *One time I complained about airconditioning. They wrote me back they'll do something, but there's no result. If you complain 3 or 4 times you're a trouble-maker. If you're a person with strong opinions, they don't like you because you influence other people. If you're very strong for what you believe, you're a trouble-maker* (Perth detainee, October 1998).

At Port Hedland IRPC in October 1998 the new DIMA business manager and the ACM manager did not require requests or complaints to be in writing.

Detainees had a range of alternative formats for making complaints. However, there was criticism of the lack of feedback on complaints.

> *The thing to do is to report it to the officer on duty. We don't go straight to the top. We don't know how it is dealt with. We tell the people on duty. Whether they go to the top or not, we don't know. We don't hear things back. We're not told what they've done* (Port Hedland detainee, October 1998).

At Villawood, similarly, complaints can be made in a variety of formats, both oral and written. However, Villawood detainees perceived their managers as far less accessible than those at Port Hedland IRPC.

> *If you have a problem here you cannot access to them. Most people complain but they gain nothing. So it's much better to be silent and see what happens to you. That's against the human rights that you can't tell anyone your problem* (Villawood Stage Two detainee, September 1998).

The Maribyrnong and Perth IDC DIMA managers require requests for appointments to be submitted in writing.

Perth IDC has established a 'Combined Consultative Committee for Cordial Cohabitation' (called the C6) which is constituted by one or two detainee representatives, the centre manager, an ACM supervisor and the IDC nurse. Prior to monthly meetings all detainees are encouraged to meet with their representative(s) who then present concerns and suggestions to the C6. C6 minutes, which go some way to explaining negative decisions and which also report action taken in response to detainee requests, are posted on the detainees' notice board.

> *The problem is we don't know whether these two are acting on behalf of us or not. We never hear the result. They only put it on the wall. But people don't look at the wall. These representatives should meet other detainees before they meet ACM* (Perth detainee, October 1998).

The work of the C6 resulted in the installation of a second phone for detainee use, this one located more privately in the exercise yard. This excellent consultative initiative should be replicated in all other centres.

Community reference committees

All centres are required by their contract with DIMA to establish a community reference group. This group must contain non-government representatives appointed by the Minister for Immigration and Multicultural Affairs and detainee representatives. This is another very welcome advance in centre accountability and implements Recommendation 15.1 of *Those who've come across the seas*.

During 1998 slow progress was made on the appointment of these reference groups. The Villawood Community Reference Group first met only at the end of September 1998.

The Commission further observed that the obligation of detainee representation was not treated appropriately. At times detainee representatives were appointed by the centre management and in no case were detainee representatives provided with an agenda in advance of a meeting or with minutes afterwards. However, at Perth IDC the meeting minutes are posted on the public noticeboard (in English only) and in 1999 the detainee representatives at Port Hedland IRPC are provided with the minutes for the purpose of reporting back to other detainees.

As far as the Commission can ascertain from discussions with managers, community representatives and detainees, the reference groups primarily play two roles: first to hear complaints from detainee representatives and second to relay information through detainee representatives to the detainee population. It is clear that they are structured and managed to assist the management process with no real participation in agenda or process from either the community representatives or the detainee representatives.

> *The ACM meeting includes only one representative from the whole detainees. They just listen and nothing changes. They have it every two months. One person can't represent every different nationality. It's no point going to the meetings so we decided not to go any more* (Maribyrnong detainee, November 1998).

> *I was on it for a long time, then I said I wouldn't any more. There was no point* (Maribyrnong detainee, November 1998).

> *At the last meeting there was one man and one woman [ie detainee representatives] and one of them didn't say anything. They could have more. The bad thing is they allow more than five people from ACM. At the meeting there was no agenda in advance. Even the Red Cross person didn't know. I wasn't aware of any minutes* (Maribyrnong detainee, November 1998).

Clause 20.1 of the *Immigration Detention Guidelines* envisages that the Detention Advisory Committee (or Community Reference Group) would

- consider proposals for improving conditions of detention
- monitor the provision of services in immigration detention centres
- review the application of disciplinary penalties
- consider complaints from detainees, legal representatives and non-government agencies
- consider reports from inspectors
- monitor and advise on compliance with these *Guidelines*.

As currently constituted and empowered the Community Reference Groups do not comply with the minimum guidelines on accountability articulated in clause 20.1 of the *Immigration Detention Guidelines.*

Access to this Commission and the Commonwealth Ombudsman

Detainees' access to the information, advice and complaint handling facilities of this Commission and the Commonwealth Ombudsman was affected during 1999 by the passage of *Migration Legislation Amendment Bill No. 2 1998*. The effect of the amendment is that the Commission and the Ombudsman are prevented from initiating confidential correspondence with unauthorised boat arrivals in immigration detention. The Commission and the Ombudsman can correspond confidentially only with a detainee who has personally made a complaint in writing. This prevents them from initiating confidential correspondence with a detainee on whose behalf a third party has complained.

Australia has undertaken to *ensure* the rights in the ICCPR, including rights in detention, to everyone within its territory, to ensure an *effective* remedy for violations and to take all *necessary* steps to give effect to the rights recognised by the ICCPR (article 2). The only remedy provided in many cases is through this Commission. The Commission is charged with promoting the human rights of everyone within Australian territory.[24]

It is axiomatic that a person does not have an effective remedy unless he or she is aware of it and has the capacity to exercise it. The Commission's public education functions, its power to investigate third party complaints and its power to initiate investigations itself are essential ingredients in a national scheme to protect rights and provide effective remedies. Immigration detainees are now denied full and equal access to the only remedy provided for violation of many of their human rights within Australia.

Unauthorised arrivals in immigration detention are entitled to enjoy all the human rights applicable to detainees. Among those rights is the right to an effective remedy. Neither the substantive rights nor the right to a remedy can be effectively exercised unless this Commission has access to those detainees at its own initiative or at the initiative of a third party. The denial of that access is a violation of Australia's human rights undertakings.

Endnotes

1 During 1999 two further Immigration Detention Centres were established – Curtin near Derby WA and Woomera in South Australia. These centres were reviewed by the Commission in February 2000 and are reported upon separately.

2 Letter from Lesley Daw, Director, Detention Section, DIMA, 18 May 1999.

3 C6 Minutes of 16 October 1998.

4 Principle 5 of the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulates that "It is a contravention of medical ethics for health personnel … to participate in any procedure for restraining a … detainee unless such a procedure is determined in accordance with purely medical criteria as being necessary for the protection of the physical or mental health or the safety of the … detainee himself, of his fellow … detainees, or of his guardians, and presents no hazard to his physical or mental health": UN Doc. A/37/51 (1982).

5 The Perth IDC nurse advised the Commission that this detainee's gum pain is believed to have been caused by poor dental hygiene.

6 States Parties must ensure to torture victims the means for as full rehabilitation as possible.

7 Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health.

8 States Parties must take all appropriate measures to promote physical and psychological recovery and social reintegration of child victims of torture and ill-treatment.

9 The nurses advised that the new GP is trying to wean detainees off sleeping tablets and other drugs.

10 Another detainee said the reason given was the fire hazard involved.

11 Ten languages are proposed: Chinese, Vietnamese, Sri Lankan, Filipino, Turkish, Indonesian, Arabic, Thai, Afghan and Korean.

12 On page 134 it is noted that DIMA denied that free-to-air TV was unavailable in separation detention. However, the Commission received confirmation of this claim from a detainee at Port Hedland IRPC in October 1998.

13 Pages 132 and 135.

14 Page 137.

15 This rationale was identified by the Australian National Audit Office in its report *The Management of Boat People*, Auditor-General Report No. 32, 1988, page 67.

16 Human Rights Committee, General Comment 20, 1992, paragraph 9.

17 The import of this for Australian domestic law is that a child asylum seeker whose Refugee Convention or ICESCR rights are allegedly violated by an act or practice of the Commonwealth can complain to HREOC under CROC article 22. CROC is an international instrument that has been the subject of a declaration under HREOCA section 47; the Refugee Convention and ICESCR are not.

18 Joint Standing Committee on Migration, *Asylum, Border Control and Detention*, AGPS 1994, page 55; S Goodwin-Gill, The *Refugee in International Law*, 2nd ed, Clarendon Press, 1996, page 90.

19 See also CROC article 2 which requires that "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind …".

20 Human Rights Committee, General Comment 15, 1986, paragraph 1. This is not to say that the ICCPR requires States Parties to accept all applicants for protection or that people unlawfully in the State's territory have identical rights with people lawfully present. The freedom of movement and residence does not apply to people not lawfully present in the territory, for example (article 12).

21 By the end of June 1999 the Port Hedland IRPC population was 635.

22 Letter from the Director, Detention Section, DIMA, 18 May 1999.

23 Letter from the Director, Detention Section, DIMA, 18 May 1999.

24 *Human Rights and Equal Opportunity Commission Act 1986* (Cth) section 11.