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The Department of Home Affairs (the Department) values the role of the Australian Human Rights Commission (the Commission) to inspect immigration detention facilities and acknowledges the findings identified in this report and the recommendations made by the Commission.

The Department appreciates the opportunity provided by the Commission to raise any factual errors or inconsistencies associated with the report and outlines the following:

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For example, the average length of time that individuals had spent detained in hotel APODs was 322 days as at 31 August 2020, but had reduced to 69 days by 31 July 2022.³⁷ This reflects a shift in the nature of the individuals being detained, from being predominantly members of the Medevac cohort to now being primarily individuals whose visas have been cancelled on character grounds under s 501 of the Migration Act.

Alternative places of detention (APODs) were used extensively during the height of the COVID-19 Pandemic in order to manage a range of risks across the Immigration Detention Network. The Department does not consider that the reduction in the average length of time an individual had spent in hotel APODs between 31 August 2020 and 31 July 2022 necessarily reflects any shift in the nature of the individuals being detained (from the transitory cohort to those who have had a section 501 visa cancellation). This reduction in average length of time individuals are detained in hotel APODs reflects the reduction in time that persons have been detained in hotel APODs regardless of the cohort to which they belong.

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Our understanding is that notification procedures did improve over time, however the description by the Department of the release processes 'all working like clockwork' stood in stark contrast to the information provided by both detainees and the community service providers with direct experience of those releases

The Department seeks to clarify the source of the quote 'all working like clockwork' noting there is no associated reference or footnote. The Department notes it took a range of actions to improve the management of releases from immigration detention as a result of Ministerial intervention decisions.

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Individuals released from hotel APODs and living in the community under either a Bridging Visa E or a Residence Determination arrangement would initially be eligible for support under the SRSS program upon release

Individuals subject to a residence determination are provided ongoing SRSS support, not transitional support.

Length of detention (Recommendation 1)

The Department acknowledges the Commission's concerns related to the use of hotels as alternative places of detention (APODs) for lengthy periods of detention and welcomes the Commission's observations of the reduction in overall numbers of individuals detained in hotel APODs, as well as the reduction in the average time spent in hotel APODs.

The Department notes recommendation one that the use of hotel APODs should only be used in exceptional circumstances for the shortest possible time and reiterates that it is actively working to reduce its reliance on hotel APODs for the placement of immigration detainees in held detention.

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Accommodation decisions are made on a case-by-case basis, but where appropriate immigration detainees may be placed in hotel APODs rather than at an immigration detention centre. Furthermore, the ongoing need for a particular APOD is subject to review based on operational needs, including considerations regarding Immigration Detention Facility (IDF) capacity constraints, COVID-19 health measures, individual detainee or cohort risks, and detainee status resolution pathways.

The use of hotel APODs for detainee placements is always premised on the shortest possible time and has significantly reduced since the removal of various measures that impacted the Immigration Detention Network (IDN) capacity. This includes the re-opening of international borders and the resumption of the Australian Border Force (ABF) being able to remove detainees from Australia.

Detainees in hotel APODs are transferred to accommodation within IDFs as placements suitable for their individual needs become available. For detainees with specific placement requirements, it should be noted that this can mean that the detainee will be separated from their family via an interstate transfer. For some detainees, APOD accommodation is the most appropriate placement option for their circumstances.

Physical conditions of detention (Recommendations 2 - 11)

The Department notes recommendation two and advises that each IDF has an Emergency Management Committee comprised of Departmental, ABF and service provider staff to ensure emergency management procedures are in place. This Committee meets quarterly and within seven days after any emergency and is responsible for:

- Developing and maintaining an emergency management plan setting out the procedures for managing and responding to emergencies;
- Implementing emergency procedures for each type of emergency;
- Ensuring sufficient personnel within their area of responsibility are trained for their role in an emergency;
- Checking on the effectiveness of emergency systems and equipment; and
- Overseeing emergency exercises.

The Department notes recommendation three, that Individuals detained in hotel APODs must be able to access fresh air in any rooms where they are required to reside.

The Department notes recommendation four. The Department, in conjunction with the service provider, regularly reviews the operating model at each IDF, including hotel APODs, to provide optimal rights and privileges while maintaining safety and security provisions. The use of the controlled movement model is limited to circumstances where the use of the model is consistent with the ongoing safety and security of the facility and the wellbeing of detainees; all detainee movements are considered on a case-by-case basis.

Welfare and engagement staff are also deployed to longer term APODs and detainees at these APODs are provided access to welfare support together with appropriate programs and activities, including daily outdoor activities.

The Department notes recommendations five and six, and refers the Commission to the response at recommendation four. There are circumstances when detainees elect not to participate in daily excursions despite access being provided.

The Department notes recommendation seven. The Department, in conjunction with the service provider, regularly reviews the operating model at each IDF, including hotel APODs, to provide optimal rights and privileges while maintaining safety and security provisions.

The Department notes recommendation eight. Where a person is in immigration detention, section 256 of the *Migration Act 1958* (the Migration Act) requires the person responsible for the detainee's immigration detention to, at the request of the detainee, give the detainee application forms for a visa or afford to the detainee all reasonable facilities for making a statutory declaration for the purposes of the Migration Act or for obtaining legal advice or taking legal proceedings in relation to the detainee's immigration detention.

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The legal obligation under section 256 of the Migration Act only arises where the detainee makes a request to obtain legal advice or for assistance with legal proceedings. It does not extend to facilitating access to a migration agent or a person who is not qualified to give legal advice. However, as a matter of policy, detainees are offered the opportunity to seek immigration assistance through a registered migration agent or to seek legal advice through a lawyer upon their immigration detention even if they have not specifically made such a request.

The departmental officer detaining the non-citizen provides the detainee with *Form 1423 – Very Important Notice* at the time of the detention decision. Status Resolution Officers (SRO) will generally conduct an initial Detention Client Interview (DCI) Part A with a detainee within 24 hours of their arrival at a place of detention. During this interview, the detainee is provided information relating to access to legal, migration and consular services.

As part of the DCI Part A, the SRO asks the detainee if they currently have, or have ever had a migration agent or legal representative appointed for their immigration matters. If the detainee answers no, the SRO explains to the detainee that they can arrange and access a migration agent or legal representative for assistance.

When inducting all new detainees, the Facilities and Detention Service Provider (FDSP) also informs the detainee that they may seek legal advice from a legal practitioner or immigration assistance from a migration agent in relation to their immigration detention. FDSP officers also advise the detainee that they may receive visits from a migration agent, legal practitioner and/or consular representative.

If the detainee requests access to legal advice for matters not relating to their immigration status, the detainee is provided with access to communication services in accordance with *DSM – Communication and engagement – Access to communication services – PI (DM-5275)*.

The Department notes recommendation nine. The Department agrees that visits are best facilitated at the detention facility in which the detainee is ordinarily accommodated, however where a detainee is placed at an APOD, visits are better facilitated at the nearest immigration detention facility for the safety and security of detainees, staff, visitors and others. Any facility level decisions to modify these arrangements for visits are managed on a case-by-case basis based on the specific circumstances of the detainee and visitors. Detainees may decline a visit if they choose. Detainees are not required to provide a reason for declining a visit.

The Department disagrees with recommendation 10 regarding a centralised contact point specifically for visitors wishing to visit multiple APODs. Visits are routinely facilitated at immigration detention facilities for all persons in immigration detention, other than in exceptional circumstances (recommendation 9 refers).

The process of arranging a visit to a detainee who is accommodated in an APOD is the same for detainees accommodated within IDFs.

Contact details are listed on the ABF website at www.abf.gov.au/about-us/what-we-do/border-protection/immigration-detention/detention-facilities, with a link on the same page with the conditions of entry, the application form and all of the relevant information in one place to make the process as easy as possible.

The facilitation of visits in one centralised area allows for a streamlined booking process for visitors across the IDN. This enables coordinated planning of logistics and ensures the good order of immigration detention facilities.

The Department acknowledges the Commission's concerns relating to the use of mechanical restraints applied on people in detention who are taken offsite for routine and planned medical appointments and other non-urgent appointments, however disagrees with recommendation 11.

The Department notes that as per the Department's *Detention Services Manual 623 – Safety and Security Management – Use of Force*, all instances where use of force and/or mechanical restraints are applied must be reported. The *Detention Services Manual 616 – Procedural Instruction – Safety and security management – Incident management and reporting* provides guidance on the procedures in place to ensure the consistent record of decisions when approving the use of mechanical restraints.

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The decision to authorise the planned application of force, including restraints, by the Facilities and Detainee Services Provider (FDSP) is recorded on the operational documentation relevant to the specific task taking the respective expertise of the service providers in relation to safety, security, health and welfare into consideration.

FDSP officers must document the request for information to the Detention Health Service Provider (DHSP) in writing, as well as any advice provided by the DHSP. This documentation provides the record of the decision to authorise the use of mechanical restraints, including any countervailing factors. Instruments of restraint must:

- Never be applied as a punishment or for discipline;
- Never be applied as a substitute for medical treatment;
- Never be used for convenience or as an alternative to reasonable staffing; and
- Be removed once the threat has diminished and the officer believes that the person is no longer a threat to themselves, others or property.

Any written advice received from the DHSP is included in the use of force approval request submitted to the ABF. When considering the FDSP request to use force, the ABF Superintendent will consider the DHSP advice and if there are any known health issues with the detainee.

Use of force and/or restraints are only used as a measure of last resort, must be reasonable and may be used to prevent the detainee inflicting self-injury, injury to others, escaping or destruction of property, and is considered alongside DHSP advice.

The ABF is responsible for assessing requests for the use of restraints from the FDSP within an IDF or during transport and escorts to external venues or appointments. Requests are considered on a case by case basis, with an assessment conducted on whether restraints are reasonably necessary to maintain detention. The assessment is conducted in accordance with the relevant legislation, Departmental policy and guidelines. The ABF decision maker (ABF Superintendent of the IDF) can provide approval for planned use of force verbally in exceptional circumstances e.g. where time constraints apply, and verbal approval must be documented after the event in accordance with reporting guidelines.

Planned use of force, including the use of restraints, must not commence prior to the approval of the ABF Superintendent being received. Included in the approval documentation, ABF Superintendents must outline their reasons for approving use of force where there are extenuating circumstances, such as the security risks outweighing the clinical advice. When considering the overall risk rating of a detainee, including their escort risk rating, the FDSP considers a number of factors. Whilst escape is one of those factors, it is not the sole factor considered. In providing a comprehensive assessment, the FDSP identifies five key risk areas impacting the IDN. As per risk management protocols, the FDSP provides a Site Risk Assessment and an Escort Risk Assessment based on the factors identified in the five key risk areas.

The Department notes that where offsite escorts for medical appointments are required, the Department works with the DHSP and FDSP. In addition, where alternative health service delivery methods are available, removing the requirement to transport a detainee, the Department takes advice from the DHSP on the relative efficacy of these services. The Department also notes that detainees may choose to accept or decline any or all medical services offered.

Programs and activities (Recommendations 12 and 13)

The Department notes recommendation 12. The Department continues to jointly develop and update Programs and Activities (P&A) with the FDSP for the purpose of supporting detainee health and well-being. This occurs on a monthly basis with the FDSP developing a structured and unstructured P&A schedule that caters for the diverse needs of detainees including physical, mental, emotional and religious needs. The P&A schedule is submitted to the IDF Superintendent prior to the month starting for approval. Regarding provision of certification for courses completed by detainees, the Department disagrees with recommendation 13, and reaffirms that under current policy settings and reflected in the Facility and Detainee Services Contract, certificate courses are not provided to immigration detainees.

OFFICIAL: Sensitive***Health Care (Recommendations 14 to 17)***

The Department notes recommendation 14. The Department ensures clinically recommended access to medical treatment is provided through the public health system for all detainees, including those transferred from regional processing countries for medical treatment.

The Department's DHSP has established procedures in place to manage medevacs. A Request for Transfer is raised by the medical team and once this is approved by the Department, the DHSP simultaneously arranges the Medevac and receiving care at a public hospital. The DHSP has well established relationships with public tertiary medical institutions in Australia, who in most cases accept the care of the patient. The DHSP provides a thorough verbal and written handover to the receiving hospital.

Transitory persons in immigration detention can choose to refuse some or all of the care offered.

The Department notes recommendation 15 and refers the Commission to the response at recommendation 14.

The Department notes recommendation 16 and can confirm quarantine is only used where medically necessary and to ensure the safety and security of, detainees, staff and visitors to the IDN.

The Department disagrees with recommendation 17 that it should publicly release the 2020 Departmental Review into mental health care in immigration detention. The report findings are currently being considered under the high-risk, high-value procurement activity of future immigration detention services and cannot be publicly released due to probity implications.

Management of Covid-19 Pandemic (Recommendation 18)

The Department agrees with recommendation 18. COVID-19 quarantine requirements are guided by the Communicable Diseases Network Australia (CDNA) National Guidelines for COVID-19 Outbreaks, the Department of Health Services Guidelines and relevant State and Territory Guidelines. The Department and stakeholder continually review current COVID-19 processes in accordance with the external guidance. The Department is reviewing current requirements and drafting a step down plan in relation to COVID-19.

Alternatives to closed detention (Recommendation 19)

The Department notes recommendation 19 and the Commission's view that regular case reviews conducted by the Department focus on whether there is any need for an individual to be released from detention, rather than whether it is necessary to continue to detain the individual for reasons specific to them such as a risk of absconding or a threat to national security.

The Department notes there is a requirement under section 189 of the Act that an officer must detain a person they know, or reasonably suspect to be an unlawful non-citizen. The Department maintains that review mechanisms regularly consider the necessity of detention and where appropriate, the identification of alternate means of detention or the grant of a visa, including through Ministerial Intervention.

In October 2016, the Department implemented the Community Protection Assessment Tool (CPAT) across the immigration detention network. The Commission would be aware the CPAT is a decision support tool to assist the Department in assessing the most appropriate placement of a non-citizen while status resolution is pursued. In this context, placement refers to whether the non-citizen resides in the community on a bridging visa or subject to a residence determination arrangement, or in held immigration detention. The Department is investigating enhancements to the CPAT to incorporate more dynamic risk assessment attributes.

OFFICIAL: Sensitive***Release from Hotel APODs (Recommendation 20)***

The Department notes the Commission's observations and findings in respect of the role of Ministerial discretion and the anecdotal evidence supporting these. However, it is important to note that the Portfolio Ministers' personal intervention powers under the Migration Act 1958 (the Act) allow them to grant a visa to a person, make a residence determination, or lift the statutory bars to permit a person to make an application for a visa, if they think it is in the public interest to do so. The Department reiterates that the powers are non-compellable and what is in the public interest is a matter for the Minister to determine. Ministerial intervention guidelines establish which cases should or should not be referred for Ministerial consideration. The Department only refers cases to a Minister where it is determined that a case meets the Ministerial Intervention guidelines, or where requested by a Minister.

The Department notes recommendation 20. The Department has continued to review and refine the processes relating to releasing persons from detention following Ministerial Intervention. Procedures have been put in place to better support and inform former detainees including:

- pre-decision logistical planning to better support persons immediately post-release
- ensuring Status Resolution Support Services (SRSS) Service providers are on stand-by to collect persons and provide Band 4 transitional SRSS support to persons released from detention.
- obtaining a better understanding of the supports required for individuals immediately post-release. For example clients are provided with health discharge assessments and a supply of medication to assist them immediately post release.
- notifying Migration Agents and legal representatives and advising family of release with consent from the individual.

The Department has also reviewed and refined the information provided to detainees being released into the Australian community. Status Resolution Officers assist in the transition of the detainee from immigration detention by ensuring the detainee is informed about what is happening (e.g. how the release will occur and/or next steps after being released).

The Status Resolution Support Services (SRSS) Program provides support to assist clients to support them immediately after they are released from immigration detention. The Department has previously provided the Commission with information about the assistance provided under SRSS Band 4 transitional support for persons released from immigration detention.

Where a person in immigration detention becomes a lawful non-citizen as a result of a decision or event, for example the grant of a visa including via Ministerial intervention or having a visa reinstated, they must be released from detention as a priority to avoid a circumstance of inappropriate detention. This must occur regardless of the amount of notice or the timing of the event or decision that resulted in the person becoming a lawful non-citizen.

The process of release (Recommendation 21)

The Department agrees with recommendation 21 and will review procedures to ensure a consistent approach is taken to notify Registered Migration Agents and legal representatives when individuals they represent are released from immigration detention.

Post-Release Support (Recommendation 22)

The Department disagrees with recommendation 22.

The Department notes SRSS eligibility was extended from November 2022 to meet the evolving needs of the status resolution cohort. The Department intends to review these arrangements within 12 months.

In April 2023 the Department held a workshop with key non-government organisation stakeholders to discuss opportunities in the SRSS program. Further workshops are planned in May and June 2023 to consider process changes that can be implemented by the Department.

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Ministerial Intervention (Recommendation 23)

The Department notes recommendation 23. Portfolio Ministers' personal intervention powers under the *Migration Act 1958* (the Act) allow them to grant a visa to a person, or lift the statutory bars to permit a person to make an application for a visa, if they think it is in the public interest to do so. The personal intervention powers are non-compellable, that is, the Ministers are not required to exercise their power. Further, what is in the public interest is a matter for the Ministers to determine.

The Department has established an approach for the consistent management of transitory persons temporarily in Australia through referral for Ministerial Intervention consideration. This includes recommending that the Minister lift the subsections 46A(1) and 46B(1) statutory bars to allow transitory persons to make valid applications for a Bridging E (subclass 050) visa (BVE). This allows transitory persons to make valid BVE applications and for a departmental delegate to consider granting a BVE without the need for further Ministerial intervention at regular intervals. This approach has been implemented for transitory persons in Australia including those holding a BVE and transitory persons referred for Ministerial intervention under section 195A of the Act.

Continuity of care following release (Recommendation 24)

The Department notes Recommendation 24. To facilitate continuity of care, a Health Discharge Assessment (HDA) is conducted for all detainees being removed from immigration detention or transferred into Residence Determination arrangements. The HDA is a clinical assessment of a detainee's physical and mental health based on their previously recorded medical history and, where clinically indicated, a physical examination.

A HDA results in a Health Discharge Summary which informs future health care providers of a detainee's clinical history, including significant health issues, past and current treatment as well as medications. It also supports the consideration and identification of any post discharge support that the detainee may require. As part of the HDA, the DHSP ensures that a detainee being granted a visa, or their guardian, if applicable, receives information relevant to their continuity of care. The DHSP will:

- review the detainee's health care record
- note the detainee's medical history and any clinical recommendations
- note any potential negative medical effects of transfer between IDFs
- document health screening results and clinical findings
- identify any physical and mental health issues of concern
- document ongoing care and treatment required, including any special health needs
- document any vaccinations given
- determine if a physical examination is required and if so, seek detainee informed consent prior to undertaking the physical examination
- provide the Department with a recommendation on any post-discharge health supports the detainee requires and arrange any post-discharge medical appointments/ referrals
- ensure that a detainee being granted a visa, or their guardian, if applicable, receives:
 - up to 28 days' supply of all clinically indicated prescription medication (or supply for a longer period as approved by the Department)
 - written medication administration instructions, translated if required; and
 - a clear verbal explanation of medication administration, utilising an interpreter if required; and
 - information on how to access the Australian health system.

OFFICIAL: Sensitive**Table 1 - Summary of Department's response to recommendations**

Recommendation number	Department's response
1	Noted
2	Noted
3	Noted
4	Noted
5	Noted
6	Noted
7	Noted
8	Noted
9	Noted
10	Disagree
11	Disagree
12	Noted
13	Disagree
14	Noted
15	Noted
16	Noted
17	Disagree
18	Agree
19	Noted
20	Noted
21	Agree
22	Disagree
23	Noted
24	Noted