

Department response

The Department of Home Affairs (the Department) values the Australian Human Rights Commission (the Commission) review of the Department's response to the human rights risks posed by the COVID-19 pandemic in the context of immigration detention, and the Commission's acknowledgement of the Department's good practices.

The Department welcomes the Commission's observation that the Department and its service providers are committed to preventing the entry and spread of COVID-19 at all immigration detention facilities (IDFs). The Department also welcomes the Commission's recognition that to date, there have been no confirmed COVID-19 cases among people detained in IDFs.

Below is the Department's response to the recommendations and key themes of the report.

Number of people in IDFs (Recommendations one and eight)

The Department notes recommendations one and eight and maintains that the Department proactively continues to review the necessity for an individual's continued detention, and to identify and utilise alternatives to held immigration detention where appropriate. Detention is a measure of last resort and detainees are regularly reviewed to ensure that ongoing placement in an IDF remains the most appropriate placement for them in their individual circumstances. The Commission has acknowledged the Government's recent decision to release a significant number of people from held immigration detention.

Status Resolution Officers (SRO) use the Community Protection Assessment Tool (CPAT) to assess the most appropriate placement for an unlawful non-citizen while status resolution processes are being undertaken. Placement in this context refers to looking at alternatives to an IDF, such as in the community on a Bridging visa or under a Residence Determination placement. The tool also assesses the types of supports or conditions that may be appropriate for that case and is generally reviewed every three to six months and/or when there is a significant change in an individual's circumstances. The CPAT takes a number of factors into account including if a detainee has any complex health needs.

Using the CPAT, and determining any legislative bars that are applicable to a detainee, SROs assess whether a detainee meets the eligibility requirement and criteria for a Bridging visa to allow the non-citizen to temporarily reside lawfully in the community while they resolve their immigration status. SROs identify cases where the Minister is the only person with the power to grant the non-citizen a visa or to make a Residence Determination in order to allow an unlawful non-citizen to reside in community detention. Where the case is determined to potentially meet the Ministerial Intervention guidelines, the case is referred to the Minister for consideration under section 195A of the *Migration Act 1958* (the Act), to grant a visa to a person in immigration detention, or under section 197AB of the Act, allowing a detainee to reside in the community. The Minister's Intervention powers are non-delegable and non-compellable, meaning that only a portfolio Minister can exercise these powers and the Ministers are under no obligation to consider exercising or to exercise these powers in any case. Only cases which meet the Minister's guidelines are referred for the Minister's consideration.

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In addition to conducting CPAT reviews, SRO's conduct a formal monthly case review of all detainee's, which includes discussing the case directly with the detainee. The purpose of the review is to ensure the detainee's placement is appropriate and that cases are progressing towards a status resolution outcome. In conducting monthly reviews, SROs consider any new information or new barriers to case progression, and escalate as appropriate.

Capacity (Recommendations two, three and four)

The Department acknowledges the Commission's concerns regarding capacity within IDFs. The Department notes recommendations two, and disagrees with recommendations three and four, maintaining that IDF infrastructure supports both the ongoing health and welfare needs of detainees, and the good order and safety of the facility, including during COVID-19.

The priority for the Australian Border Force (ABF) is the health and safety of all detainees and staff.

The ABF's approach is informed through advice from the Medical Officers of the Commonwealth, State/Territory health departments and the Communicable Diseases Network Australia (CDNA) *Guidelines for the prevention, control and public health management of COVID-19 outbreaks in correctional and detention facilities in Australia*. As at 5 May 2021, no detainee has contracted COVID-19 across the immigration detention network. This continues to reassure the Department that measures enforced to manage COVID-19 risks across the network are working.

The Department promotes flexible management of the capacity of each detention facility due to the changing requirements of the individuals detained in each IDF. Facilities also maintain some flexibility in their capacities, including for contingency arrangements should an event occur such as a COVID-19 outbreak. Whilst preferable, it is not possible for all detainees to have single bedrooms and private bathrooms. The CDNA Guidelines do not require detainees to have single bedrooms, except in the case of individuals who are confirmed or suspect cases. The Department has measures in place to enable detainees to stay appropriately distanced from other people, especially in common areas. The health service provider monitors, reviews and reports on vulnerable detainees in immigration detention, and refers to the CDNA criteria for being 'at risk' as well other factors, including age and gender when establishing care and placement.

To maintain an appropriate network balance from a capacity perspective, and where operationally possible, network rebalancing transfers occur. This rebalancing prevents capacity issues at IDFs, and also facilitates moves for the good order and safety of the network. State border closures due to COVID-19 have at times presented challenges and delayed network rebalancing however, the number of detainees accommodated at each facility remains lower than the operating capacity.

Transfers to Christmas Island (Recommendation five)

The Department welcomes the Commission's observation that transfers to North West Point Immigration Detention Centre (NWPIDC) on Christmas Island have provided some capacity relief across the network, and notes recommendation five.

International flight restrictions and border closures due to the COVID-19 pandemic have curtailed the ability of the ABF to remove unlawful non-citizens from Australia. Immigration detention capacity is also being impacted by the movement of unlawful non-citizens from prison to

immigration detention, and the adoption of COVID-19 preventative measures in IDFs including quarantine capacity and social distancing.

To relieve these pressures, on 4 August 2020, the Government announced the reopening of NWPIDC – a purpose built high security facility:

<https://newsroom.abf.gov.au/releases/statement-regarding-christmas-island>

Decisions in relation to appropriate detainee placements are undertaken after careful consideration of a number of factors, including the operational capacity of each facility and the need to ensure the safety and good order of the broader immigration detention network. Factors including medical needs are given priority, and family and community links are also carefully considered for all detainees transferring to other facilities, including to and from NWPIDC.

The Department has contracted appropriately trained and experienced service providers to ensure detainee needs at NWPIDC are adequately met, including the provision of health and welfare services, recreational and cultural needs. The ABF works closely with the Facilities and Detainee Service Provider (FDSP) to manage the welfare of people in immigration detention through a range of care, welfare and support arrangements that provide for detainee needs.

The services provided by International Health and Medical Services (IHMS) on Christmas Island are consistent with those provided to detainees in the mainland immigration detention network. Healthcare services for detainees are comparable to those available to the Australian community under the Australian public health system. Services are provided through onsite primary and mental health clinics and, where a medical service is not available within detention facilities on Christmas Island, IHMS will facilitate these services through visiting specialists or referral to the Australian mainland. Mental health services are also delivered onsite and include visiting psychiatrists from mainland Australia. On Christmas Island, IHMS provides primary health care to people in detention using general practitioners, nurses and paramedics. Clinical team leaders oversee the health care provided by nursing staff and clinicians.

With regard to telecommunications infrastructure, the Department is undertaking improvement work to increase the speed of the WiFi and the overall quality of the WiFi network at NWPIDC. This is in addition to repair work for damage caused by a major disturbance earlier in the year.

On 27 January 2021, an upgrade was completed to increase the WiFi bandwidth to White, Blue, Green and Gold compounds. As part of the bandwidth upgrade, the ABF consulted with detainees as to which websites they specifically wished to access. The Department has ensured detainees are able to access these websites, which include social media sites, messaging platforms and general news websites. Moreover, the Department is currently in the process of expanding the WiFi reception into compound rooms, and to improving coverage in the education buildings and recreation areas.

Detainees at NWPIDC have access 24 hours a day to go outside their rooms and to exercise in an outdoor area within each compound. The area is grassed and equipped with outdoor exercise equipment. Detainees can participate in walking groups and request sports equipment for outdoor sports activities. The ABF and the FDSP are currently reviewing the operating model at NWPIDC

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and consideration is being given to increasing detainee movement outside their accommodation compounds, to additional recreation areas.

The Department notes the Commission's concerns regarding visits for people detained on Christmas Island and understands the important role visitors play in detainees' health and wellbeing, and the importance of remaining in contact with support networks. Recognising the particular challenges for detainees receiving in-person visits on Christmas Island, the Department continues to provide appropriately funded phone cards on a weekly or fortnightly basis to assist them to keep in touch with family, friends, legal representatives and support networks.

Physical distancing (Recommendations six and seven)

The Department values the Commission's acknowledgement that people in immigration detention are encouraged to engage in physical distancing, and that adequate measures have been taken to promote physical distancing in communal areas. The ABF has implemented COVID-19 controls in accordance with the CDNA Guidelines, which recognise that settings such as detention can make social distancing difficult in all circumstances. The ABF assess that social distancing is physically achievable in most circumstances, noting that individuals are required to personally practice social distancing principles. The Department also values recognition of the Ombudsman's observation that during physical inspections 'both detainees and staff were complying with [physical distancing] guidelines where possible'.

The Department notes recommendation six, and welcomes the Commission's acknowledgement of the Department's efforts to reduce the number of people in bedrooms that previously accommodated four or more. The Department also welcomes the Commission's comment that steps taken to increase the number of single occupancy bedrooms and reduce dormitory-style and shared bedrooms will also improve conditions of immigration detention overall.

With regard to controlled movement, the Department welcomes the Commission's comment that controlled movement policies reduce the risks of COVID-19 transmission in facilities by limiting, or in some cases preventing, the mixing of people accommodated in different compounds. The Department disagrees with recommendation seven as the controlled movement policies are frequently reviewed, including localised requirements based on a wide range of factors that underpin the controlled movement policies and models. An assessment to ease controlled movement restrictions is not solely based on COVID-19 considerations, it includes threats and risks, such as detainee violence, the promulgation of illegal, excluded and controlled items in detention, as well as taking into consideration COVID-19 restrictions within the immigration detention network.

Training and education (Recommendations nine, 10 and 11)

The Department welcomes the Commission's observation that the Department and its contractors have taken necessary steps to ensure that facility staff are trained in infection control practices required to manage COVID-19. The Department agrees with recommendations nine, 10 and 11, and continues to ensure that training and access to reference materials remains aligned with the requirements of the CDNA Guidelines. This is an ongoing need and will continuously evolve as more is learned about the COVID-19 virus and the risks associated with the virus.

The Department confirms that all IHMS staff are required to complete mandatory e-learning, which includes all infection controls as well as hand hygiene and practical competencies. Regular updates to the Outbreak Management Plan are communicated to staff. The weekly COVID-19 Response Committee Meetings ensure that the education of staff and contractors is maintained, including in relation to vaccinations. There are also daily updates for staff regarding COVID-19 hotspots and daily updates to the COVID-19 register. IHMS has a designated platform for COVID-19 related material. This is available to all IHMS staff on the IHMS SharePoint.

All relevant departmental COVID-19 policies, procedures and protocols can be found on the Department's intranet, through a link on the intranet homepage, which is accessible by all staff.

In March 2020, key messages in relation to maintaining good personal hygiene, avoiding exposure, making mental health a priority, as well as background information on the outbreak, symptoms, prevention, screening and contact tracing were translated into all approved languages. The Department welcomes the Commission's observation that signage is available in other languages spoken by people in immigration detention.

Screening for COVID-19 (Recommendation 12)

The Department values the Commission's acknowledgement of the additional screening measures introduced for all people seeking to enter an IDF, as well as the Ombudsman's confirmation that these additional screening measures were in place at all facilities visited. The Commission's health expert assessment that temperature checking was adequate, is also welcomed. The Department agrees with recommendation 12, maintaining that screening measures, including questionnaires are aligned with the requirements of the CDNA Guidelines, and are regularly reviewed and updated.

In May 2020, the Procedural Instruction on Detention Health Screening and Management was updated to include additional policy guidance on screening of detainees for identified public health risks. This guidance applies to COVID-19 as well as any other public health risks, and extends to persons held in alternative places of detention for quarantine purposes.

IHMS key management personnel conduct weekly meetings to ensure all COVID-19 related questionnaires and documents are kept up to date, and IHMS medical directors and director of nursing proactively review and monitor State and Territory requirements daily for any public health alerts. Individual sites also receive daily updates when COVID-19 risk factors are relevant to their specific State or Territory, allowing them to safely screen and monitor the risk of every person entering the facility. Updates are distributed to all onsite stakeholders to ensure consistency in information delivered.

Quarantine (Recommendations 13 to 18)

The Department values the Commission's acknowledgement that quarantine can be justified in preventing COVID-19 in IDFs, and that quarantine can therefore be a legitimate measure to protect a person's health and broader human rights.

The Department agrees with recommendations 16 and 17, agrees in part with recommendation 14, notes recommendation 18, and disagrees with recommendations 13 and 15. Medical quarantine placement is not for the same reasons as placement in High Care Accommodation (HCA),

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however rooms used for HCA are at times also used for medical quarantine depending on the capacity of the facility, and the risk posed by the detainee. Medical quarantine placement is for the exclusive purpose of managing the COVID-19 risk to the health and safety of detainees and staff, and preventing its entry to IDFs. This messaging has been reiterated to ABF and FDSP staff. All medical quarantine placements is informed by current advice from the Department's Clinical Advisory Team and the CDNA Guidelines.

While in medical quarantine, detainees have access to essential personal items such as clothing and toiletries, their phones and devices, and can request access to a laptop, an online library of books, and activity packs. There is also regular monitoring of their physical and mental health.

The Department is committed to ensuring COVID-19 risk mitigations are in place that reflect the risk level as the COVID-19 situation evolves, in order to safeguard the health of detainees and staff. The Department's policy and procedures guiding decisions about the necessity of medical quarantine have been developed and are reviewed in consultation with the Department's Clinical Advisory Team and are consistent with the CDNA Guidelines.

The Department has instituted policies and procedures that contain a clear framework for decisions to release detainees from medical quarantine informed by advice from the Department's Clinical Advisory Team and the CDNA Guidelines. As the COVID-19 situation continues to evolve in Australia and globally, the Department has documented updated measures commensurate with the changing level of risk posed by COVID-19 across the immigration detention network via updated Operational Notifications.

From the start of the COVID-19 pandemic, the Department has been acutely aware of the risk of COVID-19 entering the immigration detention network. Strict medical quarantine procedures were implemented for any detainee with possible COVID-19 symptoms, with testing undertaken almost immediately. All swabs are sent as 'urgent' by pathology providers, and the Department has worked with State and Territory health departments to ensure clear escalation procedures are in place for any positive tests.

The [Australian COVID-19 Vaccination Policy](#), endorsed by the National Cabinet on 13 November 2020, sets out key principles for the COVID-19 Vaccination Program (Program) roll-out, including that COVID-19 vaccines will be made available for free for everyone living in Australia. Further, it outlines how COVID-19 vaccines will be accessible on a rolling basis, dependent on vaccine delivery schedules and the identification of groups for most urgent vaccination.

Vaccination for detainees within the immigration detention network will be made available once the roll-out to residential aged care and disability care facilities are complete.

Hotel alternative places of detention (APOD) (Recommendation 19)

The Department notes recommendation 19. Unlawful non-citizens who are detained under section 189 of the Act are subject to placement at any place of detention within the immigration detention network, which currently includes two longer term Hotel/Apartment style APOD accommodation options in Brisbane and Melbourne. Transitory persons, who are detained under the Act on arrival,

remain in immigration detention while onshore, unless placed into the community through the Minister's intervention¹.

APODs are generally used for those detainees where less restrictive placement is appropriate. There is a finite capacity across the national network, which has been exacerbated by COVID-19 implications, and there is often an operational need to place detainees in hotel APODs.

Detainees in hotel APODs are provided with the same services as detainees in IDFs, including the same opportunities to contribute to the development, structure and delivery of Programs & Activities. This includes through the Detainee Consultative Committee, Individual Management Plans, the complaints, requests, feedback and suggestions process, and routine interactions occurring regularly between FDSP and detainees.

Visits (Recommendation 20)

The Department values the Commission's comments that the suspension or restriction of visits may be necessary to prevent the introduction or spread of COVID-19 in an IDF, and that the ABF's current approach to visits complies with the CDNA Guidelines and relevant human rights standards. The Department agrees in part with recommendation 20.

Effective 12 April 2021, the additional \$20 phone cards ceased to be provided at most IDFs in recognition that limited contact visits had resumed. As mentioned above though, the Department continues to provide appropriately funded phone cards on a weekly or fortnightly basis to detainees at Christmas Island to assist detainees to keep in touch with family, friends, legal representatives and support networks.

All people in IDFs are provided with access to communication services, including landline phones which they can use to make calls to Australian land and mobile phone numbers free of charge, unrestricted access to personal mobile phones and access to the internet (including via Skype and audio-visual tools).

¹ The Minister's intervention powers are non-compellable, meaning the Minister is not obliged to exercise or to consider exercising these powers. The Minister exercises these powers if the Minister determines it is in the public interest to do so. What is in the public interest is a matter for the Minister to define.

Summary of Recommendations

Recommendation #	Status
1	Noted
2	Noted
3	Disagree
4	Disagree
5	Noted
6	Noted
7	Disagree
8	Noted
9	Agree
10	Agree
11	Agree
12	Agree
13	Disagree
14	Agree in part
15	Disagree
16	Agree
17	Agree
18	Noted
19	Noted
20	Agree in part

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