



Australian  
Human Rights  
Commission  
*everyone, everywhere, everyday*

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# 2008

## Immigration detention report

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Summary of observations following visits to  
Australia's immigration detention facilities

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## 1 Introduction

This report contains a summary of observations by the Australian Human Rights Commissioner, Graeme Innes AM, and staff of the Australian Human Rights Commission (the Commission) following visits to Australia's immigration detention facilities, and to people in community detention, between June and September 2008. The contents of the report are based on direct observations made during the visits, and on discussions with staff and immigration detainees.

This report follows the Commission's 2006 and 2007 reports on annual inspections of mainland immigration detention facilities.<sup>1</sup> The Commission has also commented on earlier visits to immigration detention facilities in a range of other reports available on its website.<sup>2</sup>

The report includes the following major parts:

<ul style="list-style-type: none"><li>• Overview of Commission's observations (section 2)</li><li>• Summary of Commission's recommendations (section 3)</li><li>• Methodology for annual visits (section 4)</li><li>• Purpose of visits and relevant human rights standards (section 5)</li></ul>
<ul style="list-style-type: none"><li>• Observations on:<ul style="list-style-type: none"><li>○ monitoring of standards in immigration detention (section 6)</li><li>○ number of people in detention and length of detention (section 7, 8)</li><li>○ attitudes of detention staff (section 9)</li></ul></li></ul>
<ul style="list-style-type: none"><li>• Mainland immigration detention centres:<ul style="list-style-type: none"><li>○ cross-cutting concerns (section 10)</li><li>○ specific concerns about each centre (section 11)</li></ul></li></ul>
<ul style="list-style-type: none"><li>• Alternatives to immigration detention centres:<ul style="list-style-type: none"><li>○ immigration residential housing</li><li>○ immigration transit accommodation</li><li>○ community detention (section 12)</li></ul></li></ul>
<ul style="list-style-type: none"><li>• Immigration detention on Christmas Island (section 13)</li></ul>
<ul style="list-style-type: none"><li>• Children in immigration detention (section 14)</li></ul>

This report is not a comprehensive review of every aspect of the conditions in Australia's immigration detention facilities. Rather, it focuses on those issues that detainees raised with the Commission, and on other issues that caused significant concern during the Commission's visits.

The Commission has provided an advance copy of this report to the Department of Immigration and Citizenship (DIAC), GSL (Australia) Pty Ltd (the detention services

provider), the Australian Customs Service and the Australian Fisheries Management Authority to give them an opportunity to correct any factual inaccuracies and to respond to the report. The responses received are available on the Commission's website at [www.humanrights.gov.au/human\\_rights/immigration/idc2008.html](http://www.humanrights.gov.au/human_rights/immigration/idc2008.html).

## **2 Overview**

In July 2008, the Minister for Immigration and Citizenship announced new directions for Australia's immigration detention system.<sup>3</sup> The new directions are based on seven key values. Of these values, the Commission welcomes the following:

- Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, will be subject to regular review.
- Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.
- Children and, where possible, their families, will not be detained in an immigration detention centre.
- People in detention will be treated fairly and reasonably within the law.
- Conditions of detention will ensure the inherent dignity of the human person.

While the Commission welcomes the statement of the above values, it hopes to see them translated into policy, practice and legislative change as soon as possible. Despite observing improvements in Australia's immigration detention facilities over the past few years, the Commission has significant ongoing concerns about the immigration detention system.

The legal architecture of the mandatory detention system remains in place. There are fewer people in immigration detention and the number of long-term detainees is decreasing. However, some people are still held for long and indefinite periods. During its 2008 visits, the Commission met with people who had been in detention for periods of up to six years.

Off-shore processing of asylum seekers continues on Christmas Island. The new immigration detention centre on the island is a formidable high-security facility that the Commission believes should not be used to hold immigration detainees.

While children are no longer held in immigration detention centres, they are still held in other closed immigration detention facilities, both on the mainland and on Christmas Island.

The Stage 1 section of Villawood Immigration Detention Centre remains in use, despite the Commission's repeated recommendations that it should be demolished. While there are ongoing efforts to refurbish some detention facilities, the infrastructure at the mainland immigration detention centres is inappropriate and run-down, and the atmosphere remains security-driven and prison-like.

Services and activities in immigration detention have, on the most part, improved over the past few years. Still, many detainees express frustrations about a range of issues including lack of access to external excursions, interpreters and translated documents, recreational and educational activities, and others.

Based on its 2008 annual visits, the Commission has identified a range of key areas for improvement across the immigration detention network. A summary of the Commission's recommendations is included in section 3 of this report.

As the international community celebrates the 60<sup>th</sup> anniversary of the *Universal Declaration of Human Rights*, the Commission hopes to see the implementation of reforms to ensure that Australia's immigration detention system upholds the fundamental human dignity and human rights of all persons involved.

### **3 Recommendations**

#### ***Monitoring of standards in immigration detention***

- Minimum standards for conditions and treatment of persons in immigration detention should be codified in legislation. These should be based on relevant international human rights standards.
- The Australian Government should accede to the Optional Protocol to the Convention against Torture and establish an independent National Preventive Mechanism to conduct regular inspections of all places of detention, including immigration detention facilities.

#### ***Length and uncertainty of detention***

- Australia's mandatory detention law should be repealed.
- The Migration Act should be amended so that immigration detention occurs only when necessary. This should be the exception, not the norm. It must be for a minimal period, be reasonable and be a proportionate means of achieving at least one of the aims outlined in international law.<sup>4</sup> These limited grounds for detention should be clearly prescribed in the Migration Act.
- The Migration Act should be amended so that the decision to detain a person is subject to prompt review by a court, in accordance with international law.
- The Migration Act should be amended to include periodic independent reviews of the ongoing need to detain an individual, and a maximum time limit for detention.<sup>5</sup>

#### ***Staff training***

- DIAC and GSL should ensure that all current and future staff are provided with adequate training to educate them about the human rights of persons in immigration detention. Staff training and performance management procedures should ensure that all staff treat immigration detainees in a

humane manner, with respect for their inherent dignity, and with fairness and cultural sensitivity.

## ***Mainland immigration detention centres: cross-cutting concerns***

### *Detention infrastructure and environment*

- A comprehensive redevelopment of the Villawood and Perth immigration detention centres (IDCs) should be undertaken as a matter of priority. This should include the demolition of Stage 1 at the Villawood IDC as a matter of urgency, and its replacement with a new facility. This is subject to there being a continuing need for such a facility, given the Government's stated intention to detain people in immigration detention centres only as a last resort. It should also include comprehensive refurbishments to the Perth IDC, to address the issues raised in this report.

### *Physical health care*

- DIAC should ensure that detainees are updated regularly about the status of any requests they have made for external specialist treatment, and any reasons why a referral has not been approved.
- DIAC should ensure that detainees can request and obtain a second medical examination or opinion if they wish to do so.
- For each detainee leaving immigration detention, DIAC should ensure that a health discharge assessment is conducted; a health discharge summary is provided to the person in a language they can understand; copies of all relevant medical records and test results are provided to the person; and appropriate arrangements are made for their follow-on medical care in the Australian community or in the country of return.
- DIAC should review its policy regarding certification of 'fitness to travel', in particular the provision that allows certification to be validly based on a physical examination completed within the previous 28 days.

### *Mental health care*

- DIAC should ensure that additional psychological support services are provided in immigration detention facilities whenever those services are required by detainees. DIAC should seek regular feedback from onsite mental health staff and act promptly to increase the availability of psychological support services when that feedback indicates a need in the current detainee population.
- DIAC should ensure that any detainee in an immigration detention facility who has, or is suspected to have, significant mental health concerns or a background of torture or trauma is considered for community detention or a bridging visa as soon as possible.

- Detainees on suicide and self-harm observation in Stages 2 and 3 at the Villawood IDC should not be transferred to observation rooms in Stage 1. Purpose-built observation rooms should be constructed in Stages 2 and 3. Detainees should be observed in their own rooms when appropriate.

#### *Recreational activities*

- DIAC should ensure that necessary changes are made at the immigration detention centres so that all detainees are provided with adequate access to open grassy space for sport and recreation. This is a particular priority in Stage 1 at Villawood IDC, Perth IDC and Maribyrnong IDC. In the meantime, DIAC and GSL should ensure that detainees in Maribyrnong IDC and Perth IDC have regular access to organised sporting activities, for example soccer, outside the detention centre. All detainees at Villawood IDC, including those in Stage 1, should be permitted to use the soccer pitch in Stage 3 for sporting activities on a regular basis.
- DIAC and GSL should ensure that each immigration detention centre has an onsite library area stocked with reading materials in the principal languages spoken by detainees at the centre. All detainees should have regular access to this area.
- Management at each of the immigration detention centres should explore the possibility of borrowing reading materials on a regular basis from a local library or a mobile library service.
- DIAC should upgrade the outdoor gym facilities at the Perth IDC, at Maribyrnong IDC, and in Stage 1 at Villawood IDC. These facilities should be enclosed to ensure adequate privacy and protection from the weather.

#### *Educational programs*

- DIAC should repeal its policy of prohibiting immigration detainees from undertaking a course of study that leads to a formal qualification. DIAC should allow detainees to enrol in substantive education courses at TAFE and other educational or vocational training institutions. Enrolment could be by correspondence. However, where possible, DIAC should consider permitting detainees to attend some classes in person.
- DIAC and GSL should arrange for the provision of structured educational classes at the Northern IDC for detainees who wish to participate. This should include ESL classes and computing classes.
- DIAC should ensure that each immigration detention facility has adequate space dedicated to educational activities. In particular, DIAC should upgrade the Perth IDC to provide dedicated classroom space. The Commission is of the view that Stage 1 at Villawood IDC is an inappropriate facility and should be demolished. However, if DIAC intends to continue to use Stage 1, it should upgrade the facility to provide dedicated space for educational classes.



### *External excursions*

- DIAC should adopt minimum standards for the conduct of regular external excursions from immigration detention facilities, and include these standards in the contract with the detention services provider. DIAC should monitor compliance with these standards on an ongoing basis and take appropriate remedial action when they are not being complied with.
- In the meantime, Villawood management should increase the frequency of group excursions, and make them available to detainees in all sections of the centre. Maribyrnong management should introduce regular group excursions for all detainees. Management at the Perth IDC and the Northern IDC should facilitate detainee requests for home visits or other individual excursions where possible.
- DIAC should ensure that the detention services provider is allocated sufficient resources to provide escorts for regular external excursions.

### *Use of restraints*

- DIAC and GSL should review their policies and procedures regarding the use of restraints on immigration detainees during trips outside immigration detention facilities, to ensure that restraints are only used when absolutely necessary. Restraints should only be used after a thorough risk assessment has been conducted for the individual detainee for the particular trip in question. If it is deemed necessary to use restraints, they should be covered while the detainee is in public view and they should be removed for appearances in courts and tribunals.<sup>6</sup>
- Policies regarding use of restraints should include clear procedures for restraints to be removed in time-sensitive situations that may arise - for example, an emergency health issue or a request to use toilet facilities. Current and future GSL staff should be trained on these procedures. This training should emphasise the use of techniques which ensure that, when it is absolutely necessary to restrain a detainee, that person is restrained in dignity and with minimum use of force.

### *Access to communication facilities*

- DIAC should continue to expand access to the internet for immigration detainees, particularly at the Northern IDC and the Perth IDC.

### *Client placement*

- When a person is taken into immigration detention, DIAC should promptly inform that person about the various detention arrangements available to them, including community detention, alternative detention in the community, immigration residential housing and/or immigration transit accommodation.

- DIAC and GSL should ensure that each detainee is promptly and fully informed of the reasons for their placement in a particular detention facility or arrangement. This should include explaining the risk assessment process. When a detainee makes a formal request to be moved to a different section of the facility, or to a different place of detention, DIAC or GSL should respond promptly in writing and provide reasons if the request is refused.
- The Commission hopes to see a new client placement model in place by the time of its 2009 annual visits. This should reflect the Government's new directions in immigration detention, in particular that detention in immigration detention centres is to be used as a last resort and for the shortest practicable time, and that the presumption will be that persons will remain in the community while their immigration status is resolved.

#### *Case management*

- DIAC case managers should ensure that each immigration detainee is provided with frequent updates regarding progress with their immigration case.

#### *Induction materials*

- DIAC and GSL should ensure that all immigration detainees, upon entering detention, are promptly provided with current and comprehensive induction materials containing information including, but not limited to, the details set out in section 10.9(c) of this report.
- DIAC and GSL induction materials for immigration detainees should be translated into the main languages spoken by the detainee population. Each detainee should be provided with their own copy in a language they can understand. If this is not possible, an interpreter should be provided, in person, to go through the materials with the detainee in their preferred language.

#### *Interpreters and translation of documents*

- DIAC and GSL should make greater use of onsite interpreters at immigration detention facilities. Where there is a significant group of detainees who speak the same language, DIAC should consider employing an interpreter to work onsite on a regular basis. Concerns previously expressed by GSL regarding the use of one full-time interpreter could be overcome by employing or contracting several part-time or casual interpreters to work onsite on a rostered basis.
- Detainees should be offered the option of having a face-to-face interpreter present for health and mental health appointments.
- Posters should be displayed in all immigration detention facilities explaining how detainees can access an interpreter. The information on the posters should be translated into the main languages spoken by the detainee population, and should include the Telephone Interpreting Service phone number.

- Wherever possible, DIAC should ensure that official letters and documents provided to a detainee are in a language the detainee can understand. Where this is not possible, the detainee should be offered the assistance of a face-to-face or telephone interpreter to translate the contents of the letter or document.
- All DIAC and GSL documents provided or displayed in immigration detention facilities should be translated into the main languages spoken by the detainee population. DIAC and GSL should coordinate at a national level to ensure this takes place. This should include request and complaint forms, induction materials, the menu and the program of recreational and educational activities.

#### *Visitors' facilities*

- DIAC should ensure that all immigration detention centres have appropriate facilities for detainees to meet with visitors. These should include indoor and outdoor areas. Rooms should be available for private visits. The visitors' areas should be safe, hospitable and appropriate for children. This is a particular concern at Villawood IDC and the Perth IDC.
- DIAC should ensure that the interview rooms at all immigration detention centres are private and soundproofed. This is a particular concern at Villawood IDC and Maribyrnong IDC.

#### *Food*

- DIAC and GSL should continue to explore ways to provide people in immigration detention centres with greater choice over what they eat, and more opportunities to prepare their own food if they wish to do so. This could include more cooking classes, more BBQs and occasional take-away food nights. DIAC should also consider including more self-catering facilities at the immigration detention centres. This could include kitchenette facilities with cooking equipment in common areas, or activities kitchens (similar to the activities kitchen that previously existed at Baxter IDC).
- DIAC and GSL should ensure that immigration detention centres have appropriate facilities, and follow necessary kitchen practices, to provide meals and snacks to any detainees who wish to be provided with halal food.

#### *Section 501 detainees*

- DIAC should review the operation of section 501 of the Migration Act as a matter of priority, with the aim of excluding long-term permanent residents from the provision.
- DIAC and GSL should ensure that risk assessments for the purposes of client placement and external excursions are determined on a case by case basis through an assessment of the individual's history and circumstances; they should not be based on the fact that an individual's visa has been cancelled

under section 501 of the Migration Act. The reasons for the outcome of the assessment should be clearly communicated to the detainee.

### ***Mainland immigration detention centres: specific concerns***

- Management at the Villawood IDC should address the issues discussed in section 11.1 of this report.
- Management at the Perth IDC should address the issues discussed in section 11.2 of this report.
- Management at the Maribyrnong IDC should address the issues discussed in section 11.3 of this report.
- Management at the Northern IDC should address the issues discussed in section 11.4 of this report.

### ***Immigration residential housing (IRH)***

- DIAC should fully utilise the Sydney IRH as an alternative to detaining people at the Villawood IDC. DIAC should fully utilise the Perth IRH as an alternative to detaining people at the Perth IDC.
- Detainees at the Sydney IRH and the Perth IRH should be given the option of accessing health and mental health staff and services onsite.
- Management at the Sydney IRH should increase the frequency of recreational excursions for detainees.
- DIAC and GSL should ensure that detainees at the Sydney IRH are provided with regular access to recreational and educational activities.

### ***Immigration transit accommodation (ITA)***

- If DIAC intends to use the ITA facilities to detain people for longer than seven days, as an alternative to detaining them in an immigration detention centre, DIAC should provide detainees with access to external excursions, organised recreational and educational activities, and health and mental health services, as appropriate.

### ***Community detention***

- The Commission urges DIAC and the Minister for Immigration and Citizenship to make greater use of community detention arrangements, rather than holding people in immigration detention facilities.
- The eligibility criteria for referral for a Residence Determination should be broadened. In addition to the current criteria, any person who has been in an immigration detention facility for three months or more should be able to apply for, or be referred for, a Residence Determination. In the meantime, DIAC

should ensure that all immigration detainees who meet one of the current eligibility criteria are referred to the Minister without delay. In particular, any detainees with significant health or mental health issues, or with a background of torture or trauma, should be promptly considered for a Residence Determination.

- DIAC should adopt a formal policy, without delay, to clarify its requirement that people in community detention must obtain approval before undertaking unpaid voluntary work. The policy should be clear and transparent. It should set out: the steps required to apply for approval; the criteria to be considered in determining whether a voluntary work placement is 'suitable'; the type of insurance coverage required by the organisation; and the timeframe in which requests will be responded to. DIAC should ensure that all requests are promptly considered and responded to. Reasons should be provided if the request is denied.
- DIAC should allow people in community detention to enrol in substantive education courses at TAFE and other educational or vocational training institutions.

### ***Christmas Island***

- People should not be held in immigration detention on Christmas Island.
- The Australian Government should repeal the provisions of the Migration Act relating to excised off-shore places. All unauthorised arrivals who make claims for asylum should have those claims assessed through the refugee status determination process on the Australian mainland.
- The new Christmas Island IDC should not be used to hold people in immigration detention.

### ***Children in immigration detention***

- The Australian Government should implement in full the recommendations made by the Commission in the report of its national inquiry into children in immigration detention, *A last resort?* These include the following:
  - (1) Australia's immigration detention laws should be amended, as a matter of urgency, to comply with the *Convention on the Rights of the Child*. In particular, the new laws should incorporate the following minimum features:
    - There should be a presumption against the detention of children for immigration purposes.
    - A court or independent tribunal should assess whether there is a need to detain children for immigration purposes within 72 hours of any initial detention (for example for the purposes of health, identity or security checks).

- There should be prompt and periodic review by a court of the legality of continuing detention of children for immigration purposes.
- All courts and independent tribunals should be guided by the following principles:
  - detention of children must be a measure of last resort and for the shortest appropriate period of time
  - the best interests of the child must be a primary consideration
  - the preservation of family unity
  - special protection and assistance for unaccompanied children.
- Bridging visa regulations for unauthorised arrivals should be amended so as to provide a readily available mechanism for the release of children and their parents.

(2) An independent guardian should be appointed for unaccompanied children and they should receive appropriate support.

- Children should only be detained in an IRH or ITA facility as a measure of last resort and for the shortest appropriate period of time. DIAC should consider any less restrictive alternatives that may be available to an individual child before deciding to place that child in an IRH or ITA facility. Until the recommendation in section 14.2 of this report is implemented and a system of independent review is established, the absolute maximum time of detention in these cases should be four weeks for a child with a family member, or two weeks for an unaccompanied child.
- Children should not be held in immigration detention on Christmas Island. However, if DIAC intends to continue this practice, children should be accommodated with their family members in DIAC's community based accommodation. They should not be detained at the construction camp facility, the Phosphate Hill IDC or the new Christmas Island IDC.

## **4 Methodology**

### **4.1 List of visits**

The Human Rights Commissioner and staff from the Commission conducted annual visits to Australia's immigration detention facilities as follows:

Villawood Immigration Detention Centre	23-25 June 2008
Sydney Immigration Residential Housing	25 June 2008
Perth Immigration Detention Centre	14-15 July 2008
Perth Immigration Residential Housing	15 July 2008

Brisbane Immigration Transit Accommodation	5 August 2008
Christmas Island immigration detention facilities	12-13 August 2008
Maribyrnong Immigration Detention Centre	25-26 August 2008
Melbourne Immigration Transit Accommodation	27 August 2008
Northern Immigration Detention Centre	1-2 September 2008

In July and August 2008, the Commissioner and/or staff from the Commission conducted nine visits to people in community detention, as follows:

Western Australia	1 single man	July 2008
Queensland	1 single man	August 2008
Christmas Island	1 family of four persons	August 2008
New South Wales	1 family of three persons	August 2008
	3 individual single men	August 2008
Victoria	1 unaccompanied minor	August 2008
	1 single man	August 2008

In addition, the Commissioner and one Commission staff member conducted the following visits:

- Visit to a person in immigration detention temporarily accommodated at Toowong Private Hospital, a mental health facility in Queensland (August 2008).
- Visit to the ACV Triton, a vessel used by the Australian Customs Service and the Australian Fisheries Management Authority to patrol Australia's northern waters and to apprehend alleged 'illegal foreign fishers', most of whom are later transferred to the Northern IDC (September 2008).

#### **4.2 Program for visits to detention facilities**

The Commission arranged its visits with DIAC ahead of time. Before each visit, DIAC provided the Commission with statistics on the persons detained in the facility. The Commission provided DIAC with a poster to be displayed in the facility, announcing the Commission's visit and asking detainees to indicate their interest in speaking with the Commission.

During the visits to mainland immigration detention facilities, the Commissioner and Commission staff conducted the following activities:

- A tour and general inspection of the facility.
- Interviews with DIAC and GSL management.

- Separate interviews with health care staff, mental health care staff, kitchen staff, and recreation and education staff.
- Lunch in communal dining areas.
- Private individual interviews with any detainees wishing to speak to the Commission.
- Participation in meetings of the 'client consultative committee', when these coincided with the Commission's visit.
- Review of relevant DIAC and GSL documentation regarding operation of the facility.
- Follow-up with DIAC and GSL management on any issues of concern arising during the visit.

In the case of Christmas Island, the Commission's visit included the following activities:

- Private tours of the immigration detention facilities on the island, including the new Christmas Island Immigration Detention Centre, the Phosphate Hill Immigration Detention Centre, the immigration detention facilities at the former construction workers' camp, and the bedsit and duplex accommodation in the community.
- Interviews with DIAC and GSL management.
- Review of relevant DIAC and GSL documentation.
- Private interviews with health care staff.
- Private meetings with a range of local community representatives.
- Participation in an external stakeholders' group tour of the immigration detention facilities on the island, facilitated by DIAC.
- Follow-up with DIAC and GSL management on issues of concern arising during the visit.

### **4.3 Conduct of community detention visits**

The Commission's visits to people in community detention were arranged through DIAC ahead of time. In most cases the Commission requested that DIAC facilitate a visit with a particular individual. In some cases, the Commission identified a small group of people for potential visits, and DIAC arranged visits with a few individuals from that group.

Visits to people in community detention were conducted on a voluntary basis. The visits were conducted at each person's official place of residence, as determined by their Residence Determination. During each visit, the Commissioner and/or Commission staff asked a range of questions about the conditions in community



detention. People were free to make any additional comments or raise any matters of concern. DIAC and GSL staff were not present during the interviews.

## **5 Background**

### **5.1 Purpose of visits**

The Commission conducts annual visits to Australia's immigration detention facilities to monitor conditions in the facilities. The Commission's aim is to ensure that conditions are consistent with internationally recognised human rights standards.

The Commission has concluded on prior occasions that Australia's system of mandatory immigration detention breaches fundamental human rights and fails to uphold Australia's international obligations.<sup>7</sup> The fact that the Commission conducts inspections of Australia's immigration detention facilities should not be taken in any way as an endorsement of the immigration detention system. Rather, it is a reflection of the Commission's view that while the mandatory detention system remains in place, the conditions within detention must be monitored to ensure they meet international human rights standards.

The annual visits are one aspect of the Commission's broader work on immigration matters. This also includes:

- Making submissions to parliamentary inquiries. Most recently, the Commission made a submission to the Joint Standing Committee on Migration Inquiry into Immigration Detention in Australia.<sup>8</sup>
- Conducting national inquiries. This includes *A last resort? National Inquiry into Children in Immigration Detention* (2004)<sup>9</sup> and *Those who've come across the seas: Detention of unauthorised arrivals* (1998).<sup>10</sup>
- Investigating complaints from individuals in immigration detention regarding alleged human rights breaches.<sup>11</sup> As of late 2008, the Commission's complaint handling section had received seven official complaints from immigration detainees during the course of the year.
- Examining proposed legislation, and commenting on policies and procedures relating to immigration detention.

### **5.2 Relevant human rights standards**

Immigration detention is administrative detention, not a prison or correctional sentence. Immigration detainees are detained under the *Migration Act 1958* (Cth) (Migration Act) because they do not have a valid visa.<sup>12</sup> They are not detained because they are under arrest, or because they are charged with a criminal offence. Therefore, the treatment of immigration detainees should be as favourable as possible, and in no way less favourable than that of untried or convicted prisoners.<sup>13</sup>

The conditions in immigration detention and treatment of detainees must comply with Australia's international human rights obligations. These are contained in a range of

international treaties the Australian Government has voluntarily become a party to, including:

- The *International Covenant on Civil and Political Rights* (1966) (ICCPR).<sup>14</sup>
- The *Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* (1984) (Convention against Torture).<sup>15</sup>
- The *Convention Relating to the Status of Refugees* (1951) (Refugee Convention) and the *Protocol Relating to the Status of Refugees* (1967) (Refugee Protocol).<sup>16</sup>
- The *Convention on the Rights of the Child* (1989) (CRC).<sup>17</sup>

These treaties cover a broad range of rights and freedoms. The key human rights principles relevant to people in immigration detention include the following:

The principle of <i>non-refoulement</i> prohibits Australia from returning a refugee to a country where his or her life or freedom would be threatened. <sup>18</sup>
Everyone has the right to liberty and security of the person. No one should be subjected to arbitrary arrest or detention. <sup>19</sup>
Anyone deprived of his or her liberty has the right to challenge the lawfulness of his or her detention before a court. <sup>20</sup>
All persons deprived of their liberty should be treated with humanity and respect for the inherent dignity of the human person. <sup>21</sup>
No one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment. <sup>22</sup>
The detention of a child should be used only as a measure of last resort and for the shortest appropriate period of time. <sup>23</sup>
In all actions concerning children, the best interests of the child should be a primary consideration. <sup>24</sup>
Anyone who is detained should have access to independent legal advice and assistance. <sup>25</sup>
Everyone is entitled to respect for their human rights without discrimination. <sup>26</sup>

Specific international standards relating to the treatment of detained persons include:

- The *Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment* (1988).<sup>27</sup>
- The *Standard Minimum Rules for the Treatment of Prisoners* (1955).<sup>28</sup>
- The *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (1990).<sup>29</sup>

- Guidelines issued by the United Nations High Commissioner for Refugees (UNHCR), including the *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers* (1999).<sup>30</sup>

In March 2000, the Commission developed the *Immigration Detention Guidelines*.<sup>31</sup> The Guidelines are based on relevant international standards, and are intended to act as a minimum benchmark against which conditions in Australia's immigration detention facilities can be measured.

## **6 Monitoring of standards in immigration detention**

### **6.1 Standards for conditions and treatment**

Australian law does not set out minimum standards for treatment of immigration detainees. In the absence of this, the Commission is of the view that there is currently no effective mechanism in place to ensure that all immigration detainees are treated in accordance with Australia's human rights obligations.

The detention services provider, GSL, is required to meet its service requirements in line with the Immigration Detention Standards (IDS). The Commission has previously expressed concerns that the IDS do not provide enough guidance to service providers on what steps they must take to ensure that conditions in detention comply with human rights standards. Further, the IDS are not embedded in legislation; there is no independent external accountability mechanism to monitor whether the service provider is complying with the IDS; and the IDS do not provide detainees with access to effective remedies for breaches of their human rights.

**Recommendation:** Minimum standards for conditions and treatment of persons in immigration detention should be codified in legislation.<sup>32</sup> These should be based on relevant international human rights standards.

### **6.2 External scrutiny of immigration detention facilities**

The Commission is one of several external bodies that play a role in monitoring conditions in immigration detention facilities. While the Commission is of the view that it plays a valuable role in this regard, there are limits to what the Commission can achieve under its existing powers.

The Commission does not have a specific statutory power to enter immigration detention facilities,<sup>33</sup> although in practice it has been provided with access. The Commission's statutory powers that allow it to monitor conditions in immigration detention do not explicitly extend to monitoring Australia's compliance with its obligations under the Convention against Torture (although some of these obligations are reflected in other human rights treaties to which the Commission's powers apply).<sup>34</sup> And, while the Commission has a statutory power to investigate complaints regarding alleged human rights breaches in detention facilities,<sup>35</sup> the Commission's recommendations in these cases are not legally enforceable.<sup>36</sup>

Other bodies that scrutinise immigration detention facilities also face limitations. The Immigration Detention Advisory Group (IDAG) plays an important advisory role, and the Commonwealth Ombudsman performs key functions in making unannounced visits and conducting reviews of all people detained for two years or more. However, neither IDAG nor the Ombudsman can legally enforce their recommendations.

In the Commission's view there is a need for a more comprehensive monitoring mechanism to ensure that conditions in immigration detention facilities meet human rights standards. This mechanism should consist of an independent body with the power to enter detention facilities, and a mandate based on international human rights standards. The Australian Government should be legally required to consider and respond to the recommendations made by the monitoring body.

The Commission has welcomed the Government's commitment to become a party to the Optional Protocol to the Convention against Torture (OPCAT). The OPCAT requires the establishment of an independent National Preventive Mechanism (NPM) to conduct inspections of all places of detention in order to prevent torture and ill-treatment and make recommendations on improving internal conditions. The establishment of such a mechanism, in line with the OPCAT, would facilitate a greater level of transparency and accountability with regard to conditions in immigration detention facilities.

The Commission recently released a report of research it commissioned into options for implementing the OPCAT in Australia.<sup>37</sup> The report suggests a mixed NPM model, with separate NPMs in each state and territory and a national coordinating NPM. The report suggests that the Commission should become the national coordinating NPM.

**Recommendation:** The Australian Government should accede to the Optional Protocol to the Convention against Torture and establish an independent National Preventive Mechanism to conduct regular inspections of all places of detention, including immigration detention facilities.

## **7 Number of people in detention**

The Commission did not observe a significant reduction in the number of detainees at each immigration detention centre at the time of its 2008 visits, compared to the number of detainees during its 2007 visits. The most notable exception to this was Villawood IDC. There were 201 detainees at Villawood when the Commission visited in June 2008, compared to 267 detainees the year before. The number of detainees at the Northern IDC was also much lower during the Commission's 2008 visit compared to the 2007 visit. However, this was most likely due to the fact that the 2008 visit was conducted earlier in the year when the fishing season in the northern waters was not at its peak.

There was, however, a decline in the total number of detainees over the course of the Commission's 2008 visits. When the Commission began its visits in June 2008, there were 377 people in immigration detention, including 302 in immigration detention centres.<sup>38</sup> When the Commission completed its visits in September 2008, the number of immigration detainees had decreased to 281 people, 198 of whom were in immigration detention centres.<sup>39</sup>

The Commission welcomes this decrease and hopes that the number of people being held in immigration detention will continue to decline as the Government implements its 'new directions' for immigration detention.<sup>40</sup>

## **8 Length and uncertainty of detention**

The number of long-term immigration detainees has declined over the past few years. In August 2008 the Commonwealth Ombudsman noted that, over the prior three years, the number of people in immigration detention for two years or more had decreased from 160 to 44.<sup>41</sup> The Commission welcomes this trend and the efforts made by the Minister for Immigration in reviewing long-term cases since coming to office. However, the Commission remains concerned about the length of time some people are being held in immigration detention.

When the Commission began its visits in June 2008, of the 377 people in immigration detention, 131 had been detained for 12 months or more, 86 had been detained for 18 months or more, and 53 had been detained for two years or more.<sup>42</sup> In September 2008 when the Commission's visits were completed, of the 281 people in detention, 109 had been detained for 12 months or more, 69 had been detained for 18 months or more, and 42 had been detained for two years or more.<sup>43</sup>

During the 2008 visits, the Commissioner and Commission staff spoke with people who had been in immigration detention for periods of two years, three years, and in one case, around six years.

As in previous years, the Commission met with detainees who expressed feelings of frustration and anger at the length of time they had been detained, as well as disbelief that this could take place in Australia. Some detainees were visibly distressed or spoke of being depressed. Virtually all detainees who spoke with the Commission were uncertain about how much longer they would have to stay in detention, or what their ultimate immigration outcome would be.

While the Commission has observed improvements in the physical conditions of immigration detention facilities over the past few years, the most critical issue remains: people are being detained for prolonged and indefinite periods, without knowing when they will be released or whether they will be allowed to stay in Australia when that happens. It is well established that detaining people in these circumstances leads to negative impacts on their mental health.<sup>44</sup>

The Commission has consistently called for the repeal of mandatory detention because it places Australia in breach of its international obligations, including to ensure that no one is arbitrarily detained.<sup>45</sup>

The Commission notes that the Government's new 'key immigration values' include the following:

- Detention that is indefinite or otherwise arbitrary is not acceptable. The length and conditions of detention, including the appropriateness of both the accommodation and the services provided, will be subject to regular review.

- Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.<sup>46</sup>

The Commission hopes to see significant changes as a result of the implementation of these values when it conducts its annual inspections in 2009. That is, fewer people held in detention and for much shorter periods. Further, it is essential that these values are embedded in legislation, to ensure they are applied in a transparent and accountable manner.

**Recommendations:** Australia's mandatory detention law should be repealed.

The Migration Act should be amended so that immigration detention occurs only when necessary. This should be the exception, not the norm. It must be for a minimal period, be reasonable and be a proportionate means of achieving at least one of the aims outlined in international law.<sup>47</sup> These limited grounds for detention should be clearly prescribed in the Migration Act.

The Migration Act should be amended so that the decision to detain a person is subject to prompt review by a court, in accordance with international law.

The Migration Act should be amended to include periodic independent reviews of the ongoing need to detain an individual, and a maximum time limit for detention.<sup>48</sup>

## 9 Staff attitudes

In general, the Commission has observed improvements in staff attitudes at immigration detention facilities over the past few years. Detainees who spoke with the Commission in 2008 expressed mixed views about the attitudes of detention staff. Some expressed positive views. For example, detainees at the Northern IDC were pleased with the treatment they received from DIAC and GSL staff.

However, other detainees expressed concerns about issues such as a lack of cultural respect shown by particular staff members, or a failure of staff to use interpreters when engaging with detainees who do not speak English. Some detainees expressed frustration at the lack of information provided to them by DIAC staff in connection with their immigration case. At Villawood IDC, several detainees raised concerns about instances where they felt they had been treated unfairly by staff. Several detainees said they were scared to complain for fear of retaliation, and claimed they had been threatened with being moved to a higher security section of the centre if they complained about certain incidents.

**Recommendation:** DIAC and GSL should ensure that all current and future staff are provided with adequate training to educate them about the human rights of persons in immigration detention. Staff training and performance management procedures should ensure that all staff treat immigration detainees in a humane manner, with respect for their inherent dignity, and with fairness and cultural sensitivity.

## **10 Mainland immigration detention centres: cross-cutting concerns**

### **10.1 Detention infrastructure and environment**

Over the past six years, the Commission has welcomed the closure of some of Australia's harshest and most remote immigration detention facilities, including the detention centres at Woomera, Baxter, Port Hedland and Curtin. The Commission has also noted positive additions to the detention infrastructure, in the form of alternatives to immigration detention centres. These include immigration residential housing in Sydney and Perth and immigration transit accommodation in Brisbane and Melbourne.

However, the Commission has significant concerns about the infrastructure and environment at the remaining mainland immigration detention centres. Put simply, most of the centres feel like prisons. High wire fences, lack of open green space, walled-in courtyards, ageing buildings, pervasive security features, cramped conditions and lack of privacy combine to create an oppressive atmosphere.

DIAC has developed the *Standards for design and fitout of immigration detention facilities* (DIAC Standards).<sup>49</sup> The DIAC Standards purport to provide people in immigration detention with 'accommodation commensurate with Australian community standards and expectations.'<sup>50</sup> The Commission welcomes this initiative, and notes that the detention facilities constructed in recent years provide a higher standard of accommodation and a more comfortable environment for detainees.

However, the majority of detainees continue to be held in the older immigration detention centres where the infrastructure and environment, in the Commission's view, fall a long way short of meeting the DIAC Standards.

One of the Commission's major concerns is the security-driven atmosphere at the immigration detention centres. This is created by the use of physical measures such as high wire fencing and razor wire, and surveillance measures such as closed circuit television. The DIAC Standards state that '[t]he underlying principle for security systems at all detention facilities is that security must be as unobtrusive as possible' and that '[c]rude containment devices such as razor wire, observation platforms, correctional fencing should be avoided wherever possible.'<sup>51</sup> In practice, this is far from being achieved.

Another major concern is ageing and inappropriate infrastructure, particularly in Stage 1 at Villawood IDC, and the Perth IDC. The conditions are cramped, detainees share dormitory style bedrooms with very little privacy, and there are no open grassy areas for recreational use. Again, these facilities fall short of the DIAC Standards. For example, the section on detainee accommodation states that 'a maximum of two persons are accommodated in each bedroom during surge conditions' and that 'regard is given to providing adequate space and a sense of personal amenity in personal accommodation areas.'<sup>52</sup> In practice, dormitory style bedrooms are often used to accommodate multiple detainees in bunk beds, with no privacy except what is provided by sheets strung up around the bed-frame.

The Commission has a number of specific concerns about the infrastructure and environment at each of the immigration detention centres, as discussed in section 11 below. Many of these concerns have been raised by the Commission before, some on numerous occasions. For example, the Commission has raised concerns over a ten year period about the need for major changes to Stage 1 at Villawood.<sup>53</sup>

The Minister for Immigration has recently acknowledged that Australia's immigration detention infrastructure is 'seriously inadequate' and 'ageing and inappropriate'.<sup>54</sup> The Minister has also stated that the Commission's criticisms of existing facilities at Villawood are 'totally justified'.<sup>55</sup>

The Commission is aware that selected renovations are planned for both Villawood and the Perth IDC, and it fully supports these developments. However, the Commission's view is that these selective renovations will not be sufficient to address the significant problems with the infrastructure and physical facilities in those centres.

**Recommendation:** A comprehensive redevelopment of the Villawood and Perth immigration detention centres should be undertaken as a matter of priority. This should include the demolition of Stage 1 at the Villawood IDC as a matter of urgency, and its replacement with a new facility. This is subject to there being a continuing need for such a facility, given the Government's stated intention to detain people in immigration detention centres only as a last resort. It should also include comprehensive refurbishments to the Perth IDC, to address the issues raised in this report.

## **10.2 Physical health care**

### *(a) Availability and quality of health care*

At each of the immigration detention centres, the Commission met with staff of the health service provider, International Health Medical Services (IHMS), and spoke with detainees about the health services provided.

Each of the centres has a nurse's clinic. Nurses are present onsite during regular business hours from Monday to Friday (at a minimum), and are on call outside these hours. Detainees can see a General Practitioner (GP) onsite by making an appointment during set clinic times, which range from one session per week to five sessions per week at the different centres.

Detainees are able to get a referral to see an external health specialist (e.g. a physiotherapist or optometrist), if necessary. However, they must wait for an available appointment, in the same manner that a member of the Australian community would have to wait. For emergency health needs, detainees are taken to public hospitals.

Detainees who spoke with the Commission in 2008 expressed mixed views about the health services provided. Some were satisfied with the services, and had no particular comments to make. However, a few detainees expressed frustrations about instances where they felt they had to wait too long to see a GP or a specialist,



or where they felt they were not provided with a correct diagnosis or adequate medical treatment.

**Recommendations:** DIAC should ensure that detainees are updated regularly about the status of any requests they have made for external specialist treatment, and any reasons why a referral has not been approved.

DIAC should ensure that detainees can request and obtain a second medical examination or opinion if they wish to do so.<sup>56</sup>

*(b) Procedures prior to leaving detention*

The Commission is concerned that when a person leaves an immigration detention facility, there does not appear to be a consistent practice of providing each detainee with copies of their medical records; ensuring that appropriate arrangements are made for follow-on medical care or treatment; or undertaking an examination of each departing detainee before that person is classified as 'fit to travel.'

In response to this concern, DIAC has informed the Commission that the following steps are taken before a person leaves immigration detention:

- A Health Discharge Assessment (HDA) is conducted by the health services provider (IHMS). The HDA is a review of the person's physical and mental health status at the point of their discharge from immigration detention. It requires the health services provider to review the health records of the person being discharged to consider the medical history and current health status and to summarise this information in a health discharge summary.
- The health discharge summary is provided to the person on discharge, who is instructed that they should provide this summary to their GP in the community. The GP is able to contact IHMS if they require any additional information. Along with the summary, people are also provided with any relevant referral letters and radiology and pathology reports.
- Where a person is being removed from Australia, the HDA provides a certification of fitness to travel. This certification can be validly based on a physical examination completed within the previous 28 days, unless there is an obvious or suspected change in the person's health status. If a person has not been seen by the health services provider in the 28 days preceding their scheduled removal date, they are offered a physical examination. In the event that they refuse to undergo the physical examination, a discussion takes place with the person to ensure they understand the reason for the assessment. If the person still does not consent to the examination, the refusal is recorded on their health record and the health services provider then makes the HDA and fitness to travel certification based on the medical information available.
- If the person being removed has any specific health concerns requiring ongoing management, the health services provider, with approval from DIAC, attempts to establish local arrangements with health care providers in the destination country in order to maintain continuity of care.

However, the Commission's conversations with staff at immigration detention centres raised concerns that, in practice, these steps might not always be followed at all centres. In particular, these discussions suggested that detainees are not always provided with test results and medical records (although they may be provided if specifically requested); that staff of the health services provider do not routinely make arrangements for follow-on care in the community or in the country of return; and that the fitness to travel certification is sometimes done without undertaking a physical examination of the detainee.

The Commission is also concerned that a detainee might be certified as 'fit to travel' based on a physical examination done up to 28 days before the certification is issued. DIAC policy states that this will not be the case if there is an 'obvious or suspected change in the person's health status.' However, without requiring that the detainee be assessed by a medical professional much closer to the day of removal, it is not clear how DIAC ensures that changes in a person's health status during that time are monitored or acted upon. This could potentially lead to detainees being removed from Australia despite the fact that they might not actually be 'fit to travel' at the time, due to health or mental health concerns.

**Recommendations:** For each detainee leaving immigration detention, DIAC should ensure that a health discharge assessment is conducted; a health discharge summary is provided to the person in a language they can understand; copies of all relevant medical records and test results are provided to the person; and appropriate arrangements are made for their follow-on medical care in the Australian community or in the country of return.

DIAC should review its policy regarding certification of 'fitness to travel', in particular the provision that allows certification to be validly based on a physical examination completed within the previous 28 days.

### **10.3 Mental health care**

In its 2007 inspection report the Commission noted that, overall, the provision of mental health services in immigration detention centres appeared to have improved over the past few years.<sup>57</sup> This observation was based on various factors, including positive feedback from mental health staff about the newly introduced system of mental health assessments and about the increased seriousness with which DIAC was treating their recommendations.

During the 2008 visits, the Commission mostly heard similar views from mental health staff at the immigration detention centres. Staff expressed positive views about the system of mental health assessments, under which an initial assessment is conducted for each detainee within 72 hours of arrival and a follow-up is done every three months (or once a month for any detainee of particular concern). However, some concerns were expressed about detainees with a background of torture or trauma spending prolonged periods in detention, and their referrals for Residence Determinations being processed too slowly.

The Commissioner and Commission staff had concerns for the mental wellbeing of some detainees they met with during the 2008 visits. Several detainees spoke of the help they were receiving from mental health staff. However, other detainees felt that

mental health staff could do little to help them, as the main source of their distress and anxiety was the fact that they were being detained for an undefined period of time, without any certainty about what would happen to them at the end of that period. Some expressed fears about being returned to their country of origin, and others expressed concerns for family members left behind. Several detainees had attempted to harm themselves while in detention, and a few had spent some time in a psychiatric facility.

The negative effects of prolonged and uncertain periods of detention on detainees' mental health have been well documented.<sup>58</sup> The Commission has noted in its past two annual inspection reports that this continues to be a fundamental problem which cannot be adequately addressed by the delivery of mental health services in immigration detention.<sup>59</sup> This is because, often, the detention itself causes or exacerbates mental health concerns. Mental health staff have little control over the length of detention, so they cannot effectively address this cause of distress for detainees. The Commission has consistently called for the repeal of the mandatory detention system in Australia, in part because of the devastating effects it has had, and continues to have, on the mental health and wellbeing of people detained.<sup>60</sup>

*(a) Availability of mental health staff*

In most cases, the delivery of mental health services for detainees in mainland immigration detention centres is contracted out to a private company, Professional Support Services (PSS). The staffing arrangements are as follows:

- At Villawood IDC, the mental health team consists of the team leader, three mental health nurses, one counsellor, one part-time psychologist, and a psychiatrist who visits once each week.
- At Maribyrnong IDC, there is a full-time mental health nurse, a part-time psychologist onsite three days each week, and a second psychologist who works a certain number of hours each week depending on the number of detainees in the centre.
- At the Perth IDC, there is a mental health team leader (a part time role filled by IHMS), and a part-time psychologist onsite for three half days each week.
- At the Northern IDC, there is a part-time psychologist onsite for a certain number of hours each week depending on the number of detainees in the centre.

The Commission has concerns about the method for calculating the availability of psychological staff, which in some centres is based on the number of detainees in the centre at the time. For example, at Maribyrnong the Commission was informed that the second psychologist is onsite for four hours each week when there are fewer than 60 detainees in the centre. At the Northern IDC, a psychologist is available for up to eight hours per week for fewer than 75 detainees, up to ten hours per week for 75 to 100 detainees, and up to 26 hours per week for more than 100 detainees.

This system is based on the assumption that a smaller number of detainees will require a lower level of psychological support services. While this might be the case

in some circumstances, it will not always be so. The number of detainees will not necessarily determine the level of psychological support services required at any given time. Rather, this will depend on factors including the personal backgrounds of those detained, and the length of time each of them has been in detention.

In response to this concern, DIAC has informed the Commission that it has the scope to increase staff availability if additional psychological support services are required at a given time.

**Recommendation:** DIAC should ensure that additional psychological support services are provided in immigration detention facilities whenever those services are required by detainees. DIAC should seek regular feedback from onsite mental health staff and act promptly to increase the availability of psychological support services when that feedback indicates a need in the current detainee population.

*(b) Mental health referrals and recommendations*

Generally, detainees can access psychological counselling onsite with a member of the mental health staff at an immigration detention centre. External referrals can also be made to psychiatrists, specialist counselling centres or psychiatric facilities.

For example, in Melbourne detainees can access counselling services at Foundation House (run by the Victorian Foundation for Survivors of Torture). Occasionally detainees are admitted to a nearby mental health hospital for a short period of time. However, the hospital has a limited capacity to accept new admissions. In Sydney, detainees from Villawood can be temporarily admitted to a facility such as Banks House, a mental health unit attached to Bankstown-Lidcombe Hospital. The Commission was informed that this occurs approximately once every two months. In Perth, detainees can be referred to a psychologist at a nearby hospital.

DIAC also has an arrangement with Toowong Private Hospital, a mental health facility near Brisbane. Immigration detainees are occasionally accommodated at the hospital on a temporary basis. Their admission must be approved by both DIAC and the hospital ahead of time. During 2008, the Commission met with an immigration detainee at Toowong Private Hospital. The individual had arrived there one week earlier, after spending seven months in detention at Villawood.

Generally, mental health staff who spoke with the Commission during the 2008 visits indicated that their recommendations regarding external treatment for individual detainees are considered and acted upon by DIAC. However, some concern was raised about the prolonged detention of persons with backgrounds of torture or trauma, and the length of time taken for such detainees to be moved to community detention.

**Recommendation:** DIAC should ensure that any detainee in an immigration detention facility who has, or is suspected to have, significant mental health concerns or a background of torture or trauma is considered for community detention or a bridging visa as soon as possible.

(c) *Suicide and self-harm observation*

The Commission has commented on the Suicide and Self-Harm (SASH) observation system in its previous annual inspection reports.<sup>61</sup> Under this system, detainees suspected of being at risk of suicide or self-harm are placed on a temporary program of observation. Detainees considered to be at greater risk are observed constantly or at more regular intervals, while those considered to be at less risk are monitored at less regular intervals. Generally, detainees on constant or very regular SASH observation are moved to an observation room within the detention centre.

At Maribyrnong, detainees on SASH observation are moved to one of two observation rooms in Zone C. This apparently occurs, on average, around twice each month. While the rooms are quite hard and bare, they are in better condition than the observation rooms at some of the other centres. Detainees in these rooms have access to a shared recreation room and a small outdoor courtyard.

At the Perth IDC, the preference is to observe detainees on SASH observation in their own room when possible. If necessary, they are moved to the medical observation room, but this apparently does not happen often. The room has been recently refurbished. However, it has very little natural light, and no access to an outdoor area. The Commission was provided with records listing 54 instances of SASH observation at the Perth IDC between July 2007 and July 2008. This is approximately one detainee on SASH observation each week.

At the Northern IDC, some detainees on SASH observation are observed in their own rooms. If there are serious concerns for their safety, they are moved to the Oscar compound, a small area containing two observation rooms and several additional bedrooms. The observation rooms are basic and bare, with a single bed and a small adjoining bathroom. They are situated in ageing demountable blocks, and are of poorer quality than the observation rooms at Maribyrnong and Perth IDC. There is no recreation room in the compound, but detainees have access to a small outdoor area. The Commission was informed that detainees on SASH observation have been placed in Oscar compound three or four times since the Commission's last annual visit.

The Commission's most significant concerns about SASH observation relate to Villawood IDC. There, the observation rooms are located in Stage 1, the most run-down and highest security section of the centre. Because there are no observation rooms in Stages 2 and 3 of Villawood (with the exception of one room in the women's compound), detainees on constant SASH observation are moved to the observation rooms in Stage 1. These rooms are not appropriate for use by people at risk of suicide or self-harm. They are not sectioned off from the rest of Stage 1, which might raise privacy and security concerns. The rooms are inhospitable and bare, and do not have direct access to an outdoor area. The Commission has called for the demolition of Stage 1 because of the ageing and inappropriate facilities.<sup>62</sup>

Because Stage 1 is the high security section of the centre, the Commission has heard that some detainees are scared to be moved there, and some consider it a punishment. This could act as a disincentive for detainees to be completely open with mental health staff in counselling sessions, fearing that they might be placed on SASH observation and moved to Stage 1. It could also lead to mental health staff

being reluctant to place detainees on constant SASH observation, out of concern that a move to a Stage 1 observation room might be harmful rather than helpful.

The Commission has raised significant concerns about the Stage 1 observation rooms in its past two annual inspection reports.<sup>63</sup> Since the Commission's last visit to Villawood, DIAC has announced plans to develop a new self-contained 'high care unit' in Stage 1. This will include three bedrooms suitable for use by detainees on SASH observation, and should be completed by January 2009. By April 2009, a redevelopment of the Management Support Unit (MSU) at Villawood should also be completed. DIAC intends to turn the MSU into a 'high care unit' for detainees in Stages 2 and 3 of Villawood, with rooms suitable for SASH observation. The Commission has been informed that, once the MSU redevelopment is complete, detainees from Stages 2 and 3 will no longer be transferred to observation rooms in Stage 1.

The Commission looks forward to seeing these completed refurbishments at its next annual visit to Villawood. However, while newly refurbished observation rooms will be a welcome development in Stage 1, this will not alter the Commission's long held view that Stage 1 is an inappropriate facility and should be demolished. Similarly, the Commission welcomes the intention to refurbish the MSU. However, in the Commission's view, the MSU would need a complete overhaul in order for it to be turned into a facility appropriate for accommodating people at risk of self-harm. Refer to section 11.1 below for further comments about the MSU.

**Recommendation:** Detainees on SASH observation in Stages 2 and 3 at the Villawood IDC should not be transferred to observation rooms in Stage 1. Purpose-built observation rooms should be constructed in Stages 2 and 3. Detainees should be observed in their own rooms when appropriate.

#### **10.4 Recreational activities**

The 2000 *Immigration Detention Guidelines* provide that immigration detainees should have access to materials and facilities for exercise, recreation, cultural expression and intellectual and educational pursuits to utilise their time in detention in a constructive manner, and for the benefit of their physical and mental health.<sup>64</sup> The Guidelines also state that the range of activities and programs should aim to promote and sustain the health, well-being and self-respect of immigration detainees, foster their sense of responsibility, and encourage the development of skills that will assist them to take their place in mainstream society.<sup>65</sup>

During its 2006 visits, the Commission was pleased to see improvements in the recreational programs provided at most immigration detention centres, when compared with the activities offered in previous years. The one exception to this was the Northern IDC. In its 2007 report, the Commission welcomed efforts to make improvements at that centre as well.

During its 2008 visits, the Commission met with GSL staff responsible for recreational programs at each detention centre. While the activities offered in each centre vary, and are offered on a more or less frequent basis, they generally include a mix of structured activities such as pool competitions, table tennis competitions, soccer,

volleyball, card nights, karaoke and movie nights. In addition, some centres offer weekly art, craft or cooking classes. All centres have a range of facilities available for use by detainees on an unstructured basis. These generally include access to TV, DVDs, video games, board games, newspapers, internet access and gym facilities.

In general, the Commission considers that individual staff members make genuine efforts to work with the resources they have to provide a mix of recreational activities for detainees. However, what is less clear is whether adequate resources are dedicated to funding the staff and facilities required to provide regular and engaging activities for detainees at all centres.

Detainees who spoke with the Commission offered mixed views about the recreational activities in detention. Some expressed positive views about the staff and activities. Others were more critical of the limited range and frequency of activities, or spoke of feeling too low to want to take part in activities on a regular basis, because of the anxiety caused by their ongoing detention.

The Commission has some specific concerns about the recreational facilities and activities at the individual detention centres, as discussed in section 11 below. The Commission also has concerns about the following cross-cutting issues.

(a) *Outdoor space for sport and recreation*

The Commission is concerned about the lack of adequate outdoor space at the immigration detention centres, particularly grassy space for sport and recreational activities. At the Perth IDC there is no grassy outdoor space. Detainees have access to two small concrete courtyards, both of which are surrounded by high walls. At Villawood, detainees in Stage 1 have a walled-in concrete courtyard for recreational use, but no open grassy area for sports. There is a soccer pitch in Stage 3, but detainees from Stage 1 are not provided with regular access to it. At Maribyrnong, there is a concrete tennis court, but no grassy area for sports. At the Northern IDC, there is more open space, but not much grass or other greenery.

The Commission is aware that DIAC is taking some steps to address this issue, by refurbishing the courtyards at the Perth IDC, and undertaking water mitigation measures to allow for more grass to grow at the Northern IDC. The Commission hopes to see significant progress with these steps at its next annual visits. However, even if these steps are fully implemented, detainees at Maribyrnong, Stage 1 at Villawood, and the Perth IDC will still not have adequate access to open grassy space.

**Recommendations:** DIAC should ensure that necessary changes are made at the immigration detention centres so that all detainees are provided with adequate access to open grassy space for sport and recreation. This is a particular priority in Stage 1 at Villawood IDC, Perth IDC and Maribyrnong IDC.

In the meantime, DIAC and GSL should ensure that detainees in Maribyrnong IDC and Perth IDC have regular access to organised sporting activities, such as soccer, outside the detention centre. All detainees at Villawood IDC, including those in Stage 1, should be permitted to use the soccer pitch in Stage 3 for sporting activities on a regular basis.

(b) *Access to reading materials*

The Commission is concerned that detainees at some immigration detention centres do not have adequate access to books and other reading materials, particularly in languages other than English. Internet access can alleviate the need for access to hard copy materials to a limited extent. However, internet access for detainees is time limited, and is not an adequate substitute for having books and other recreational and educational reading materials available in hard copy.

The 2000 *Immigration Detention Guidelines* provide that each immigration detention centre should have a library adequately stocked with recreational and instructional books and periodicals in the principal languages spoken by detainees at the centre.<sup>66</sup>

While each of the detention centres has a small collection of books or newspapers, none of them has a well maintained library facility onsite. At Villawood, there is a small library room in Stage 2, but it is kept locked and is only opened on request. Resources are not dedicated to purchasing reading materials, and the facility is not maintained by DIAC or GSL, but by a volunteer. At the Northern IDC, there is a small selection of books available from an office in the North compound, open during business hours on weekdays. There is currently no library in the South compound. At Maribyrnong, there are a few books in the classroom, but there is no dedicated library area. This has apparently been delayed while arrangements are made for bookshelves to be constructed. At the Perth IDC, shelving has been installed in the multi-purpose recreation room and books are donated by a local charity.

At Maribyrnong, the lack of onsite reading materials has been overcome, to some extent, by making arrangements with the local council library. The library has a mobile service which visits Maribyrnong once every month. Detainees can request books, and the responsible staff member can request reading materials in particular languages depending on the detainee population at the time. The Commission applauds the use of this system at Maribyrnong and encourages management at other immigration detention facilities to make similar arrangements.

**Recommendations:** DIAC and GSL should ensure that each immigration detention centre has an onsite library area stocked with reading materials in the principal languages spoken by detainees at the centre. All detainees should have regular access to this area.

Management at each of the immigration detention centres should explore the possibility of borrowing reading materials on a regular basis from a local library or a mobile library service.

(c) *Gym facilities*

In its 2007 annual inspection report, the Commission welcomed improvements in the availability of gym equipment at the immigration detention centres. However, the Commission raised concerns about some of the gym areas being located in inappropriate or exposed areas, without adequate privacy or protection from the weather.<sup>67</sup> These concerns are still relevant with regard to two external gym areas at Maribyrnong, and the gym areas at the Perth IDC and in Stage 1 at Villawood.



During its 2007 visits, the Commission was informed of plans to enclose the gym areas at Maribyrnong and to refurbish the gym area at the Perth IDC. These plans have not yet been implemented. After its 2008 visit to Perth, the Commission was informed that DIAC intends to refurbish the gym area at the Perth IDC.

**Recommendation:** DIAC should upgrade the outdoor gym facilities at the Perth IDC, at Maribyrnong IDC, and in Stage 1 at Villawood IDC. These facilities should be enclosed to ensure adequate privacy and protection from the weather.

## **10.5 Educational programs**

The 2000 *Immigration Detention Guidelines* state that opportunities for English language instruction and further education, including technical and vocational education should be provided for immigration detainees where possible.<sup>68</sup>

In its past two annual inspection reports, the Commission noted that many detainees express feelings of boredom and frustration at having few meaningful activities to spend their time on.<sup>69</sup> This is particularly the case for people detained for long periods.

Most of the immigration detention centres run some internal educational classes for detainees, generally computing classes and English as a second language (ESL). For example, at Maribyrnong there are several computing classes and several English classes each week, including one advanced English class. At the Perth IDC there are weekly computing classes and adult education classes. At Villawood there are English and computing classes in Stages 2 and 3. Some of the centres also hold occasional cooking, music, art or craft classes, although these are generally recreational sessions rather than accredited educational classes. The Commission welcomes these activities and encourages their further development. However, the Commission has a number of ongoing concerns about detainees' access to educational programs and activities.

The Commission is concerned about the lack of adequate space for educational activities in Stage 1 at Villawood and at the Perth IDC. Neither has a dedicated space for conducting English classes, computing classes or other educational activities. While there is a small computer room at each facility, conducting classes in those rooms interferes with detainees' general access to computers and the internet. During its 2007 visit to the Perth IDC, the Commission was informed of plans to refurbish the centre, including by adding a second storey with a dedicated education room. These refurbishments have since been scaled back for budgetary reasons, and the plan to build an education room has been abandoned.

The Commission is also concerned about the lack of educational programs at the Northern IDC, where there are no ESL or computing classes. The Commission raised this concern in its 2006 inspection report.<sup>70</sup> Under DIAC policy, activities at the Northern IDC are recreational rather than educational, as most detainees are alleged 'illegal foreign fishers' who the Department seeks to remove from Australia as soon as possible. However, the Commission notes that some people are detained at the centre for significant periods. Between September 2007 and August 2008, the average length of detention there was 21 days. However, of the people detained

there during that time, 65 spent 50 days or more in detention. Of these 65 people, 26 were detained for 70 days or more, eight were detained for 90 days or more, and six were detained for 100 days or more.<sup>71</sup> DIAC has informed the Commission that 'conversational' English classes will soon commence at the centre. The Commission welcomes this step, but encourages DIAC to expand it into a more comprehensive program of educational activities.

On a broader level, the Commission has ongoing concerns about the DIAC policy which prohibits immigration detainees from taking part in courses of study leading to a formal qualification. The Commission has raised concerns about this issue over the past two years, and has made prior recommendations that DIAC should repeal this policy.<sup>72</sup> While the Commission is of the view that people should not be held in immigration detention facilities for lengthy periods, in reality there are a significant number of people spending many months in detention. Given this reality, detainees should be facilitated in undertaking meaningful activities, including formal study, to assist them in using their time in detention in a constructive way. This could offer significant benefits for detainees' mental and physical wellbeing. For those detainees permitted to remain in Australia, the knowledge and skills they gain will ultimately be of broader benefit to the Australian community.

**Recommendations:** DIAC should repeal its policy of prohibiting immigration detainees from undertaking a course of study that leads to a formal qualification. DIAC should allow detainees to enrol in substantive education courses at TAFE and other educational or vocational training institutions. Enrolment could be by correspondence. However, where possible, DIAC should consider permitting detainees to attend some classes in person.

DIAC and GSL should arrange for the provision of structured educational classes at the Northern IDC for detainees who wish to participate. This should include ESL classes and computing classes.

DIAC should ensure that each immigration detention facility has adequate space dedicated to educational activities. In particular, DIAC should upgrade the Perth IDC to provide dedicated classroom space. The Commission is of the view that Stage 1 at Villawood IDC is an inappropriate facility and should be demolished. However, if DIAC intends to continue to use Stage 1, it should upgrade the facility to provide dedicated space for educational classes.

## **10.6 External excursions**

The Commission is of the view that immigration detainees should be provided with regular opportunities to leave the detention environment and participate in external excursions. This should include organised group excursions, where detainees are taken on recreational, educational or cultural trips, for example to a museum, the beach or a park. It should also include individual excursions or home visits, which allow detainees time to interact with relatives in a recreational setting, or to attend a specific event such as a funeral or a hospital visit with a sick family member. Excursions are critical for the physical and mental wellbeing of immigration detainees, particularly those detained for prolonged periods. Excursions can also

assist in reducing the frustrations and tensions that can build up in detention centres, potentially resulting in fewer internal incidents of property damage.

In its 2006 inspection report, the Commission welcomed improvements made to the external excursions programs at the detention centres at Maribyrnong, Perth and Baxter, and urged that excursions also be arranged at Villawood and the Northern IDC.<sup>73</sup> During 2007, the Commission was disappointed to learn that, after the escape of a high risk detainee, excursions had been suspended. New procedures were then introduced, under which excursions by high risk detainees would only be approved in exceptional circumstances. At the time of the Commission's 2007 visits, the introduction of these new procedures appeared to be having the effect of preventing detainees whose visas had been cancelled on character grounds (section 501 detainees) from participating in external excursions.<sup>74</sup> In addition, the excursions programs for the rest of the detainee population at several detention centres appeared to have been reduced or suspended.<sup>75</sup>

During its 2008 visits, the Commission was pleased to hear that some external excursions have been taking place from the immigration detention centres. However, the Commission remains concerned at the limited extent of the excursions, particularly at Villawood and Maribyrnong. Further, there appear to be inconsistencies across the centres, suggesting the need for a minimum standard that can be monitored.

At the Northern IDC, group excursions are conducted on a regular basis, and are made available to all detainees. Appropriate steps are taken by management to mitigate any potential risks, rather than depriving detainees of a chance to leave the centre. Detainees are generally able to take part in at least one excursion each week. However, the Northern IDC generally does not facilitate requests for home visits or individual excursions, with the exception of external medical appointments. The reasoning behind this is that most detainees at the Northern IDC are suspected 'illegal foreign fishers' who generally do not have family or friends to visit in Darwin.

The Perth IDC has reintroduced some group excursions since the Commission's visit in 2007. The Commission was provided with records indicating that small group excursions are conducted approximately once a week, for an average of four detainees each time. Section 501 detainees and 'high risk' detainees are able to participate if arrangements can be made for an appropriate venue where risks can be mitigated. Detainees can also request an individual excursion, for example to a medical appointment or a religious service. However, detainees are generally not permitted to go on home visits, due to concerns about managing the potential security risks in a private home setting.

At Villawood, the Commission was informed that GSL has intentions to gradually introduce more group excursions. However, at the time of the Commission's visit, they were still very limited. There had been two group excursions in the prior three month period, both for detainees in Stage 2, the lowest security section of the centre. Detainees in Stages 1 and 3 were not being provided with access to group excursions. All detainees at Villawood can request an individual excursion or home visit. Requests are approved (or not) based on a risk assessment process. These individual excursions were re-introduced in November 2007, a positive step. In the

three months prior to the Commission's visit, there had been nine individual home visits and seven individual hospital visits.

At Maribyrnong, no group excursions are being conducted. All external excursions must be requested by detainees and approved by management on an individual basis. 'High risk' detainees are only permitted to go on excursions in exceptional circumstances, for example to visit a sick parent. Detainees can request a home visit, but this apparently does not happen very regularly. In the three and a half month period prior to the Commission's visit, there were 44 external excursions. The vast majority of these were individual trips to the bank or to a religious service. Some were individual trips to the aquarium, the zoo or the cinema, and three were home visits (all for the same detainee).

**Recommendations:** DIAC should adopt minimum standards for the conduct of regular external excursions from immigration detention facilities, and include these standards in the contract with the detention services provider. DIAC should monitor compliance with these standards on an ongoing basis and take appropriate remedial action when they are not being complied with.

In the meantime, Villawood management should increase the frequency of group excursions, and make them available to detainees in all sections of the centre. Maribyrnong management should introduce regular group excursions for all detainees. Management at the Perth IDC and Northern IDC should facilitate detainee requests for home visits or other individual excursions where possible.

DIAC should ensure that the detention services provider is allocated sufficient resources to provide escorts for regular external excursions.

## **10.7 Use of restraints**

During the Commission's 2008 visits, concerns were raised by a number of detainees about the use of handcuffs for trips outside the detention centre, for example to attend a court or tribunal hearing, a medical appointment or a home visit. This was a particular concern raised by detainees at Villawood and the Perth IDC.

The 2000 *Immigration Detention Guidelines* state that any use of restraints on detainees being transported outside a detention centre should be commensurate with an assessment of the individual's likelihood and capacity to abscond.<sup>76</sup> On the use of restraints in detention, the Guidelines provide that restraints should only be used to prevent a detainee from injuring themselves or another, damaging property or escaping. They should only be used by order of the manager of the detention centre; where all other control methods have failed; for no longer than is necessary; and only to the extent reasonably necessary for the purpose.<sup>77</sup>

While the Commission acknowledges that there may be situations when it is necessary to restrain someone using handcuffs, this should be a limited practice used in exceptional cases only. A detainee who is normally considered 'medium risk' or 'high risk' should not automatically be handcuffed each time they leave the centre based on that ongoing risk rating. Rather, the need for using restraints should be assessed for each individual detainee every time they leave the detention centre.

In response to this concern, DIAC has informed the Commission that the issue will be looked into further across the immigration detention network. According to DIAC, the use of handcuffs is considered on a case by case basis; it is not a standard practice. Arrangements are in place at each of the detention facilities for GSL to provide the health services provider with a weekly list of detainees who are to be restrained on external appointments, to allow them to comment if there are people on the list with mental health concerns that may be exacerbated by being restrained. Detainees who are restrained are physically assessed by the medical staff on their return to the detention facility.

**Recommendations:** DIAC and GSL should review their policies and procedures regarding the use of restraints on immigration detainees during trips outside immigration detention facilities, to ensure that restraints are only used when absolutely necessary. Restraints should only be used after a thorough risk assessment has been conducted for the individual detainee for the particular trip in question. If it is deemed necessary to use restraints, they should be covered while the detainee is in public view and they should be removed for appearances in courts and tribunals.<sup>78</sup>

Policies regarding use of restraints should include clear procedures for restraints to be removed in time-sensitive situations that may arise - for example, an emergency health issue or a request to use toilet facilities. Current and future GSL staff should be trained on these procedures. This training should emphasise the use of techniques which ensure that, when it is absolutely necessary to restrain a detainee, that person is restrained in dignity and with minimum use of force.

## **10.8 Access to communication facilities**

At the mainland immigration detention centres, detainees have access to mail, phones, fax and the internet.

Detainees are generally permitted to have a mobile phone, provided that it does not have a camera function. Since the Commission's 2007 visits, some Telstra payphones had been removed from the detention centres. These have generally been replaced with landline phones from which detainees can make free local calls, or use phone cards to make interstate or international calls. Phone cards can be purchased within the centres.

Detainees are able to send and receive mail. At the largest centre, Villawood, the Commission was informed that mail can sometimes take up to three to five days to get from administration to the correct detainee. Detainees' incoming and outgoing mail is not opened. However, for incoming packages the detainee is requested to open the package in front of a detention officer, to check for items that could be used as weapons.

Detainees can send and receive faxes. However, they do not have personal access to a fax machine – they must rely on detention officers to send outgoing faxes and deliver incoming faxes. This could potentially raise privacy concerns.

Internet access is now available at all of the mainland immigration detention centres. Each centre has a certain number of internet connected computers for use by

detainees. Detainees are generally allowed a limited period of time on the internet each day, regulated by an individual access card. Internet access by detainees also depends on availability of a computer. There have been some improvements in the number of computers available to detainees since the Commission's last report. This includes a new internet facility in Stage 2 at Villawood with ten computers, two additional computers at the Perth IDC, and new internet connectivity at the Northern IDC. However, at the time of the Commission's 2008 visits, there were only four internet connected computers in Stage 1 at Villawood, four for the whole of the Perth IDC, and two at the Northern IDC.

It is important that detainees are provided with adequate access to the internet, as email is often the most convenient and effective method for maintaining regular communication with the outside world, particularly with legal representatives or with family and friends located overseas. Internet availability is also important in terms of providing detainees with access to essential information sources.

**Recommendation:** DIAC should continue to expand access to the internet for immigration detainees, particularly at the Northern IDC and the Perth IDC.

## **10.9 Provision of information to detainees**

### *(a) Client placement*

In its 2007 inspection report, the Commission raised questions about the implementation of the DIAC Client Placement Model.<sup>79</sup> Under the Model, each person should be assessed upon entry to immigration detention for an appropriate placement. This might be in an immigration detention centre, immigration residential housing, immigration transit accommodation, community detention or an alternative place of detention. The decision should take into account a broad range of factors including a security risk assessment, health and wellbeing, family considerations, the person's likely immigration pathway, cultural issues, and the availability of detention accommodation. The Model requires the initial placement to be reviewed on a monthly basis. In addition, a review can be triggered if there is a change in circumstances or if a review is requested by the detainee or staff.

During the Commission's discussions with detainees in 2008, some were unaware of the way the client placement system operates. Some detainees expressed frustration about not being informed of the risk assessment process, and why they were placed in a certain facility (or a certain section within a facility). Some detainees were not aware of the possible alternatives to being held in an immigration detention centre. Other detainees said they had applied to be moved to an alternative place (for example, community detention or a different section of the detention centre), but claimed that they had been refused without reasons being provided.

**Recommendations:** When a person is taken into immigration detention, DIAC should promptly inform that person about the various detention arrangements available to them, including community detention, alternative detention in the community, immigration residential housing and/or immigration transit accommodation.

DIAC and GSL should ensure that each detainee is promptly and fully informed of the reasons for their placement in a particular detention facility or arrangement. This should include explaining the risk assessment process. When a detainee makes a formal request to be moved to a different section of the facility, or to a different place of detention, DIAC or GSL should respond promptly in writing and provide reasons if the request is refused.

The Commission hopes to see a new client placement model in place by the time of its 2009 annual visits. This should reflect the Government's new directions in immigration detention, in particular that detention in immigration detention centres is to be used as a last resort and for the shortest practicable time, and that the presumption will be that persons will remain in the community while their immigration status is resolved.<sup>80</sup>

*(b) Case management*

Some detainees who spoke with the Commission in 2008 expressed frustration at the lack of regular information flow from their DIAC case manager. Some said they rarely see their case manager in person. Others said they don't speak to their case manager on the phone very often. Several detainees said their case manager does not assist them in substantive ways; rather they focus on seeking the detainee's removal from Australia. Some detainees who spoke with the Commission seemed unsure of exactly what stage their immigration case was at, what the likely next steps were, or when they might take place. While some detainees had been able to access independent legal or migration advice, others had not.

This lack of regular information flow can significantly increase the anxiety and frustration felt by immigration detainees, particularly when it is combined with being detained for an indefinite and prolonged period of time.

**Recommendation:** DIAC case managers should ensure that each immigration detainee is provided with frequent updates regarding progress with their immigration case.

*(c) Induction materials*

Detainees are provided with induction materials at each of the immigration detention centres. However, there appear to be inconsistencies among the materials provided at the different centres, and some materials are outdated.

GSL provides detainees at Villawood and the Perth IDC with an induction booklet, available in English, Arabic, Indonesian, Korean, Persian, Chinese, Tongan and Vietnamese. It is dated January 2005 and does not appear to have been adequately updated since then. For example, it includes inaccurate information such as a provision stating that detainees do not have access to the internet or email. At Maribyrnong, GSL uses two induction handbooks – the same version used at Villawood and the Perth IDC, but also a shorter and more locally tailored booklet.

DIAC does not appear to provide induction materials to detainees at Villawood or Maribyrnong. However, at the Perth IDC a locally developed set of DIAC induction

materials is used. At the Northern IDC, DIAC provides detainees with an induction booklet designed specifically for detainees who are alleged 'illegal foreign fishers.' It is available in English, Indonesian and Mandarin.

While it is appropriate for the induction materials at each immigration detention centre to vary to some extent (in order to provide logistical information to detainees relevant only to the centre they are in), there is some critical information that should be consistently provided to all detainees at all centres. This information should include (but should not be limited to) the following:

- How a detainee can request an interpreter, including the phone number for the Telephone Interpreting Service (TIS).
- How a detainee can make a request for an individual excursion or home visit, and the factors that will be taken into account in considering that request.
- How a detainee can lodge a complaint with GSL or DIAC, and how and in what time frame that complaint will be responded to. Contact phone numbers for DIAC and GSL should be included so that detainees do not have to rely solely on submitting a written complaint or request form. This should include the phone number for the DIAC Global Feedback Unit.<sup>81</sup>
- How a detainee can lodge a complaint with the Commonwealth Ombudsman or the Australian Human Rights Commission. Current contact details, including phone and fax numbers, should be included.
- Current contact details, including a phone number, for the police.
- What facilities are available in the centre for religious purposes (e.g. prayer rooms, bibles, prayer mats etc) and how a detainee can make a request to attend a religious service outside the centre.
- Contact details for Legal Aid, UNHCR, major refugee and asylum seeker information and advice groups, and Immigration Advice and Application Assistance Scheme (IAAAS) providers.

Currently, some of this information is included in some of the induction materials provided at some of the immigration detention centres. However, there is not a consistent practice of providing all of this information in induction materials for all detainees at all centres.

**Recommendations:** DIAC and GSL should ensure that all immigration detainees, upon entering detention, are promptly provided with current and comprehensive induction materials containing information including, but not limited to, the details set out in the above section.

DIAC and GSL induction materials for immigration detainees should be translated into the main languages spoken by the detainee population. Each detainee should be provided with their own copy in a language they understand. If this is not possible, an interpreter should be provided, in person, to go through the materials with the detainee in their preferred language.



## **10.10 Interpreters and translation**

The 2000 *Immigration Detention Guidelines* state that all written and oral communications concerning an immigration detainee and the refugee determination process should be conveyed in a language and in terms the detainee can understand, and that detainees who are unable to understand English should be provided with an interpreter when information concerning them is being obtained or conveyed.<sup>82</sup>

The Commission has raised concerns in its previous annual inspection reports about insufficient use of onsite interpreters at immigration detention centres, and the lack of provision of documents in languages other than English.<sup>83</sup> These concerns were raised by some detainees who spoke with the Commission during the 2008 visits, particularly at Villawood and the Perth IDC.

The Commission is aware that the Commonwealth Ombudsman has also raised concerns about the need for the use of interpreters and translators in immigration detention.<sup>84</sup> The Commission understands that the Ombudsman has commenced an own motion investigation into the use of interpreters in immigration detention centres. The Commission looks forward to the outcomes of that investigation.

### *(a) Interpreters*

Generally, TIS is used in most situations where an interpreter is required in an immigration detention facility. This includes detainees' interactions with DIAC, GSL, health staff and mental health staff. There are some exceptions to this. The Northern IDC has two interpreters who work onsite on a fairly regular basis. Face-to-face interpreters are used for most mental health appointments at that centre, and an interpreter also attends excursions on occasion. The other detention centres have interpreters attend onsite on certain occasions, for example to interpret at detainee consultative meetings or when there is an incident that requires personal discussions with detainees. This does not appear to be a frequent practice. For example, at Villawood the Commission was provided with records indicating that there were 16 uses of face-to-face interpreters between July 2007 and June 2008. This is approximately 1.3 times each month.

While TIS might be sufficient for many interactions with detainees, the Commission is concerned that it is not always adequate or appropriate. This is particularly the case for health or mental health appointments, especially psychological counselling sessions or medical examinations. In these situations, detainees should be offered the option of having a face-to-face interpreter present.

The lack of onsite interpreters also restricts the ability of detainees to communicate with detention officers. For detainees who do not speak English and do not know how to get an interpreter over the phone, it can be difficult to request an interpreter, ask that a document be faxed, make a complaint or ask to see a doctor. In these and other daily situations, detainees must rely on detention officers to call TIS and arrange for an interpreter.

There are a wide range of languages spoken by immigration detainees in each of the centres at any given time. The Commission recognises that it is not feasible to expect

that onsite interpreters be provided for all languages on an ongoing basis. However, where there is a significant number of detainees who speak the same language, greater use should be made of face-to-face interpreters than is currently the case.

**Recommendations:** DIAC and GSL should make greater use of onsite interpreters at immigration detention facilities. Where there is a significant group of detainees who speak the same language, DIAC should consider employing an interpreter to work onsite on a regular basis. Concerns previously expressed by GSL regarding the use of one full-time interpreter could be overcome by employing or contracting several part-time or casual interpreters to work onsite on a rostered basis.

Detainees should be offered the option of having a face-to-face interpreter present for health and mental health appointments.

Posters should be displayed in all immigration detention facilities explaining how detainees can access an interpreter. The information on the posters should be translated into the main languages spoken by the detainee population, and should include the Telephone Interpreting Service phone number.

*(b) Translation of documents*

In past years the Commission has heard from detainees about difficulties when documents are provided or displayed in detention centres only in English. This concern was also raised by some detainees during the Commission's 2008 visits.

This is a particular concern in the case of official documents or letters provided to detainees by DIAC, especially where they relate to the person's immigration case. At Villawood, for example, we were informed that letters are not translated for detainees, but a TIS interpreter explains the content of the letter over the phone. It is not clear whether this is done as a matter of course, or only if a detainee specifically requests it. The Commission observed one detainee using a Chinese-English dictionary to translate a letter he had received from DIAC.

In addition, the Commission is concerned that many of the less formal documents used or displayed in detention centres are not provided in languages other than English. In most centres this includes documents like the detainee request and complaint forms, the menu and the program of recreational and educational activities.

At the Northern IDC, efforts have been made to provide translated written materials, including quite a few posters, signs and the menu. In some respects it is easier at the Northern IDC, as most detainees speak Bahasa Indonesia. However, it is also indicative of the positive attitude of management at that centre, who have also taken steps to ensure that an individual Mandarin-speaking detainee is provided with a face-to-face interpreter on a regular basis. Some positive efforts have also been made at Maribyrnong. After the Commission's 2008 visit, management at that centre agreed to have the menu translated into a range of languages.

**Recommendations:** Wherever possible, DIAC should ensure that official letters and documents provided to a detainee are in a language the detainee can understand. Where this is not possible, the detainee should be offered the assistance of a face-to-

face or telephone interpreter to translate the contents of the letter or document.

All DIAC and GSL documents provided or displayed in immigration detention facilities should be translated into the main languages spoken by the detainee population. DIAC and GSL should coordinate at a national level to ensure this takes place. This should include request and complaint forms, induction materials, the menu and the program of recreational and educational activities.

### **10.11 Visitors' facilities**

The Commission is concerned about inadequate facilities for visiting detainees at some immigration detention centres. The DIAC Standards provide that visitors' areas, while 'robust', should be 'comfortable and well-maintained, with a design that creates a lounge atmosphere and facilitates small group interactions.'<sup>85</sup> The facilities should include internal and external areas, be safe for children's entertainment and supervision, and include access to private rooms.<sup>86</sup>

Currently, Maribyrnong is the only immigration detention centre that has visitors' facilities of a good quality. These are spacious, well-furnished, comfortable and include basic kitchen facilities, internet and TV. There are also smaller rooms available for private visits.

At the Perth IDC and the Northern IDC there are no dedicated visitors' facilities. This is not necessarily a problem at the Northern IDC, where there are several large cabana areas that can be used for visits, as well as interview rooms that can be used if privacy is needed. However, it is a significant problem at the Perth IDC, where visits have to be conducted in a small multi-purpose room which is also used for recreational programs, detainee consultative meetings, and general activities such as watching TV, reading and listening to music. Detainees have little space and no privacy with visitors. The Commission raised this concern during its 2007 visit, and was informed that a visitors' area would be added as part of a planned refurbishment.<sup>87</sup> In 2008, the Commission was informed that these plans have been scaled back for budgetary reasons. The refurbishment that will go ahead will not include addition of visitors' facilities.

The visitors' facilities at Villawood are also a significant concern. In Stage 1 the facilities consist of two rooms and an outdoor concrete courtyard area enclosed by high wire fencing. The rooms are bleak and inhospitable, and provide no privacy. The Commission raised concerns about these facilities in its last inspection report.<sup>88</sup> It is particularly worrying given that young children visit detainees in these areas. DIAC has announced that it intends to upgrade the visitors' areas in Stage 1 by April 2009. The Commission hopes to see the upgraded facilities at its next annual visit.

In Stages 2 and 3 at Villawood, there are no indoor visitors' facilities. There is an outdoor grassed area with tables and chairs, and a small covered section. However, in the colder months this is not an appropriate area for detainees to meet with visitors, particularly if they include babies, children, pregnant women or people with health concerns.

The Commission is also concerned about the interview rooms provided for detainees to meet with legal representatives and other official visitors. At Villawood and

Maribyrnong, the interview rooms are not soundproofed. The DIAC Standards state that interview rooms should be soundproofed so that interviews cannot be overheard and external noises are not disruptive to interviews.<sup>89</sup> The 2000 *Immigration Detention Guidelines* also provide that detainees should enjoy privacy of communication with their legal advisers, the Commission, the Ombudsman and others, and that private visits should be facilitated.<sup>90</sup>

**Recommendations:** DIAC should ensure that all immigration detention centres have appropriate facilities for detainees to meet with visitors. These should include indoor and outdoor areas. Rooms should be available for private visits. The visitors' areas should be safe, hospitable and appropriate for children. This is a particular concern at Villawood IDC and the Perth IDC.

DIAC should ensure that the interview rooms at all immigration detention centres are private and soundproofed. This is a particular concern at Villawood IDC and Maribyrnong IDC.

## **10.12 Food**

### *(a) Food variety and opportunities for self-catering*

The provision of meals for detainees at the immigration detention centres is sub-contracted by GSL to another private company, DNCA. During its annual visits in 2006 and 2007, food was one of the things most complained about by detainees.<sup>91</sup> In 2008, concerns about food were raised by some detainees, but it did not appear to be as much of a problem as in previous years.

During the 2008 visits, the Commissioner and Commission staff ate in the detainee dining room at each immigration detention centre, and heard mixed views from detainees about the food. Some detainees complained that the food was too oily, too fattening, not spicy enough, lacking in taste or lacking in variety. Others said they don't particularly like the food, but they understand that it is difficult for kitchen staff to cater for a broad range of tastes. For those people who have been detained for a lengthy period, while they might not be particularly happy about the food, for them it is not a priority - they just want to be released.

Detainees have limited opportunities to cook for themselves in the detention centres. At Villawood, occasional cooking classes are held in the women's compound in Stage 2 and BBQs are held weekly in an outdoor area in Stage 1. Besides that, there are no facilities for detainees to cook for themselves. At the Northern IDC detainees are not able to cook for themselves, except when a BBQ is held. BBQs may or may not be held on a regular basis, depending on what the detainee population prefers at any given time. At Maribyrnong and the Perth IDC, detainees are able to cook for themselves at a weekly BBQ and they can take part in a weekly cooking class. Detainees at Maribyrnong also have access to fridges and some basic cooking equipment in the common areas, and there is a take-away food night occasionally.

In its 2007 report, the Commission encouraged the detention centres to develop more opportunities for detainees to cook for themselves if they wish to do so.<sup>92</sup> This

can be an important way to provide detainees with some autonomy, in an environment where most choices and decisions are beyond their personal control.

**Recommendation:** DIAC and GSL should continue to explore ways to provide people in immigration detention centres with greater choice over what they eat, and more opportunities to prepare their own food if they wish to do so. This could include more cooking classes, more BBQs and occasional take-away food nights. DIAC should also consider including more self-catering facilities at the immigration detention centres. This could include kitchenette facilities with cooking equipment in common areas, or activities kitchens (similar to the activities kitchen that previously existed at Baxter IDC).<sup>93</sup>

(b) *Special dietary needs*

The 2000 *Immigration Detention Guidelines* state that appropriate meals should be provided for detainees where this is necessary for medical reasons, on account of religious or cultural requirements, because the detainee is vegetarian, or where the detainee has other special needs.<sup>94</sup>

The Commission is concerned that there appear to be inconsistencies across the immigration detention centres in terms of ensuring that kitchen practices are halal.

At Villawood we were informed that the kitchen is certified as being halal, that all pork products are stored in a separate fridge, and that different kitchen implements are used for preparing any food that contains pork. Nevertheless, concerns were raised by a detainee who claimed that the kitchen does not always follow halal practices.

At the Perth IDC we were told that the kitchen is certified as halal and that no pork is prepared in the kitchen.

At Maribyrnong we were told that the kitchen is halal. However, pork is stored in the main fridge where other food products are also stored. We were also informed that, once the kitchen had been certified as being halal, there were no requirements for ongoing inspections or reviews.

At the Northern IDC, the kitchen practices are apparently halal and no pork products are stored in the main fridge. However, we were informed that there is no official process to certify the kitchen as being halal. Rather, management there has consulted a local Imam on the kitchen practices.

In response to the Commission raising concerns about these inconsistencies, DIAC has informed the Commission that the matter will be investigated.

**Recommendation:** DIAC and GSL should ensure that immigration detention centres have appropriate facilities, and follow necessary kitchen practices, to provide meals and snacks to any detainees who wish to be provided with halal food.

### **10.13 Detainees whose visas have been cancelled under section 501**

During annual inspections over the past three years, the Commission has observed that an increasing proportion of immigration detainees are people whose visas have been cancelled under the section 501 character provisions of the Migration Act. This is usually because they have been convicted of a criminal offence.

Generally, a person's visa is cancelled under section 501 when they are at the end of serving their prison sentence. They are then transferred directly from prison to immigration detention to await deportation. Some of them spend months, or even years, in immigration detention while they attempt to challenge the decision to cancel their visa, or while travel documents are arranged or a claim for a protection visa is assessed. The Commonwealth Ombudsman has observed that it is not uncommon for some section 501 detainees to spend more time in immigration detention than they did in prison.<sup>95</sup>

Many of the section 501 detainees the Commission has spoken with during its annual visits have lived in Australia for a significant period of time. They often have strong ties to the Australian community, including family, friends, jobs and/or houses. Some of them have Australian partners or spouses, and some have children who are Australian citizens or were born in Australia.

According to statistics provided by the Minister to the Senate in June 2008, of 25 people in immigration detention whose visas had been cancelled due to criminal convictions, all but one of them had lived in Australia for more than 11 years. Seventeen of them had lived in Australia for more than 20 years. Fifteen of them were 15 years old or younger when they arrived in Australia for the first time. All but one of them had been in immigration detention for more than 100 days. Eight had been detained for more than 300 days, and one had been detained for more than 1000 days.<sup>96</sup>

The Commission is concerned about the practice of using section 501 of the Migration Act to cancel visas held by people who have been in Australia for significant periods of time, and who have strong ties to the community. The Commonwealth Ombudsman has recommended that there should be a review of the application of section 501 to consider whether it would be appropriate to raise the threshold for visa cancellation in relation to permanent residents.<sup>97</sup> The Commission has previously recommended that section 501 should be reviewed, with the aim of excluding long-term permanent residents from its application.<sup>98</sup>

The Commission is also concerned about conditions in immigration detention for people whose visas have been cancelled under section 501. Some section 501 detainees who spoke with the Commission during the 2008 visits complained that they had not been provided with information about how their risk assessment had been conducted and why they were being held in an immigration detention centre (or in a particular section of the centre). Several raised concerns about being handcuffed for trips to court and external medical appointments. Others complained about not being taken on external excursions at all. While the Perth IDC appears to be making efforts to include section 501 detainees on external excursions where possible, the situation appears to be different at Villawood. At the time of the Commission's visit to

Villawood, there were no external excursions being conducted for people from Stage 1, which accommodates most of the section 501 detainees.

DIAC has informed the Commission that section 501 detainees are not treated as a distinct group for purposes of client placement or risk assessment. However, in practice it seems that most section 501 detainees are considered to be ‘high risk’ and are accommodated in an immigration detention centre rather than being considered for other alternatives. Further, the Commission is concerned that under the new directions announced by the Minister in July 2008, section 501 detainees might be automatically considered as posing an ‘unacceptable risk’ to the community, and thus be held in detention instead of being allowed to remain in the community while their immigration status is resolved.<sup>99</sup>

While many section 501 detainees have been convicted of a serious crime, it should be remembered that in most cases they have completed their prison sentence. The expectation is that they have been punished and rehabilitated by the correctional system. The extent of any continuing risk they might pose to others, either in the immigration detention population or in the Australian community, should be determined on a case by case basis through an assessment of their individual history and circumstances. This concern was recently raised by the Joint Standing Committee on Migration. In the first report of its inquiry into immigration detention in Australia, the Committee stated that ‘risk assessments for section 501 detainees should focus on evidence, such as a person’s recent pattern of behaviour, rather than suspicion or discrimination based on a prior criminal record.’<sup>100</sup>

**Recommendations:** DIAC should review the operation of section 501 of the Migration Act as a matter of priority, with the aim of excluding long-term permanent residents from the provision.

DIAC and GSL should ensure that risk assessments for the purposes of client placement and external excursions are determined on a case by case basis through an assessment of the individual’s history and circumstances; they should not be based on the fact that an individual’s visa has been cancelled under section 501 of the Migration Act. The reasons for the outcome of the assessment should be clearly communicated to the detainee.

## **11 Mainland immigration detention centres: specific concerns**

### **11.1 Villawood Immigration Detention Centre**

Villawood IDC is approximately an hour’s drive west of Sydney’s city centre. It is the largest mainland immigration detention centre and accommodates the highest number of detainees. At the time of the Commission’s visit in June 2008, there were 201 detainees there. Villawood accommodates some of the longest term detainees. Prior to the Commission’s visit, DIAC provided statistics which showed that as of 6 June 2008 there were 224 detainees at Villawood, 50 of whom had been in detention for more than 500 days. Of those 50 people, 19 had been in detention for more than 1000 days.<sup>101</sup>

(a) *Stage 1*

The Commission has raised concerns about the facilities at Villawood over the past ten years.<sup>102</sup> In its last two annual inspection reports, the Commission raised serious concerns about Stage 1, which is used to accommodate detainees considered to be 'high risk.' The Commission recommended that Stage 1 at Villawood should be demolished as a matter of priority, and replaced with a new facility.<sup>103</sup>

Stage 1 at Villawood is the most prison-like section in all of the mainland immigration detention centres. The area is surrounded by high wire fencing with razor wire in some parts. The buildings are ageing and dilapidated. The dormitory bedrooms are cramped and almost completely lacking in privacy. There is no grassy outdoor space for sports. The dining room and the visitors' facilities are both bleak and inhospitable. There is an overwhelming feeling of being closed in by walls and fences, and a tense atmosphere.

There were some minor improvements made to Stage 1 between the Commission's 2007 visit and its 2008 visit. These were mostly cosmetic, such as deep cleaning floors, painting walls, and adding curtains over the doorways to the dormitory bedrooms. These improvements are positive, but do not come close to addressing the fundamental problems with the inappropriate and ageing infrastructure in Stage 1.

The Minister for Immigration has acknowledged that the Commission's past criticisms of the facilities at Villawood are 'totally justified'.<sup>104</sup> The Minister has also stated that 'urgent works' are commencing at Villawood, with priority being given to Stage 1 and the MSU, prior to a 'major redevelopment'.<sup>105</sup>

The redevelopment of Villawood has been under discussion by successive federal governments for a significant period of time. In the Human Rights Commissioner's 1998-99 review of immigration detention, the Commission noted that the then government had proposed to replace Villawood with a purpose-built centre, but that plans had 'stalled'.<sup>106</sup> Almost a decade later, \$1.1 million was allocated in the 2008-09 federal budget to undertake a feasibility study for the redevelopment of Villawood.

The Commission welcomes the feasibility study and the refurbishments planned for Stage 1 in the short term. However, these works will not be sufficient to address the significant problems in Stage 1, in particular the cramped dormitory bedrooms, the lack of outdoor grassy space, the inappropriate dining facilities and the lack of dedicated rooms for recreational and educational activities.

**Recommendation:** A comprehensive redevelopment of the Villawood IDC should be undertaken as a matter of priority. This should include the demolition of Stage 1 as a matter of urgency, and its replacement with a new facility. This is subject to there being a continuing need for such a facility, given the Government's stated intention to detain people in immigration detention centres only as a last resort.<sup>107</sup>

(b) *Other concerns*

The Commission has a range of other significant concerns regarding the conditions at Villawood. These include the following:



- **SASH observation rooms:** As discussed in section 10.3 above, the SASH observation rooms in Stage 1 at Villawood are not appropriate for use by detainees at risk of suicide or self-harm. Detainees from Stages 2 and 3 on SASH observation should not be transferred to observation rooms in Stage 1. Purpose-built observation rooms should be constructed in Stages 2 and 3. Detainees should be observed in their own rooms when this is appropriate.
- **Management Support Unit (MSU):** The MSU at Villawood is a small building used for separating detainees for behaviour management purposes. It is surrounded by a steel fence at the front, and a cage-like structure enclosing a small gravel courtyard at the back. The MSU is a grim, bare and uncomfortable place. Detainees are observed in their rooms on closed-circuit television, so they have virtually no privacy. There are no recreational facilities, and the only view out is through bars and wire fencing. The Commission has been informed that DIAC intends to redevelop the MSU by April 2009, to turn it into a 'high care unit' for SASH observation and behaviour management purposes. The Commission welcomes the intention to refurbish the MSU. However, the Commission is of the view that the MSU would need a complete overhaul in order for it to be turned into a facility appropriate for accommodating detainees at risk of self-harm.
- **External excursions:** As discussed in section 10.6 above, the re-introduction of some group excursions from Villawood is positive, but the Commission is concerned that they are very limited in number and are not available to all detainees. Management at Villawood should increase the frequency of group excursions and make them available to detainees in all sections of the centre.
- **Violent incidents:** Several detainees in Stage 1 raised concerns with the Commission about violent attacks against them by other detainees. The Commonwealth Ombudsman has noted that it regularly receives complaints from detainees and staff regarding assaults and other criminal acts allegedly occurring at Villawood, and the 'lack of an adequate police response' to such matters.<sup>108</sup> The Commission is aware that DIAC has been negotiating a Memorandum of Understanding with the NSW Police for some time. The Commission hopes to see this in place as soon as possible.
- **Use of restraints:** Several detainees at Villawood raised concerns about being handcuffed for visits to a court or tribunal, medical appointments or home visits. Refer to the discussion and recommendations in section 10.7 above.
- **Drug use:** Several detainees raised the issue of drug use at Villawood, particularly in Stage 1. One detainee claimed that heroin use is common. Another detainee claimed that some detainees pay some staff to bring them drugs and alcohol. In response to this concern, DIAC informed the Commission that allegations of drug use at Villawood were referred to the Australian Federal Police and the NSW Police, and that DIAC has contracted a consultant to review the policies and procedures in place to prevent drugs getting into immigration detention centres.

- **Interpreters:** As discussed in section 10.10 above, there are no interpreters based at Villawood, and it appears that interpreters only attend onsite on average around once or twice each month.<sup>109</sup> DIAC and GSL should make greater use of face-to-face interpreters at Villawood. Given the number of Chinese detainees, consideration should be given to employing a Mandarin-speaking interpreter to work at the centre on a regular basis. Concerns previously expressed by GSL regarding the use of one full time interpreter could be overcome by employing or contracting several part-time or casual interpreters to work at the centre on a rostered basis.
- **Recreational activities:** While there are some positive recreational activities at Villawood, the Commission is concerned about the lack of organised activities for detainees in Stage 1. At the time of the Commission's visit, we were informed that GSL was in the process of hiring a new 'Community Development Manager' to develop a program of activities. While this would be a welcome development, it is unfortunate that it has taken so long to address this matter. GSL should ensure that all detainees, including those in Stage 1, have regular access to a range of organised recreational and sporting activities. All detainees, including those in Stage 1, should be permitted to use the soccer pitch in Stage 3 for sporting activities on a regular basis.
- **Educational activities:** As discussed in section 10.5 above, the Commission is concerned about the lack of dedicated space for educational activities in Stage 1 at Villawood. If DIAC intends to continue using Stage 1, it should upgrade the facility to provide dedicated classroom space for educational activities.
- **Library facilities:** As discussed in section 10.4 above, the library room in Stage 2 at Villawood is kept locked and is only opened on request. Resources are not dedicated to purchasing reading materials or to maintaining the facility. In 2007, GSL stated that it was 'reviewing the range of books and other reading material available at VIDC, particularly in languages that are more representative of the nationalities of the clients' and that 'improvements' were being made.<sup>110</sup> The Commission is not aware of any improvements since then. GSL should arrange for the library room to be open for part of each day, and for all detainees to have access to it.
- **Visitors' facilities:** As discussed in section 10.11 above, the visitors' facilities at Villawood are of significant concern. The visitors' areas in Stage 1 are inhospitable and lacking in privacy. In Stage 2 and 3 there is no indoor area for detainees to meet with visitors. DIAC should implement its plans to upgrade the visitors' areas in Stage 1 as soon as possible. In addition, an indoor area should be provided for visitors to Stage 2 and 3 detainees.
- **Interview rooms:** The interview rooms in Stages 2 and 3, and one of the interview rooms in Stage 1, are not private or soundproofed. This is a particular concern for detainees meeting with legal representatives or migration agents, or detainees speaking with representatives of the Commission or the Commonwealth Ombudsman. DIAC should ensure that the interview rooms at Villawood are private and soundproofed.

- **Halal food:** The Commission was informed that the main kitchen at Villawood is certified as being halal. However, one detainee claimed that kitchen staff do not always follow halal practices. GSL and DNCA should ensure that kitchen practices at Villawood are halal. For any detainees who raise concerns about this issue, GSL should consider arranging for those detainees to be taken on an escorted tour of the kitchen areas. Refer to the discussion and recommendations in section 10.12 above.

## **11.2 Perth Immigration Detention Centre**

The Perth IDC is located next to the Perth airport. It is the smallest mainland detention centre. Many of the detainees there are people who have overstayed or breached their visa. However, the centre also accommodates some longer term detainees, including some people whose visas have been cancelled under section 501 of the Migration Act. At the time of the Commission's visit in July 2008, there were 21 detainees at the Perth IDC, including two people who had been detained for more than 18 months.

### *(a) Infrastructure and facilities*

The Commission's most significant concern regarding the Perth IDC is that the infrastructure is inappropriate to use for anything other than holding a very small number of detainees for a very short period of time. Ten years ago, the Commission raised concerns about the facilities at the Perth IDC, and recommended that DIAC should stop using the centre for long-term detention.<sup>111</sup>

During its 2007 visit, the Commission was told that a major refurbishment would be undertaken at the centre in 2008, including adding a second storey with an education room and cooking facilities, replacing some of the dormitories with smaller bedrooms, and adding visitors' facilities. In its 2007 report, the Commission raised concerns about the inadequacy of the infrastructure at the centre, and recommended that the renovations be undertaken promptly.<sup>112</sup> The Commission was disappointed to learn in 2008 that many aspects of the planned refurbishment have been cancelled for budgetary reasons.

The Perth IDC is a small, cramped centre. DIAC and GSL management and staff make efforts to improve the conditions and to communicate with detainees. However, given the restraints imposed by the physical infrastructure, it is easy to imagine that detainees held at the centre for more than a few days might quickly feel claustrophobic and frustrated.

There were some improvements made at the centre between the Commission's visits in 2007 and 2008. These included new pot plants, furnishings in the dining room, library shelving in the recreation room, and refurbishment of the medical observation room. These are all positive improvements. However the larger structural problems remain. The Commission's major concerns include the following:

- The dormitory bedrooms are small and cramped. Detainees sharing these rooms have very little privacy. Many detainees hang sheets over the sides of the top bunk bed to provide some privacy on the lower bed.

- There is no outdoor grassy space for sport or recreational activities. Detainees have access to two small concrete courtyards, both of which are surrounded by high walls and razor wire.
- There is not enough dedicated indoor space for recreational or educational activities. The computer room is very small. While there have been two additional computers installed since last year, there are still only four internet connected computers for use by the whole detainee population. There is no dedicated room for conducting computing classes, English classes or other scheduled programs. The multi-purpose recreation room has to cater for a myriad of purposes.
- There is no visitors' area, so visits have to be conducted in the multi-purpose room, which is also used for recreational programs, detainee consultative meetings, and other general activities such as watching TV. Detainees have no privacy with their visitors.
- The gym area is small, outdoors, and not adequately protected from the weather.
- There is no dedicated space for prayers or other religious activities. The DIAC Standards state that there should be a multipurpose space in each detention facility which can be used for spiritual or religious purposes.<sup>113</sup>

DIAC has informed the Commission that a scaled down version of the previously planned refurbishment will go ahead at the Perth IDC. Improvements will be made to the bathroom and laundry areas, the gym and the outdoor courtyards. The Commission welcomes these plans. However, they will not address most of the Commission's major concerns regarding the infrastructure and facilities at the Perth IDC.

**Recommendations:** A comprehensive redevelopment of the Perth IDC should be undertaken as a matter of priority. This should ensure that detainees are provided with access to an outdoor grassy area for sport and recreation, dedicated classroom space for educational activities, space that can be used for religious purposes, and appropriate visitors' facilities.

In the meantime, DIAC and GSL should ensure that detainees at the Perth IDC have regular access to organised sporting activities, such as soccer, outside the detention centre.

The outdoor gym area at the Perth IDC should be enclosed to ensure adequate privacy and protection from the weather.

DIAC should continue to expand access to the internet for detainees at the Perth IDC.

(b) *Other concerns*

The Commission has a range of other concerns regarding the conditions at the Perth IDC. These include the following:

- **External excursions:** As discussed in section 10.6 above, the Perth IDC has reintroduced some group excursions since the Commission's visit in 2007. 'High risk' detainees are able to participate if arrangements can be made for an appropriate venue where risks can be mitigated. However, the Commission is concerned that detainees do not appear to have access to home visits, due to concerns about managing the potential security risks in a private home setting. In response to this concern, DIAC has informed the Commission that detainees at the Perth IDC do not usually request home visits, but that any requests are considered on a case by case basis using a risk assessment approach. Management at the Perth IDC should facilitate individual detainee requests for home visits where possible.
- **Use of restraints:** A detainee at the Perth IDC expressed concerns about being handcuffed for visits to court, counselling sessions, and a shopping centre. Refer to the discussion and recommendations in section 10.7 above.
- **Interpreters and translation:** Several detainees raised concerns about information not being provided in a language they can understand. The Commission is concerned that few documents provided for detainees are translated, and there does not seem to be a consistent practice of using onsite or telephone interpreters for day-to-day interactions between centre staff and detainees. In response to this concern, DIAC has informed the Commission that interpreters are consistently used at the Perth IDC, and that detainees are given a small card during induction that they can show to a detention officer to indicate that they need an interpreter. Refer to the discussion and recommendations in section 10.10 above.
- **Cultural sensitivity:** Two detainees raised concerns about a lack of cultural respect shown to detainees by GSL staff at the Perth IDC. In response to this concern, DIAC has informed the Commission that the DIAC Centre Executive has increased monitoring of GSL on this matter. Refer to the recommendation on staff training in section 9 above.

### **11.3 Maribyrnong Immigration Detention Centre**

Maribyrnong IDC is located approximately half an hour's drive north-west of Melbourne. Of the four mainland immigration detention centres, it is the third largest after Villawood and Northern. Maribyrnong accommodates a mix of detainees, including people who have overstayed or breached their visa, protection visa applicants, and people whose visas have been cancelled under section 501 of the Migration Act. At the time of the Commission's visit in August 2008, there were 41 detainees at Maribyrnong, seven of whom had been in detention for longer than one year. Three of those people had been in detention for more than two years.

#### *(a) Infrastructure and facilities*

In its past two annual inspection reports, the Commission noted that Maribyrnong has, in some ways, led the other centres in terms of positive improvements.<sup>114</sup> Maribyrnong has had significant refurbishments done over the past few years, which make it more comfortable, modern and flexible than the other immigration detention

centres. Most of the razor wire has been removed, the external courtyards have been landscaped, and there are a range of indoor recreational areas for use by detainees. The visitors' area is large, well-furnished and more comfortable than the visitors' areas in the other detention centres.

While many of the facilities at Maribyrnong are of a higher quality than those at the other immigration detention centres, there are some infrastructure issues that should be addressed. These include the following:

- The interview rooms are not soundproofed. DIAC has informed the Commission that this issue has been referred to Facilities Management to be rectified.
- There is no dedicated space for prayers or other religious activities. The DIAC Standards state that there should be a multipurpose space in each detention facility which can be used for spiritual or religious purposes.<sup>115</sup> DIAC has informed the Commission that this issue will be discussed further within the Community Consultative Group at Maribyrnong. In the meantime, DIAC has noted that there are two small private rooms in the visitors' area that can be used upon request.
- Some of the bedrooms are quite small, yet contain three single beds or two bunks (four single beds). When detainee numbers are low, this might not pose a problem. However, if these rooms were used to their capacity, they would be quite cramped. Under the DIAC Standards, a maximum of two persons should be accommodated in each bedroom during surge conditions.<sup>116</sup>
- There is a concrete tennis court area, but no grassy area for sport and recreational activities.
- Some of the gym areas at Maribyrnong are outdoor and not adequately protected from the weather. During its 2007 visit, the Commission was informed about plans to enclose the gym areas. These plans have not yet been implemented.

**Recommendations:** DIAC should ensure that the interview rooms at Maribyrnong IDC are private and soundproofed.

DIAC and GSL should ensure that detainees at Maribyrnong IDC have access to a space which can be used for religious purposes.

DIAC should undertake necessary changes at Maribyrnong IDC so that detainees are provided with adequate access to open grassy space for sport and recreation. In the meantime, DIAC and GSL should ensure that detainees at Maribyrnong IDC have regular access to organised sporting activities, such as soccer, outside the detention centre.

The outdoor gym areas at Maribyrnong IDC should be enclosed to ensure adequate privacy and protection from the weather.

(b) *Other concerns*

The Commission has a range of concerns regarding the conditions at Maribyrnong. These include the following:

- **External excursions:** As discussed in section 10.6 above, there are no group excursions being conducted from Maribyrnong. All external excursions must be requested by detainees and approved by management on an individual basis. 'High risk' detainees are only permitted to go on excursions in exceptional circumstances. Management at Maribyrnong should introduce regular group excursions for all detainees.
- **Violent incidents:** GSL provided the Commission with records indicating that there were 13 violent incidents between detainees at Maribyrnong between January and August 2008, including four classified as assault occasioning actual bodily harm.<sup>117</sup> The police were informed in each of these cases. However, there is no record of charges being laid in connection with any of the incidents. The Commission is aware that DIAC has been negotiating a Memorandum of Understanding with the Victoria Police for a number of years. The Commission hopes to see this in place as soon as possible.
- **Halal food:** The Commission was informed that the kitchen at Maribyrnong is halal. However, it is not clear if this is in fact the case, as we were also informed that pork is stored in the main fridge. In response to this concern, DIAC has informed the Commission that the matter will be investigated. GSL and DNCA should ensure that kitchen practices at Maribyrnong are halal. Refer to the discussion and recommendations in section 10.12 above.
- **Library facilities:** As discussed in section 10.4 above, there is no dedicated library area at Maribyrnong. This has apparently been delayed while arrangements are made for bookshelves to be constructed. DIAC and GSL should ensure that Maribyrnong has an onsite library area stocked with reading materials in the principal languages spoken by detainees at the centre. All detainees should have regular access to this area.

#### **11.4 Northern Immigration Detention Centre**

The Northern IDC is located on property within the Defence Establishment Berrimah, a fifteen minute drive outside of Darwin. It is the second largest mainland immigration detention centre. Most of the people detained at the Northern IDC are alleged 'illegal foreign fishers' apprehended in Australia's northern waters.

At the time of the Commission's visit in September 2008, there were three detainees at the centre. There were also two immigration detainees in the Berrimah prison, serving sentences for unpaid fines for illegal fishing. The Commission has been informed that the number of detainees at the Northern IDC is generally associated with the fishing season and weather conditions. Detainee numbers are generally much higher between October and February.

In the year between September 2007 and August 2008, there were 1145 alleged 'illegal foreign fishers' detained at the Northern IDC. The vast majority were from

Indonesia. Many detainees spend a relatively short period of time at the centre. For the people held there between September 2007 and August 2008, the average time in detention was 21 days. However, 65 of those people spent more than 50 days in detention.<sup>118</sup>

In its 2007 inspection report, the Commission commended management at the Northern IDC for responding to, and implementing many of the recommendations the Commission made in its report the previous year.<sup>119</sup> That included ceasing the practice of holding children in the centre. Any detainees under the age of 18 have since been accommodated at an alternative place of detention in Darwin, usually a hotel in the city where DIAC has a number of reserved rooms. The detention of minors in Darwin is discussed in section 14 below.

During the 2008 visit, the Commission had concerns about a range of issues at the Northern IDC, as discussed below. However, the Commission welcomes the ongoing positive attitude of DIAC and GSL management at the centre, and their willingness to address issues of concern where possible. Positive efforts are made at the Northern IDC in areas including provision of interpreters, translation of materials into languages other than English, and access to external group excursions.

*(a) Infrastructure and physical environment*

Since the Commission's 2007 visit to the Northern IDC, a new dining and recreation building has been constructed in the South compound. The building is a large, flexible facility with two main rooms that will be used for dining and recreation, as well as small prayer rooms and open veranda areas. This is a positive development. However, the accommodation blocks in the South compound have not been upgraded and are of average quality.

In general, the Northern IDC feels less restrictive than the other mainland detention centres because it has more open space. However, the physical appearance of the centre is quite harsh. There is a significant amount of high wire fencing, which creates a high-security look and feel. This seems unnecessary given that the centre is mostly used for low-risk detainees. It also fails to implement the DIAC Standards, which state that '[t]he underlying principle for security systems at all detention facilities is that security must be as unobtrusive as possible.'<sup>120</sup>

The Commission is also concerned about the lack of trees and other greenery inside the centre, particularly the lack of an adequate grassy area for sporting activities. The Commission has been informed that DIAC is taking steps to address this issue. A water mitigation project has begun and is currently estimated to be completed by May 2009. This should allow for more grass to grow in the open areas at the centre, without the topsoil being washed away. The Commission hopes to see significant progress with this project at its next annual visit.

**Recommendations:** DIAC should consider reducing the amount of high wire fencing at the Northern IDC. This would be in line with the principle contained in the DIAC Standards that security systems at all detention facilities should be as unobtrusive as possible.<sup>121</sup>

DIAC should ensure that detainees at the Northern IDC are provided with adequate



access to an open grassy space for sport and recreation. The Commission encourages DIAC to implement water mitigation measures at the Northern IDC as soon as possible.

(b) *Other concerns*

The Commission has a range of other concerns regarding the Northern IDC. These include the following:

- **Educational programs:** As discussed in section 10.5 above, the Commission is concerned about the lack of educational programs at the Northern IDC. Activities at the centre are recreational rather than educational, as most detainees are alleged 'illegal foreign fishers' who the Department seeks to remove from Australia as soon as possible. However, some people are detained at the Northern IDC for significant periods of time. The Commission welcomes the introduction of conversational English classes, but encourages expansion of these into a more comprehensive program of activities. DIAC and GSL should arrange for the provision of structured educational classes for detainees who wish to participate. This should include ESL classes and computing classes.
- **Internet access:** As noted in section 10.8 above, internet access has been provided for detainees at the Northern IDC since the Commission's 2007 visit. This is a positive development. However, at the time of the Commission's 2008 visit, there were only two internet stations for use by detainees. This might be sufficient when detainee numbers are very low, but it will not be sufficient when numbers increase. DIAC has informed the Commission that two internet stations will be added to each of the two South compounds and one will be added to the North 2 compound. DIAC should continue to expand access to the internet for immigration detainees at the Northern IDC.
- **Halal food:** As discussed in section 10.12 above, the Commission was informed that kitchen practices are halal, but there is no official process to certify that. This appears to be inconsistent with the practice in other detention centres. In response to this concern, DIAC has informed the Commission that the matter will be investigated. GSL and DNCA should ensure that kitchen practices at the Northern IDC are halal.
- **External excursions:** As discussed in section 10.6 above, the Northern IDC runs a positive program of regular group excursions. However, the centre generally does not facilitate requests for home visits or individual excursions. The reasoning behind this is that most detainees in the centre generally do not have family or friends to visit in Darwin. While this might be the case, the Commission encourages management to consider any requests on a case by case basis and to facilitate detainee requests for home visits or other individual excursions where possible.

(c) *Concerns relating to ‘illegal foreign fisher’ detainees*

As noted above, most of the detainees held at the Northern IDC are alleged ‘illegal foreign fishers.’ Generally these people are apprehended at sea by the Australian Customs Service or the Australian Fisheries Management Authority (AFMA). On arrival at an Australian port they are detained under the *Fisheries Management Act 1991* (Cth), before being transferred to immigration detention.<sup>122</sup> Some are prosecuted for illegal fishing – usually the captain of the vessel is charged. The rest spend a period of time in immigration detention - usually at the Northern IDC - before being returned to their country of origin, commonly Indonesia.

In connection with the 2008 visit to the Northern IDC, the Commissioner and one Commission staff member visited the ACV Triton, which was docked in Darwin. The Triton is a vessel used by Customs and AFMA to patrol Australia’s northern waters and to apprehend ‘illegal foreign fishers.’ The Triton is a 98 metre long diesel-powered vessel. It is capable of operating at sea for extended periods and it is equipped with two high-speed boats for conducting boarding operations on vessels suspected of illegal fishing activities. It has the capacity to hold up to 30 alleged ‘illegal foreign fishers’ for short a period of time while they are transported to an Australian port.

The Commission’s visit to the ACV Triton and discussions with detainees at the Northern IDC raised the following concerns:

- When Customs and/or AFMA officers board a vessel suspected of illegal fishing activities, there does not appear to be a consistent practice of providing clear information to crew-members in a language they can understand, explaining what personal belongings they should take with them and whether or not they will be allowed to return to the vessel later to retrieve any belongings left behind. This can lead to frustrations later on, when detainees at the Northern IDC are concerned about personal belongings left on their vessel.
- Some AFMA and Customs officers are able to communicate in Bahasa Indonesia. However, there does not appear to be a policy requiring the presence of a qualified interpreter on patrols to convey information to crew-members in a language they can understand. Language cards are used to convey basic messages and questions to the crew, for example: ‘Who is the master of this vessel?’ The cards are available in Bahasa Indonesia, Spanish, Japanese, Chinese, Sinhalese, Thai, Russian, and Korean. While the cards are a useful device, the Commission is concerned that they might not be detailed or flexible enough to convey adequate information to people being apprehended at sea.
- The area used for accommodating alleged ‘illegal foreign fishers’ on the Triton is cramped and stuffy. While access is available to the upper deck, this would not be ideal in rough weather. There are only two toilets and two small showers for use by up to thirty people. Unlike the crew areas of the ship, this area is not air-conditioned. Customs has informed the Commission that this will be rectified.

## **12 Alternatives to immigration detention centres**

Over the past few years an increasing number of alternatives to immigration detention centres have been established on the mainland. These include detention in immigration residential housing or immigration transit accommodation, and community detention under a Residence Determination. Immigration detainees can also be held in alternative places of detention. Among others, these places can include hotels, hospitals, foster care arrangements, and detention in the community with a designated person at a private house.

Currently, the number of people detained in immigration detention centres far exceeds the number of people detained in alternative locations. When the Commission began its annual visits in June 2008, there were 377 people in immigration detention. Of these, 302 people were in immigration detention centres and 75 were in an alternative location.<sup>123</sup> When the Commission concluded its visits in September 2008, there were 281 people in immigration detention. Of these people, 198 were in immigration detention centres and 83 were in an alternative location.<sup>124</sup>

The Commission has advocated for amendments to the Migration Act which would reduce the number of people held in any form of immigration detention, and increase the use of bridging visas for people awaiting an immigration outcome.<sup>125</sup> In the meantime, in the event that a person is taken into immigration detention, the Commission encourages DIAC to make greater use of alternatives to immigration detention centres. Generally, these alternatives provide a more comfortable environment, and to varying degrees they allow people more personal freedom. Greater use of alternatives would be in line with the Government's stated intention that detention in immigration detention centres is only to be used as a last resort.<sup>126</sup>

However, it is important to recognise that, despite the fact that they are not in an immigration detention centre, people held in these alternatives remain in immigration detention. For people in immigration residential housing or immigration transit accommodation, the physical environment is highly preferable to an immigration detention centre, but they are still being held in a detention facility. They are not free to come and go. These facilities are discussed in sections 12.1 and 12.2 below.

For people in community detention under a Residence Determination, they are permitted to live in a designated house or apartment in the community. They are generally free to come and go from that residence. However, there are certain restrictions in terms of where they can go and what they can do while they are in community detention. These issues are discussed in section 12.3 below.

For people held in an alternative place of immigration detention (e.g. a hotel or hospital), the conditions will depend on where they are held and what arrangements are made for a designated person to supervise their detention. These issues are discussed in section 14.4 below with regard to children held in immigration detention in hotel accommodation in Darwin.

### **12.1 Immigration residential housing**

There are currently two immigration residential housing facilities in Australia:

- The Sydney Immigration Residential Housing (Sydney IRH) is located next to the Villawood IDC. It was opened in 2006.
- The Perth Immigration Residential Housing (Perth IRH) opened in 2007. It is located in Redcliffe. It is not located in the same area as the Perth IDC, which is next to the airport.

The Commission visited both facilities during its 2008 visits. As in past years, the Commission found that the immigration residential housing facilities provide a much higher standard of accommodation than the immigration detention centres. Partly this is because the Sydney IRH and Perth IRH are much newer facilities. However, it is also because the security measures are much less intrusive – there are no high wire fences, razor wire, or small walled-in courtyards. Rather, each facility is surrounded by residential style fencing and the area is monitored by external cameras and an alarm system. The buildings are similar to regular brick houses and they are generally well-furnished and supplied with modern appliances. These factors all combine to create an atmosphere that is much more comfortable and less tense than in the immigration detention centres.

In addition, people detained in the immigration residential housing facilities are generally provided with more autonomy and privacy than people in the immigration detention centres. Detainees at the Sydney IRH and the Perth IRH have access to a kitchen and can do their own cooking. They are generally able to go on more external excursions. And they usually have their own bedroom, and access to dining and living areas that are shared by a smaller number of people than would be the case in an immigration detention centre.

However, it is important to remember that immigration residential housing is still a closed detention facility. People are not free to come and go. They can only leave the facility on supervised excursions. In 2008, the Commission spoke with some detainees at the Sydney IRH and the Perth IRH who had previously been held in an immigration detention centre. While these people were generally much happier to be in immigration residential housing, several expressed their ongoing frustration about being detained for a lengthy period of time. The psychological effects of detention remain a significant concern for people held in immigration residential housing.

*(a) Sydney Immigration Residential Housing*

The Sydney IRH consists of four duplex houses. Each house contains three bedrooms, two bathrooms, a shared kitchen, two living and dining areas and an undercover garage area with outdoor furniture. The houses face a shared garden area which includes some children's playground equipment, a few trees, some grassy space and a small vegetable garden.

At one end of the facility there is an administration building, which includes a computer room for use by detainees. This has four computers, two of which are connected to the internet. The internet connection is a positive development since the Commission's last visit. A second room has some sewing equipment available for detainees to use. There is also an undercover garage area containing recreational facilities including a table tennis table, couches, a TV, and children's toys.

The facilities and environment at the Sydney IRH are highly preferable to the Villawood IDC. The Commission has visited the Sydney IRH three years in a row, and has consistently raised concerns that the facility is not used to its full capacity.<sup>127</sup> It has a regular capacity of 34 people, and a surge capacity of 48 people. When the Commission visited in 2008, there were 16 detainees there, compared to 224 at Villawood. It is not clear why greater use is not made of the Sydney IRH as an alternative to detaining people at Villawood, particularly for detainees considered 'low risk.'

**Recommendation:** DIAC should fully utilise the Sydney IRH as an alternative to detaining people at the Villawood IDC.

The Commission has some concerns regarding the facilities and services at the Sydney IRH. These include the following:

- **External excursions:** Excursions for detainees at the Sydney IRH appear to be quite limited. While detainees are escorted on regular trips for buying groceries, there do not appear to be many recreational excursions. As recommended in section 10.6 above, DIAC should adopt minimum standards for the conduct of regular external excursions from immigration detention facilities and include these standards in the contract with the detention services provider. In the meantime, management at the Sydney IRH should increase the frequency of recreational excursions for detainees.
- **Families and children:** At the time of the Commission's visit there was a family of five at the Sydney IRH, with a baby and a five year old child. The family had been detained for three months. The Commission has significant concerns about children being held in immigration detention facilities. This is discussed further in section 14 below.
- **Health services:** Detainees at the Sydney IRH do not have access to health or mental health services onsite. They are required to make an appointment with medical providers offsite. This has the benefit of allowing detainees to leave the facility and to access health services in a community setting. However, because an escort must be arranged for each external appointment, this policy can have the effect of delaying access to health services. Several detainees raised concerns about this. Detainees at the Sydney IRH should be given the option of accessing health and mental health staff and services onsite.
- **Recreational and educational activities:** There are some recreational facilities at the Sydney IRH, as noted above. However, there is no schedule of organised internal activities. This is particularly concerning given that the number of recreational excursions is quite limited. DIAC and GSL should ensure that detainees at the Sydney IRH are provided with regular access to recreational and educational activities.

**Recommendations:** Management at the Sydney IRH should increase the frequency of recreational excursions for detainees.

Detainees at the Sydney IRH should be given the option of accessing health and

mental health staff and services onsite.

DIAC and GSL should ensure that detainees at the Sydney IRH are provided with regular access to recreational and educational activities.

(b) *Perth Immigration Residential Housing*

The Perth IRH consists of two houses, each with five bedrooms, two bathrooms, a shared kitchen and dining area, and two living room areas. In between the houses there is a shared courtyard area with outdoor furniture, garden beds, a BBQ and a table tennis table. There is also a shared back lawn.

The facility is entered through a small administration building, which contains a security control room and a common room used by staff and detainees. This room is small but well-furnished. It has a TV area, tables and chairs, basic kitchen facilities and two internet connected computers.

The Commission was pleased to hear that the Perth IRH provides a weekly schedule of internal and external recreational and educational activities for detainees. The Commission was provided with a schedule that includes internal English classes and sessions on computer skills and life skills, as well as external trips to the library, gym, church, and grocery shopping. The Commission encourages DIAC and GSL staff at the Perth IRH to ensure that this schedule of activities is maintained.

The facilities and environment at the Perth IRH are highly preferable to the Perth IDC. For this reason, at both the 2007 and 2008 visits, the Commission raised concerns about the under-utilisation of the Perth IRH.<sup>128</sup> The facility has the capacity to accommodate up to 20 people, with a comfortable capacity of ten people. When the Commission visited in July 2008 there were only four detainees there, compared with 21 detainees at the Perth IDC.<sup>129</sup>

In response to this concern, DIAC informed the Commission that use of immigration detention facilities is under review to ensure alignment with the Government's new directions in immigration detention. There will be particular emphasis on increased placement of people in lower risk facilities such as immigration residential housing, rather than immigration detention centres. The Commission hopes to see that significant progress has been made in this regard during its 2009 annual inspections.

**Recommendation:** DIAC should fully utilise the Perth IRH as an alternative to detaining people at the Perth IDC.

The Commission has some concerns regarding the facilities and services at the Perth IRH. These include the following:

- **Interpreters:** There are no onsite interpreters at the Perth IRH. Several detainees raised concerns about difficulties with communication. One detainee claimed that TIS is not always used when it should be. In response to this concern, DIAC has informed the Commission that interpreters are consistently used, and that detainees are given a small card during induction that they can show to a detention officer to indicate that they need an interpreter. Refer to the recommendations on interpreters and translation in section 10.10 above.

- **Families and children:** At the time of the Commission's visit there were no children at the Perth IRH. However, we were informed that there had been two families with children at the IRH prior to our visit. There have also been children at the IRH since then.<sup>130</sup> The Commission has significant concerns about children being held in immigration detention facilities. This is discussed further in section 14 below.
- **Health services:** Detainees at the Perth IRH do not have access to health or mental health services onsite. This raises the same concerns discussed with regard to the Sydney IRH in the above section. In response to this concern, DIAC has informed the Commission that it is in the process of reviewing options for the provision of limited onsite health services at the IRH.

**Recommendation:** Detainees at the Perth IRH should be given the option of accessing health and mental health staff and services onsite.

## **12.2 Immigration transit accommodation**

There are currently two immigration transit accommodation facilities in Australia:

- The Brisbane Immigration Transit Accommodation (Brisbane ITA) is located in Pinkenba. It was opened in late 2007.
- The Melbourne Immigration Transit Accommodation (Melbourne ITA) opened in June 2008. It is located in Broadmeadows, on property that forms part of the Maygar Barracks.

The Commission visited both facilities in 2008. A third immigration transit accommodation facility will be established in Adelaide. DIAC anticipates that it will be operational in mid 2009.

Many of the positive comments about the immigration residential housing facilities in section 12.1 above also apply to the immigration transit accommodation facilities. The Brisbane and Melbourne ITAs provide a much higher standard of accommodation than the immigration detention centres. The facilities are newer and more comfortable. The security measures are less intrusive and, as a result, the atmosphere is more relaxed. Detainees have greater privacy, usually having their own bedroom.

The Commission welcomes alternatives to holding detainees in immigration detention centres, and encourages DIAC to make greater use of the ITAs when possible and appropriate. For people in these facilities, the physical environment is highly preferable to an immigration detention centre. However, it is important to recognise that they are still being held in a closed detention facility. They are not permitted to come and go.

The Brisbane and Melbourne ITAs were established with the intention that they would be used as temporary accommodation for low risk detainees on a rapid removal pathway. At the time of the Commission's 2008 visits, DIAC policy was that

the ITAs would be used to accommodate low risk detainees for up to seven days, and that children and their families would not be held in the facilities.<sup>131</sup>

However, during its 2008 visits the Commission was informed that this policy was being reconsidered. At that time, there had already been cases of detainees staying at the ITAs for longer than seven days. Since the visits, DIAC has informed the Commission that the policy has been amended so that detainees can be held at the ITAs for two to three weeks. This change was apparently made due to problems removing detainees from Australia within seven days, because of delays in sourcing travel documents.

The Commission is not opposed to detainees being accommodated at the ITAs for longer than seven days if the alternative would be to move them to an immigration detention centre. However, if DIAC intends to use the ITA facilities for longer stays, the services and facilities will need to be improved. Because the ITAs were designed for short stays only, detainees are generally not provided with access to external excursions, there are no organised recreational or educational activities, and there are limited health services provided onsite.

The Commission is aware that, since its 2008 visits, several children have been accommodated at the ITA facilities. The Commission has significant concerns about this practice, as discussed in section 14 below.

**Recommendation:** If DIAC intends to use the ITA facilities to detain people for longer than seven days, as an alternative to detaining them in an immigration detention centre, DIAC should provide detainees with access to external excursions, organised recreational and educational activities, and health and mental health services, as appropriate.

(a) *Brisbane Immigration Transit Accommodation*

The Brisbane ITA consists of three accommodation blocks. Each block has five small bedrooms, each with two beds. The Commission was informed that detainees will not be required to share bedrooms unless absolutely necessary. There is a shared recreation area in each accommodation block with kitchen, dining and living room facilities.

There is a central administration building which contains a large common room used for dining, recreation, visits and watching TV. This room also has a table tennis table, several internet connected computers, and basic kitchen facilities. Detainees have access to a large grassy area, and an outdoor basketball and tennis court. The facility is surrounded by a residential style fence, with an infra-red alarm system along the fence line.

There are no organised recreational or educational programs at the Brisbane ITA. Detainees are generally not provided with access to external excursions or home visits. There is a nurse onsite three times per week, for a total of 16 hours.

At the time of the Commission's 2008 visit, there were no detainees at the Brisbane ITA. DIAC provided the Commission with statistics indicating that between 1 November 2007 and 30 July 2008, there were 265 people held at the ITA.<sup>132</sup> This is



approximately one person per day. The average length of detention was less than two days. The longest was 14 days. Almost all of the detainees were airport turnarounds or compliance cases. This includes people who have breached or overstayed their visa, or people whose visas have been cancelled.

In general, the Brisbane ITA is a good facility. In many ways it is highly preferable to the immigration detention centres. However, the Commission has some concerns about the services and facilities at the Brisbane ITA. These include the following:

- **Induction materials:** Detainees at the Brisbane ITA are not provided with written induction materials. DIAC has informed the Commission that a draft induction handbook is being finalised. However, at the time of the Commission's visit, the ITA had already been operational for more than nine months. During that time, detainees have been provided with basic induction information verbally. However, this is not an adequate substitute for comprehensive written induction materials. Refer to the recommendations on induction materials in section 10.9 above.
- **Complaint and request forms:** At the time of the Commission's visit, there were no complaint forms or detainee request forms freely available in the facility. There were also no internal mail boxes for DIAC or GSL, making it difficult for detainees to lodge anonymous written comments or complaints. In response to this concern, DIAC has informed the Commission that a brochure stand has since been installed in the common room, containing copies of GSL request and complaint forms translated into a number of languages. Mail boxes have also been installed.
- **Food:** Detainees do not have access to cooking facilities at the Brisbane ITA (except a microwave and a toaster). At the time of the Commission's visit, there was no chef to prepare meals. This meant that meals for detainees were mostly frozen pre-packaged meals. In response to this concern, DIAC has informed the Commission that a new 'Hospitality and Activities Coordinator' has since been hired and freshly cooked meals are now being prepared onsite.
- **Communications:** During the 2008 visit, the Commission was concerned to hear that there had been a policy in place at the Brisbane ITA under which access to phones and the internet was restricted for 'medium risk' and 'high risk' detainees. There did not appear to be a rational explanation for this policy. In response to this concern, DIAC management at the ITA informed the Commission that the practice would be stopped.
- **Families and children:** At the time of the Commission's visit, DIAC policy was that children and their families would not be held in the ITA facilities. Since the Commission's visit, children have been accommodated at the Brisbane ITA.<sup>133</sup> The Commission has significant concerns about children being held in immigration detention facilities. This issue is discussed in section 14 below.

(b) *Melbourne Immigration Transit Accommodation*

The Melbourne ITA is a new immigration detention facility. The Commission visited for the first time in August 2008. At that time, the ITA had only been operational for approximately two months. As a result, there were some operational issues still being considered. Given that, the Commission's comments on the facility are of a preliminary nature. The Commission will monitor developments at the Melbourne ITA and conduct a more comprehensive assessment at its next annual visit.

The Melbourne ITA is situated in a two-storey brick building that has been recently refurbished. The facility is enclosed with a residential style fence. The external areas are monitored with cameras and there is an infra-red beam alarm along the fence line.

The facility is designed to accommodate up to 30 people. It contains 16 bedrooms, most of which have two single beds. The bedrooms are clustered in four areas. Each of these areas has a small common room with a kitchenette, lounge, TV, and dining table. There is also a large common room on one side of the building, which has four internet connected computers, a lounge and TV area, and a dining and kitchen area. Unlike the Brisbane ITA, where detainees do not have access to cooking facilities, detainees at the Melbourne ITA can cook for themselves in the kitchen area. Leading off the common room there are two smaller rooms that can be used for private visits or interviews.

At the back of the building there is a self-contained unit, called the Maygar annex. This can accommodate up to four people in two bedrooms. There is a small kitchen area, a lounge and dining room, and a small outdoor courtyard. According to DIAC, the annex is suitable for accommodating a 'special care' group.

The facility has a shared outdoor area including a veranda with outdoor furniture and two BBQs, a volleyball court and a small grassy area suitable for sport and recreation. Detainees have access to recreational facilities including a table tennis table, a pool table, TV and DVDs. Detainees are not normally provided with access to external excursions or home visits.

At the time of the Commission's 2008 visit, there were two detainees at the Melbourne ITA. Just prior to the Commission's visit there was a large group of detainees at the ITA, including 18 men and six women. All of these people had been detained as a result of breaching their visa conditions or overstaying their visa, and had been in detention for more than one week and less than one month.<sup>134</sup>

In general, the Melbourne ITA is a good facility. It provides a much more comfortable environment than Maribyrnong and the other immigration detention centres. However, the Commission has some concerns regarding the services and facilities at the Melbourne ITA. These include the following:

- **Health services:** There is a small medical room at the Melbourne ITA, and a nurse from Maribyrnong conducts visits when there are detainees at the ITA. However, there are no health or mental health staff based onsite. The Commission is concerned that, for this reason, a detainee with a health or mental health condition might be held at Maribyrnong despite the fact that the ITA might be a more appropriate facility for them. In response, DIAC has

informed the Commission that placement decisions are made on a case by case basis and that health or mental health concerns will not necessarily prevent a detainee from being held at the ITA.

- **Recreational and educational activities:** There are no organised recreational or educational activities at the Melbourne ITA. This might not pose a problem if detainees are there for up to seven days, as the original ITA policy provided for. However, at the time of the Commission's visit there had been detainees held at the ITA for up to 26 days. As recommended above, if DIAC intends to use the ITA facilities to detain people for periods of longer than seven days, DIAC should ensure that detainees are provided with access to organised recreational and educational activities as appropriate. DIAC has informed the Commission that GSL will engage with groups of detainees placed at the ITA for seven days or more to determine if they want or would benefit from structured recreational activities. If so, DIAC will submit a request for GSL to provide an officer to organise activities.
- **Families and children:** At the time of the Commission's visit, DIAC policy was that children and their families would not be held in the ITA facilities. Since the Commission's visit, children have been accommodated at the Melbourne ITA.<sup>135</sup> The Commission has significant concerns about children being held in immigration detention facilities. This issue is discussed further in section 14 below.

### **12.3 Community detention**

Under the Migration Act, the Minister for Immigration can make a Residence Determination permitting an immigration detainee to live at a specified location in the community. This is known as community detention.

When the Commission began its annual visits in June 2008, there were 377 people in immigration detention, including 44 in community detention.<sup>136</sup> The Commission met with approximately one third of these people during nine separate visits in July and August 2008. This included visits to one unaccompanied minor in Victoria, six single men (three in NSW and one each in Victoria, Western Australia and Queensland), and two families (one in NSW and one on Christmas Island).

This section of the report primarily relates to community detention arrangements on the mainland. Concerns regarding community detention arrangements on Christmas Island are discussed in section 13.6 below.

#### *(a) Advantages of community detention*

The Commission has noted in previous reports that there are significant advantages for people placed in community detention rather than an immigration detention facility.<sup>137</sup> The Commission's 2008 community detention visits confirmed that view. The people the Commission met with were much happier to be in community detention than in an immigration detention facility.

People in community detention are permitted to live in a designated house or apartment in the community. They are generally free to come and go from that

residence, and they are not under physical supervision. This means that they have a much higher degree of privacy and autonomy than people detained in a closed facility. They do their own grocery shopping, prepare their own meals, and generally have freedom to engage with others in the community. The physical environment is highly preferable to an immigration detention centre, as there are no security measures in place.

The Commission is of the view that, generally, people should not be held in any form of immigration detention. Rather, they should be granted a bridging visa to remain in the community while they await an immigration outcome.<sup>138</sup> However, in the event that a person is taken into immigration detention, the Commission believes that community detention is the most appropriate arrangement.

**Recommendation:** The Commission urges DIAC and the Minister for Immigration and Citizenship to make greater use of community detention arrangements, rather than holding people in immigration detention facilities.

*(b) Eligibility criteria*

Currently, the criteria for a person to be considered for community detention are very limited. People in the following circumstances may be referred to the Minister for consideration for a Residence Determination:

- Children and their families.
- Unaccompanied minors.
- An adult with special needs that cannot be cared for in detention.
- An adult with unique and exceptional circumstances such that failure to recognise them would result in hardship and harm to an Australian citizen or Australian family unit.
- A person with a background of torture and trauma.<sup>139</sup>

The Commission has observed in the past that the eligibility criteria unduly restrict the ability of DIAC to refer adult detainees to the Minister for a Residence Determination.<sup>140</sup> The Commission has met with numerous detainees in immigration detention facilities whose physical and mental wellbeing would be greatly assisted by being moved to community detention. This is despite the fact that they might not be considered as meeting the 'unique and exceptional circumstances' test or the 'special needs' test set out in the eligibility criteria.

In addition, the Commission has concerns that some detainees who would meet the 'special needs' criteria because of health or mental health issues are currently not being moved to community detention quickly enough. For example, during the 2008 visits, Commission staff were concerned about a detainee at Villawood who was suffering from a significant medical condition. The individual was receiving ongoing treatment for the condition. However, he spoke of difficulties dealing with his condition and the treatment whilst in a detention centre. Despite his condition, he had not been informed of, or considered for, community detention or an alternative place

of detention. Further, as discussed in section 10.3 above, some concerns were raised with the Commission during its visits about the length of time taken to move detainees with a background of torture or trauma to community detention.

**Recommendations:** The eligibility criteria for referral for a Residence Determination should be broadened. In addition to the current criteria, any person who has been in an immigration detention facility for three months or more should be able to apply for, or be referred for, a Residence Determination.

In the meantime, DIAC should ensure that all immigration detainees who meet one of the current eligibility criteria are referred to the Minister without delay. In particular, any detainees with significant health or mental health issues, or with a background of torture or trauma, should be promptly considered for a Residence Determination.

(c) *Conditions in community detention*

As noted above, the environment for people in community detention is highly preferable to being held in an immigration detention facility. The people the Commission met with were much happier to be in community detention. However, it is important to recognise that, even though they are not in a detention facility, legally these people remain in immigration detention. They are awaiting an immigration outcome, sometimes for many months or even years.

For example, in 2008 the Commission met with a family who had been in community detention for almost two years, a young man who had been in community detention for a year, and an unaccompanied minor who had been in community detention for nine months. For some people, their time in community detention comes on top of time already spent in an immigration detention facility. For example, the Commission met with one man who had been in community detention for three months after spending more than four years at Villawood and the Sydney IRH, and another man who had been in community detention for three months after spending more than two and a half years at Villawood.

For people in community detention, while they await their immigration outcome they face the same uncertainty experienced by detainees in immigration detention facilities. Virtually all of the people the Commission met with expressed anxiety about the ongoing uncertainty.

People in community detention are allowed to live unsupervised in the community. However, they are required to follow a set of conditions, as set out in their Residence Determination. These conditions can be varied for each individual. However, they generally include requirements such as living at a specified address and sleeping at that place every night, reporting to DIAC on a regular basis, and refraining from engaging in paid work or a formal course of study.

Some people told the Commission that they felt restricted by the conditions placed on them. While they are not physically in a detention centre, they still feel as though they are in detention, because they do not have total freedom of movement. They are not able to sleep anywhere besides their stipulated residence or have other people stay at their residence, unless they seek prior approval from DIAC. This restricts their

ability to travel. In response to this concern, DIAC has informed the Commission that it will normally approve short domestic trips of up to eight days away.

People in community detention are provided with a range of support services by the Australian Red Cross, which is contracted by DIAC to provide these services. The Red Cross arranges accommodation, provides basic furnishings and appliances, assists with arranging medical appointments, provides information about community services and classes, and provides general support for the wellbeing of people in community detention. Most of the people the Commission met with were happy with the support being provided by the Red Cross, and found their Red Cross officer to be very helpful. Most people were generally satisfied with their accommodation placement.

People in community detention are provided with a living allowance, which is 89% of the amount Centrelink clients receive. Most people told the Commission that the money was not very much, but they were generally able to cover their basic costs including food, electricity and phone bills. While they are not eligible for Medicare, basic health care costs are covered for people in community detention. In general, people were satisfied with the medical services they were able to access, although one person raised concerns about not being able to use the IHMS card they had been given to access prescription medication at a pharmacy.

*(d) Meaningful activities for people in community detention*

One of the most common concerns raised by people in community detention is that they would like to be able to spend their time doing something meaningful and constructive, particularly some form of work or study. The Commission has raised concerns about this issue in the past.<sup>141</sup>

Currently, people in community detention are not allowed to do paid work or receive a salary. They are provided with accommodation and a basic living allowance, so they will not necessarily be in severe financial hardship. However, the benefits of working go beyond the purely financial. For most people it is a significant source of pride to support themselves and their family. It is also psychologically beneficial in terms of having a constructive daily purpose, and professionally beneficial in terms of increasing knowledge and skills.

People in community detention are allowed to undertake 'suitable unpaid voluntary work', but only if they get prior approval from DIAC.<sup>142</sup> The Commission has heard that, in practice, this approval can be very difficult to obtain. There is currently no formal policy setting out the process for submitting a request or the criteria that DIAC will consider when deciding whether to approve a request. DIAC has informed the Commission that there is a set of principles included in a draft policy manual. However, the manual is yet to be finalised and the draft principles are not publicly available.

The lack of a clear and transparent policy about voluntary work causes problems for people in community detention. The process of applying for DIAC approval is not clear, and there is uncertainty as to what types of voluntary work DIAC will consider as 'suitable.' The Commission has also heard from some people that DIAC's

approval process takes a long time. By the time the approval comes through, the voluntary work placement is not necessarily available anymore.

Further, the Commission has been informed that a request to undertake voluntary work will only be approved by DIAC if the request is accompanied by certification that the organisation has appropriate workers' compensation insurance. The Commission has heard that this requirement causes difficulties in practice. There is no clarity as to exactly what type of insurance coverage is required, and some community based organisations are therefore unsure if their insurance policy will provide adequate coverage for people in community detention who wish to undertake voluntary work.

In terms of study, with the exception of school children, people in community detention are not permitted to enrol in a formal course of study or vocational training. This is particularly concerning given the length of time many people spend in community detention, without the ability to pursue meaningful activities to help them prepare for their future. One young man told the Commission of his frustrations at not being able to pursue a course of study leading to a qualification. He was worried that by the time he got an immigration outcome, he would not be employable. Given that some people spend months or years in community detention, they should be permitted to use this time in a constructive way. For those people permitted to remain in Australia, the knowledge and skills they gain will ultimately be of broader benefit to the Australian community.

**Recommendations:** DIAC should adopt a formal policy, without delay, to clarify its requirement that people in community detention must obtain approval before undertaking unpaid voluntary work. The policy should be clear and transparent. It should set out: the steps required to apply for approval; the criteria to be considered in determining whether a voluntary work placement is 'suitable'; the type of insurance coverage required by the organisation; and the timeframe in which requests will be responded to. DIAC should ensure that all requests are promptly considered and responded to. Reasons should be provided if the request is denied.

DIAC should repeal its policy of prohibiting immigration detainees from undertaking courses of study that lead to a formal qualification. DIAC should allow people in community detention to enrol in substantive education courses at TAFE and other educational or vocational training institutions.

### **13 Immigration detention on Christmas Island**

The Human Rights Commissioner and one Commission staff member conducted a three day visit to Christmas Island in August 2008. This was the Commission's first visit to the island since the former Human Rights Commissioner visited in January 2002.<sup>143</sup>

In the 12 month period leading up to the Commission's visit, there were 22 people detained on the island.<sup>144</sup> At the time of the Commission's visit in August 2008, there was a family of four in community detention on the island, but there were no detainees in the immigration detention facilities. Since the Commission's visit there have been several new groups of asylum seekers detained on the island.

In the past, the Commission has opposed the policy of processing asylum seekers in off-shore facilities, and has called for the repeal of the provisions of the Migration Act relating to excised off-shore places including Christmas Island.<sup>145</sup> These views have been solidified by the Commission's visit to the island and the immigration detention facilities located there.

Christmas Island is very remote from the Australian mainland. The nearest capital city is Perth, more than 2600 kilometres away. With only two flights each week from Perth, reaching the island is logistically difficult and expensive. The island's population is very small - currently around 1000 people. The communications infrastructure is limited, and the island is four hours behind Australian Eastern Standard Time.

These factors combine to create numerous concerns which, in the Commission's view, make Christmas Island an inappropriate place to hold people in immigration detention or to process applications for asylum. The remoteness, infrequent flights and prohibitive costs make it almost inaccessible to external scrutiny bodies, refugee support groups and non-government organisations working on immigration detention issues. The small size and limited capacity of the local community make it difficult for detainees to access services including health care, mental health care, legal assistance, and cultural and religious support.

In addition to these overarching views, the Commission has serious concerns about the immigration detention facilities on Christmas Island, particularly the new detention centre. It is a harsh facility with excessive levels of security.

The Commission's major concerns regarding immigration detention on Christmas Island are set out below. It should be noted that this does not constitute a comprehensive assessment of the various immigration detention facilities on the island, or the services and conditions in those facilities. This is partly due to the fact that there were no detainees in the facilities at the time of the Commission's visit, and therefore some systems were not fully operational. However, it is also reflective of the Commission's position that, regardless of what the detention facilities are like, Christmas Island is not an appropriate location to hold people in immigration detention.

**Recommendation:** People should not be held in immigration detention on Christmas Island.

### **13.1 Excision and off-shore processing**

The Minister for Immigration has stated that the asylum claims of people who arrive unauthorised in excised places will be processed on Christmas Island.<sup>146</sup> The Commission has consistently raised concerns about the practice of processing claims of asylum seekers in off-shore places, including Christmas Island.<sup>147</sup>

Australia's excision legislation creates a dual processing system for asylum seekers that, in the Commission's view, is unjustified. Under this dual system, a person who arrives in an excised place without a valid visa (for example, a person who arrives by boat on Christmas Island) has access to a different refugee status determination



process compared to a person who arrives by air on the mainland, also without a valid visa. Both people can make a claim for asylum. But the asylum seeker on the mainland will have access to some legal processes that the asylum seeker on Christmas Island will not have access to.

People who arrive at excised places, including Christmas Island, are not able to submit a valid visa application under the Migration Act, unless the Minister for Immigration exercises his or her discretion to allow an application to be submitted.<sup>148</sup> This discretion is non-compellable, so a person will have no legal recourse if the Minister decides not to exercise it. Further, people who arrive at excised places, including Christmas Island, are not able to have their cases reviewed in the Refugee Review Tribunal or the Australian courts.<sup>149</sup>

The Commission has raised concerns in the past that the off-shore processing of asylum seekers undermines Australia's international obligations under the Refugee Convention, the ICCPR and the CRC.<sup>150</sup> For example, it undermines the principle of *non-refoulement* by failing to provide adequate legal safeguards to ensure that cases in which a person has a fear of persecution are justly decided. It can also lead to breaches of children's rights.<sup>151</sup> This includes the right of child asylum seekers and refugees to receive appropriate protection and assistance.<sup>152</sup> The principle of non-discrimination in the CRC means that all children seeking asylum are entitled to the same level of protection and assistance – regardless of whether they arrive in an excised place or not.<sup>153</sup>

Until recently, detainees on Christmas Island were not entitled to legal or migration advice or assistance during the immigration process. In July 2008, the Minister for Immigration announced that asylum seekers in excised places will be provided with access to publicly funded advice and assistance through the IAAAS.<sup>154</sup> The Commission welcomes this development, but has ongoing concerns given the lack of lawyers and migration agents located on the island. If DIAC intends to continue to detain people on Christmas Island, it will need to allocate sufficient resources to ensure that all detainees on the island are provided with comprehensive legal and migration advice and assistance in person.

The Minister also announced in July 2008 that asylum seekers on Christmas Island will be provided with access to independent review of negative refugee status assessment decisions, and external scrutiny by the Immigration Ombudsman.<sup>155</sup> These are both positive developments. However, it has not yet been made clear who will conduct independent merits reviews, and what specific powers the Ombudsman will have with regard to detainees on Christmas Island. There is also a lack of clarity and transparency regarding how the refugee status assessment process is being conducted on Christmas Island.

**Recommendations:** The Australian Government should repeal the provisions of the Migration Act relating to excised off-shore places. All unauthorised arrivals who make claims for asylum should have those claims assessed through the refugee status determination process on the Australian mainland.

### **13.2 Health care for detainees on Christmas Island**

The Commission has concerns about the availability of health care for detainees on Christmas Island. Given the small size of the island's population, local health care services are very limited. These services could only meet the health care needs of a small number of immigration detainees without impacting on the availability of resources for the local community.

At the time of the Commission's visit, DIAC was in negotiations with the Indian Ocean Territories Health Service (IOTHS) with regard to the provision of basic health services for immigration detainees on the island. At the time, it was not clear what arrangements were in place to ensure that an adequate level of medical staff and resources would be provided if a significant number of immigration detainees arrived.

Since the Commission's visit, DIAC has informed the Commission that doctors, nurses and specialist health care providers will be transported to Christmas Island when required to provide additional support for the delivery of health care services to immigration detainees. No details have been provided, however, as to the number or type of health care staff that will be made available, or how quickly detainees will be able to access these services.

There are some medical needs that cannot be met on the island at all. For example, there is currently no capacity for a pregnant immigration detainee to give birth on Christmas Island; they will need to be flown to the mainland. DIAC will need to ensure that any pregnant immigration detainees are provided with appropriate pre-natal and post-natal care, and that any immigration detainee flown to the mainland to give birth is provided with appropriate medical and personal support. This should include ensuring that the woman's husband, partner or other personal care-giver is permitted to travel with her to attend the birth and provide support afterwards.

### **13.3 Mental health care for detainees on Christmas Island**

The Commission has significant concerns about the ability of immigration detainees on Christmas Island to access adequate mental health and psychological support services. This contributes to the Commission's view that the island is not an appropriate location for holding immigration detainees, particularly asylum seekers who might have a background of torture or trauma.

There is currently almost no local capacity to meet the mental health or psychological needs of immigration detainees on the island. The local health service has only one part-time psychologist. There is no suitable facility for accommodating a detainee in need of admission to a psychiatric facility. Further, the local community is not large enough or sufficiently resourced to be able to provide adequate psychological, cultural or religious support to any significant number of immigration detainees.

When the Commission visited Christmas Island, there were no PSS or IHMS mental health staff there. This was presumably because, at the time, there were four people in community detention but none in the immigration detention facilities. However, the Commission was concerned that there did not appear to be clear arrangements in place to ensure that, if new detainees arrived, they would be provided with sufficient

access to general counsellors, psychologists, psychiatrists and/or specialised torture and trauma counsellors.

The Commission is also concerned that the immigration detention facilities on Christmas Island are inappropriate for detainees at risk of self-harm and detainees with a background of torture or trauma. This view particularly applies to the new Christmas Island IDC, discussed in section 13.5 below. The centre is a high-security facility with compounds surrounded by cage-like structures and high wire fences. The medical clinic has observation rooms for detainees on SASH observation. However, when the Commission visited, the rooms did not appear to be safe for people at risk of self-harm. The attached outdoor area is also inappropriate for people with mental health concerns. It is a very small concrete courtyard enclosed in cage-like fencing, with views over wire fences.

### **13.4 Access to communication facilities**

The remoteness of Christmas Island and the limited communications infrastructure make it difficult for immigration detainees to communicate effectively and efficiently with legal representatives, family members and community support services on the mainland or elsewhere. Internet service is generally much slower than on the mainland, and the mobile phone network is very limited. The time difference between the island and the east coast of Australia exacerbates communication difficulties.

Added to this overarching issue, the Commission is concerned about the lack of access to adequate communications equipment at the immigration detention facilities on the island. In particular, at the time of the Commission's visit, the fenced compound at the Phosphate Hill IDC had no internet facilities or public phones for use by detainees. The same situation applied at the construction camp facility. While there were no detainees at the Phosphate Hill IDC or the construction camp at the time, there were detainees at both facilities approximately two months later.

Since the Commission's visit, DIAC has stated that internet connection is available at the construction camp, and they are working to improve internet services at the camp and the Phosphate Hill IDC. DIAC has also informed the Commission that four previously disconnected phone lines at the construction camp have been reconnected. However, it is not clear whether detainees are being provided with open access to those phones, or whether they must make a specific request and arrangement with a detention officer to make or receive a phone call. This could be intimidating for some detainees, and for some it would be difficult to do without an interpreter present. Detainees should be provided with open access to phones throughout the day, and they should be able to make and receive calls in a private environment.

The remoteness of Christmas Island and the difficulties with communication contribute to the Commission's view that the island is not an appropriate location for holding people in immigration detention. However, if DIAC intends to continue to use Christmas Island for immigration detention purposes, it should ensure that all detainees are provided with adequate access to phones, internet, mail and fax machines.

### **13.5 Immigration detention facilities on Christmas Island**

#### *(a) Christmas Island Immigration Detention Centre*

The new Christmas Island IDC is located in what is potentially one of the most remote parts of Australia. To get there from the east coast of Australia, one must catch a five hour flight to Perth, catch another four to five hour flight to Christmas Island, then drive into the wilderness for approximately twenty minutes. The centre is located at North West Point, about 17 kilometres away from the small town area on Christmas Island.

Construction of the centre started in 2005 and was completed in late 2008. It is a massive facility, with the capacity to hold up to 400 people in normal conditions, or up to 800 people in surge conditions. One side of the facility is comprised of separate accommodation compounds. The other side is made up of several large compounds containing recreation and education facilities, as well as administration areas, induction areas, and medical facilities. The centre is so large that staff members drive golf buggies to get around it.

The Commission has serious concerns about the Christmas Island IDC. It is a formidable facility that is inappropriate for accommodating asylum seekers, particularly those fleeing situations of torture or trauma. The extreme levels of security also seem unnecessary given the remote location. The Commission's major concerns include, but are not limited to, the following:

- The Christmas Island IDC looks and feels like a high-security prison. While some of the facilities are of good quality, they are contained within an oppressive series of caged and fenced compounds and walkways. The centre is surrounded by high wire fences, and within it, each compound is contained within its own fences. Inside the centre, despite there being some open grassy areas, the excessive amount of wire fencing surrounding each compound makes one feel caged in.
- The bedrooms are small, dim and claustrophobic. The windows are obscured by metallic mesh grills.
- The highest security section of the centre, the management support unit, looks and feels extremely harsh and punitive.
- The observation rooms in the medical area do not appear to be safe for people at risk of self-harm. The outdoor area linked to the observation rooms is inappropriate for people at risk of self-harm.
- The location of the centre makes it difficult for locals to access in order to visit or provide support to detainees.

Given these concerns, the Commission is of the view that the Christmas Island IDC should not be used to hold people in immigration detention. The Commission is aware that the new centre cost approximately \$396 million to construct, and that the estimated cost of maintaining it while empty is approximately \$25 million per year. The Commission acknowledges that the current Government was not responsible for

the cost of constructing the centre. However, it is unfortunate that such a significant sum was spent on building an inappropriate facility in an inappropriate location, rather than improving or replacing the ageing immigration detention facilities on the mainland.

**Recommendation:** The new Christmas Island IDC should not be used to hold people in immigration detention.

*(b) Phosphate Hill Immigration Detention Centre*

The Phosphate Hill IDC was opened in 2001. It consists of a series of demountable buildings, some open grassy areas, two large open air cabana areas and a children's playground. The centre is located across the road from the community recreation centre, approximately five kilometres from the town, up a very steep hill.

The centre used to be surrounded by high wire fencing and it was divided into three compounds. The wire fences were removed from two of the compounds earlier this year, leaving one fenced compound and a larger unfenced area (which has since been fenced with a residential-style fence). The facility has capacity for approximately 100 people.

The Commission has significant concerns about the facilities at the Phosphate Hill IDC. At the time of the Commission's visit, major concerns included the following:

- The standard of accommodation is low. The bedrooms are contained in long rows of demountables. The bedrooms are tiny and claustrophobic, with four beds (two bunks) in a very small space. The windows look onto metal bars.
- Detainees have no access to the internet in the centre. Detainees in the fenced compound do not have access to public phones either.
- The fenced compound has very few recreational facilities for detainees.

As noted above, the Commission is of the view that people should not be held in immigration detention on Christmas Island at all. However, in the event that DIAC continues this practice, the Commission notes that the facilities at the Phosphate Hill IDC are less objectionable than the new Christmas Island IDC. The facilities at the Phosphate Hill IDC are of a relatively low standard, but the more central location and much lower degree of security are preferable.

However, the nature of the facilities at the Phosphate Hill IDC make the centre appropriate for only the shortest of stays. If immigration detainees are held at the centre at all, it should only be for initial processing for up to a few days. During this time, detainees should be provided with access to public phones, the internet, health and mental health services, recreational facilities, and legal assistance.

*(c) Construction camp*

Across the road from the Phosphate Hill IDC is a facility that was formerly used by the construction workers who built the new Christmas Island IDC. This facility, the

construction camp, is now being used by DIAC as an alternative place of immigration detention.

The construction camp, like the Phosphate Hill IDC, consists of a series of demountable buildings. The area is surrounded by a residential style fence.

The Commission has significant concerns about the facilities at the construction camp. At the time of the Commission's visit, major concerns included the following:

- The area has no grass and very few trees. The facility consists mostly of metal, concrete and gravel.
- The bedrooms are very small and claustrophobic.
- There were no public phones and no internet access in the facility.

As noted above, the Commission is of the view that people should not be held in immigration detention on Christmas Island at all. However, in the event that DIAC continues this practice, the Commission notes that the facilities at the construction camp are less objectionable than the new Christmas Island IDC. The facilities at the camp are of a relatively low standard, but the more central location and much lower degree of security are preferable.

However, the nature of the facilities at the construction camp make the facility appropriate for only the shortest of stays. If immigration detainees are held at the camp at all, it should only be for initial processing for up to a few days. During this time, detainees should be provided with access to public phones, the internet, health and mental health services, recreational facilities, and legal assistance.

At the time of its visit, the Commission was informed by DIAC that the facilities at the construction camp would not be used for long-term accommodation of immigration detainees, but for initial processing of new arrivals. We were informed that this would take a few days. The Commission notes with concern that, since that time, immigration detainees including children have been held at the facility for a number of weeks. The Commission is of the view that children should not be held in immigration detention on Christmas Island at all. However, if DIAC intends to continue this practice, children should not be detained at the construction camp (or the Phosphate Hill IDC or the new Christmas Island IDC). They should be accommodated with their family members in the community based accommodation options (which are discussed in section (d) below). This issue is discussed further in section 14.4 of this report.

*(d) Community based accommodation*

DIAC has access to community based accommodation on Christmas Island, which could be used for people in community detention or as places of alternative immigration detention.

DIAC has ten duplex houses that could be used for families or small groups. Each duplex has three bedrooms, a living room, a kitchen and dining area, laundry facilities, a bathroom, and a small back courtyard area. The houses are furnished and the standard of accommodation is much higher than in any of the other

immigration detention facilities on the island. The duplexes are located at Drumsite, the closest of the accommodation options to the local school. However, this is towards the bottom of the hill, so getting up to the community recreation centre or the hospital without a car would be very difficult. It is also a significant walk to get to the town area.

DIAC also has approximately 160 bedrooms available in bedsit units. The units are located at Poon Saan, about halfway down the hill between the Phosphate Hill IDC and the town area. Eight of the rooms have been turned into interview rooms. Each bedsit unit is like a small studio apartment with a doubled bed, TV, table and chairs, kitchenette and a combined bathroom and laundry room. The accommodation is basic, but of a much higher standard than the other immigration detention facilities on the island. The bedsits are much smaller than the duplexes. However, some of them have adjoining doors, so two units could be joined together for use by small groups or families.

The Commission is of the view that people should not be held in immigration detention on Christmas Island at all. However, in the event that DIAC continues this practice, the Commission notes that the duplexes and bedsits are the least objectionable accommodation options for immigration detainees on the island, and should be used as the first preference.

### **13.6 Community detention on Christmas Island**

During its visit to Christmas Island, the Commission met with a family in community detention. The Commission also met with a range of local community members and representatives. These discussions helped to inform the Commission about the services available on the island and the challenges that people in community detention will face.

People in community detention on Christmas Island will be accommodated in one of the community based accommodation options discussed in section 13.5(d) above. As noted in that section, if DIAC continues to hold immigration detainees on Christmas Island, these are the least objectionable accommodation options for detainees and should be used as the first preference.

During the Commission's visit it was apparent that people in community detention on the island will face significant challenges. These will include transport issues. There is no public transport system. There is one taxi, and it only runs part time. Getting around the island without a car is very difficult, given the steep hills. A community bus has been ordered, but not yet delivered to the island. It is not clear what the capacity or frequency of that service will be once it begins.

The Commission met with some dedicated local individuals on the island who have generously given their time and personal resources to provide various forms of support to immigration detainees in the past. While the Commission does not detract from these individuals' efforts in any way, the Commission is concerned that the small size and limited capacity of the local community will impede the ability of people in community detention on the island to access various services and forms of support that would be much easier to access on the mainland. This includes access

to community level recreational programs and educational classes, health and mental health services, legal assistance, and cultural and religious support.

If DIAC intends to continue to place people in community detention on Christmas Island, it will need to ensure that an adequate level of support is provided to those people. At the time of the Commission's visit to the island, there did not appear to be an adequate system of support in place. The family in community detention had no formal care plan, despite having been there for eight months. DIAC did not have arrangements in place for the Red Cross to provide the same support services it provides to people in community detention on the mainland. In the absence of this, it appeared that support services for people in community detention on the island were being arranged by DIAC or GSL on an ad hoc basis.

Since the Commission's visit, a care plan has been arranged for the family the Commission met with. However, in the intervening period, there have been a number of new arrivals on the island, some of whom have been placed in community detention. DIAC has informed the Commission that it is exploring possibilities to expand the provision of services to people in community detention on the island. This should be done without delay. In the Commission's view, adequate support cannot be provided by staff based on the mainland; it should be provided in person. Given the remoteness of the island, the limited communications capacity, and the limited support services available locally, DIAC should allocate sufficient resources to enable support staff to be based on Christmas Island to assist people in community detention.

## **14 Children in immigration detention**

In 2004, the Commission released *A last resort?*, the report of its national inquiry into children in immigration detention. The inquiry found that Australia's mandatory detention laws are inconsistent with the human rights of children, as protected by the *Convention on the Rights of the Child (CRC)*.<sup>156</sup>

In 2005, the Migration Act was amended to affirm the principle that children should only be detained as a measure of last resort.<sup>157</sup> Now, children are no longer held in immigration detention centres. Many children are either given a bridging visa, or placed in community detention. However, some children are still held in other immigration detention facilities. This includes immigration residential housing, immigration transit accommodation and alternative places of detention. The Commission has significant concerns about this practice. The Commission also has ongoing concerns about the lack of adequate legal protections for children under the Migration Act. The Commission's major concerns are summarised in the sections below.

### **14.1 Overarching principles**

The CRC comprehensively protects the human rights of all children. Human rights of particular importance for children subject to immigration detention include the following:

The best interests of the child should be a primary consideration in all actions



concerning children. <sup>158</sup>
The detention of a child should be used only as a measure of last resort and for the shortest appropriate period of time. Children must not be deprived of their liberty unlawfully or arbitrarily. <sup>159</sup>
No child should be subjected to torture or cruel, inhuman or degrading treatment or punishment. <sup>160</sup>
Children in detention have the right to be treated with humanity and respect for their inherent dignity. <sup>161</sup>
Children in detention must be able to challenge the legality of their detention before a court or other competent, independent and impartial authority. <sup>162</sup>
Children have the right to enjoy, to the maximum extent possible, development and recovery from past trauma. <sup>163</sup>
Asylum-seeking and refugee children are entitled to appropriate protection and assistance. <sup>164</sup>
Children have a right to non-discrimination. <sup>165</sup>

All people, including children, have a right not to be subjected to arbitrary or unlawful detention.<sup>166</sup> However, the protection afforded to children under the CRC goes beyond that. For children, immigration detention should only be used as a measure of last resort and for the shortest appropriate period of time.<sup>167</sup>

While there is no set definition of the 'shortest appropriate period', when read with the 'last resort' principle, it is clear that the Australian Government must consider any less restrictive alternatives that may be available to an individual child in deciding whether and/or for how long a child is detained. Detention of children should only occur in exceptional cases. When it does occur, the detention period should be as short as possible.<sup>168</sup>

## **14.2 Lack of legal protections for children**

The Commission has ongoing concerns that the Migration Act provides insufficient protection against breaches of children's human rights.

The Commission welcomed the Minister's announcement in July 2008 that one of the Government's key immigration values is that children will not be detained in an immigration detention centre.<sup>169</sup> However, this value should be embedded in legislation. While section 4AA of the Migration Act affirms the principle that children should only be detained as a measure of last resort, this is a statement of principle only and does not create legally enforceable rights. As noted above, while children are no longer detained in immigration detention centres, they continue to be detained in other immigration detention facilities.

The Commission is concerned that child detainees are unable to challenge the lawfulness of their detention in a court or another independent authority. This

breaches fundamental rights under the CRC and the ICCPR.<sup>170</sup> In *A last resort?*, the Commission recognised that, although it may be necessary to briefly detain children for identity, health and security checks, international law imposes a presumption against any detention of children even for these purposes. Therefore, to comply with the CRC, the Commission found that the need for, and period of, detention of children must be closely supervised by an independent body.<sup>171</sup>

The Commission recommended that Australia's laws should require independent assessment of the need to detain children within 72 hours of their initial detention. Similar to bail application procedures in the juvenile justice system, if DIAC has been unable to complete its security checks within 72 hours, it might ask a tribunal or court to order continuing detention of a particular child and their parents until those checks are completed.<sup>172</sup>

The Commission also recommended that Australia's laws should provide for prompt and periodic review of the legality of continuing detention. This would be in line with article 37(d) of the CRC, which requires that there be an opportunity to seek review of any decision to detain in 'a court or other competent, independent and impartial authority'. Such review is most appropriately provided by a court.<sup>173</sup>

**Recommendation:** The Australian Government should implement in full the recommendations made by the Commission in the report of its national inquiry into children in immigration detention, *A last resort?*<sup>174</sup> These include the following:

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

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

provide a readily available mechanism for the release of children and their parents.

### **14.3 Children in immigration residential housing and immigration transit accommodation**

While children are no longer detained in immigration detention centres, some children are held in immigration residential housing and immigration transit accommodation. These facilities provide a much higher standard of accommodation than the immigration detention centres, as discussed in section 12 above. However, they are still closed detention facilities. Children and their families are not free to come and go as they please. Children might be permitted to attend school or to go on external excursions, but these must be supervised and pre-arranged. In addition, there are a mix of detainees accommodated in these facilities, some of whom it might not be appropriate or safe for children to mix with.

During the Commission's 2008 visits to the immigration residential housing facilities, there was a family of five at the Sydney IRH with a baby and a five year old child. The family had been detained for three months. The parents spoke of the five year old child's confusion and distress about being detained. There were no children at the Perth IRH when the Commission visited. However, we were informed that there had been two families with children at the Perth IRH prior to our visit. There have also been children at the Perth IRH since then.<sup>175</sup>

At the time of the Commission's 2008 visits to the immigration transit accommodation facilities in Brisbane and Melbourne, DIAC policy was that children and their families would not be held in these facilities. However, during the Commission's visits we were informed that this policy was being reconsidered. Since the Commission's visits, children have been accommodated at the ITA facilities in both Brisbane and Melbourne.<sup>176</sup>

The Commission has significant concerns about children being held in immigration detention facilities, including the IRH and ITA facilities. While the physical environment is highly preferable to the immigration detention centres, the psychological effects of being detained are similar. Many of the concerns raised by the Commission in *A last resort?* with respect to detaining children in immigration detention centres also apply to detaining children in immigration residential housing or immigration transit accommodation. For children and their families, these facilities are inappropriate for anything but the briefest of periods.

As noted above, under section 4AA of the Migration Act, children should only be detained as a measure of last resort. Under the CRC, children should only be detained as a measure of last resort and for the shortest appropriate period of time.<sup>177</sup> These principles apply not only to detention in an immigration detention centre, but also to detention in other facilities including immigration residential housing and immigration transit accommodation.

This means that DIAC must consider any less restrictive alternatives available to an individual child before deciding to place that child in one of the IRH or ITA facilities.

Children should not be placed in these facilities as a matter of course; it should only take place in exceptional cases. The detention period should be as short as possible.<sup>178</sup> As discussed in section 14.2 above, the initial decision to detain a child should be subject to independent review within 72 hours, and any ongoing detention should be subject to prompt and periodic review by a court.

**Recommendation:** Children should only be detained in an IRH or ITA facility as a measure of last resort and for the shortest appropriate period of time. DIAC should consider any less restrictive alternatives that may be available to an individual child before deciding to place that child in an IRH or ITA facility. Until the recommendation in section 14.2 of this report is implemented and a system of independent review is established, the absolute maximum time of detention in these cases should be four weeks for a child with a family member, or two weeks for an unaccompanied child.

#### **14.4 Children in alternative places of detention**

##### *(a) Darwin*

In Darwin, children are not detained at the Northern IDC. They are held in an alternative place of detention, usually a city hotel where DIAC has a number of rooms reserved on an ongoing basis. Child detainees in Darwin are normally minors who have been apprehended along with adult crew members on boats suspected of illegal fishing activities in Australia's northern waters. In the year between September 2007 and August 2008, there were 1145 alleged 'illegal foreign fishers' detained in Darwin, including 123 minors.<sup>179</sup>

In its 2006 inspection report, the Commission raised significant concerns about child detainees spending their days at the Northern IDC, and the lack of appropriate arrangements in place for child detainees in Darwin.<sup>180</sup> In its 2007 report, the Commission noted that children were no longer spending significant amounts of time at the Northern IDC, and various improvements had been made to the services and facilities available to child detainees in Darwin. These included establishing a schedule of recreational activities, and employing a youth worker to supervise the children.<sup>181</sup>

During the Commission's 2008 visit, there were no children in immigration detention in Darwin. The Commission therefore did not visit the hotel where child detainees are normally accommodated, as it has done previously. However, the Commission did conduct meetings with DIAC and GSL management at the Northern IDC, and with the GSL youth worker responsible for organising and conducting recreational activities and excursions for child detainees.

The Commission was pleased to hear that, since our 2007 visit, changes have been put in place so that child detainees do not spend any time inside the Northern IDC. In 2007, children were still spending some time in the detention centre for initial processing and for medical appointments. This is no longer the case. Children now go through initial processing in an area outside the detention centre fence. Likewise, children no longer access medical services inside the detention centre, but use a clinic room outside the centre fence.

The Commission was also pleased to hear that the excursion program for minors is still in place. Children held in detention at the hotel are generally taken out on a recreational excursion at least once each day. When there are children and adults from the same fishing vessel, GSL arranges combined excursions so the children can see the adult members from their crew. We were informed that they aim to hold three mixed excursions each week.

Child detainees at the hotel have access to recreational facilities including a swimming pool (used under adult supervision), TV and board games. The youth worker organises internal recreational activities including art and craft sessions.

Children held in detention at the hotel have access to phones. Each child is allowed to make a free phone call to a family member every day. However, the Commission was concerned to hear that the children do not have access to the internet at the hotel. This would provide them with an additional means of communicating with family members and friends. In response to this concern, DIAC informed the Commission that arrangements would be made to provide access to the internet for any minors accommodated at the hotel in future.

At the time of the Commission's visit to Darwin, construction had started on a new facility that will be used to accommodate child detainees in future, instead of placing them at a hotel. The facility will be located on the same property as the Northern IDC, but outside the detention centre fence. The facility will be surrounded by a residential style fence. It will have four bedrooms, with an overall capacity to accommodate 16 minors.

As noted above, children should only be detained as a measure of last resort and for the shortest appropriate period of time.<sup>182</sup> These principles apply not only to detaining children in an immigration detention centre, but also to detaining them in alternative places of immigration detention such as the new juvenile facility being constructed in Darwin. This means that DIAC must consider any less restrictive alternatives available to an individual child before deciding whether to place that child in such a facility.

At the time of the Commission's 2008 visit, it was expected that the new facility would be completed before the end of the year. The Commission will inspect the facility during its 2009 annual visit to the Northern IDC.

*(b) Christmas Island*

Since the Commission's visit to Christmas Island in August 2008, the construction camp facility (discussed in section 13.5(c) above) has been used to hold children in immigration detention for a number of weeks.

DIAC classifies the construction camp as 'alternative temporary detention in the community.'<sup>183</sup> The Commission is of the view that this is not accurate. The construction camp is not community based accommodation; it is a facility being specifically used as a place of immigration detention. In many respects it is not dissimilar to the Phosphate Hill IDC across the road.

The Commission is of the view that children should not be held in immigration detention on Christmas Island at all. However, if DIAC intends to continue this

practice, children should not be held at the construction camp; they should be accommodated with their family members in the community based accommodation options discussed in section 13.5(d) above.

As noted above, children should only be detained as a measure of last resort and for the shortest appropriate period of time.<sup>184</sup> These principles apply to detaining children in alternative places of immigration detention such as the construction camp on Christmas Island. This means that DIAC must consider any less restrictive alternatives available to an individual child before deciding whether to place that child in the construction camp facility. DIAC has access to community based accommodation on Christmas Island, including duplex houses and bedsit units. These are less restrictive options than the construction camp, and should be used to accommodate any children and their families detained on Christmas Island.

**Recommendation:** Children should not be held in immigration detention on Christmas Island. However, if DIAC intends to continue this practice, children should be accommodated with their family members in DIAC's community based accommodation. They should not be detained at the construction camp facility, the Phosphate Hill IDC or the new Christmas Island IDC.

## **14.5 Unaccompanied minors**

The CRC requires Australia to ensure that children lacking the support of their parents, especially those who are seeking asylum, receive the extra help they need to guarantee the enjoyment of their human rights.<sup>185</sup>

Currently in Australia, unaccompanied minors might be held in detention in immigration residential housing, immigration transit accommodation, community detention, or an alternative place of immigration detention.

In 2008, the Commission met with one unaccompanied minor in community detention, and another young person in community detention who had previously been an unaccompanied minor, but who had recently turned 18. Both of these young people had been in community detention for longer than nine months.

During its visit to Christmas Island, the Commission was concerned that there did not appear to be arrangements in place to provide appropriate support to unaccompanied minors that might arrive. Since then, the Commission has been concerned by reports that a number of unaccompanied minors arrived on the island and were held in immigration detention at the construction camp facility.

The Commission has previously raised concerns about arrangements for the care of unaccompanied minors.<sup>186</sup> Many of the concerns raised by the Commission in *A last resort?* remain valid.<sup>187</sup> In particular, the Commission has ongoing concerns about the practice of appointing a DIAC officer to be the legal guardian of an unaccompanied minor. In *A last resort?* the Commission noted that this arrangement created a conflict of interest for DIAC, and recommended that an independent guardian should be appointed for unaccompanied children.<sup>188</sup>

The UNHCR *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum* recommend that an independent and formally accredited organisation should appoint a guardian or adviser for each unaccompanied child.<sup>189</sup> The UNHCR Guidelines also state that unaccompanied children should not be kept in immigration detention.<sup>190</sup> However, in the event that detention does occur, it should be in conditions that are appropriate for children.<sup>191</sup>

In *A last resort?* the Commission discussed possible guardianship models for unaccompanied children.<sup>192</sup> Part of the role of a guardian would be to seek to ensure that an unaccompanied child is not held in immigration detention, or if the child is detained, it is for the shortest possible period of time and in the best possible conditions.<sup>193</sup>

In its 2007 inspection report, the Commission raised concerns about inadequate coordination between DIAC and state child welfare authorities regarding care for unaccompanied minors in immigration detention. The Commission suggested that the respective roles and responsibilities of DIAC and state authorities should be formally clarified, and that these roles should be clearly communicated to unaccompanied minors and their representatives or carers.<sup>194</sup> The Commission reiterates these suggestions.

**Recommendation:** The Australian Government should implement the recommendation made by the Commission in *A last resort?* that an independent guardian should be appointed for unaccompanied children and they should receive appropriate support.<sup>195</sup>

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<sup>1</sup> Human Rights and Equal Opportunity Commission, *Summary of observations following the inspection of mainland immigration detention facilities 2007* (December 2007) (2007 Summary of Observations), at

[http://www.humanrights.gov.au/pdf/human\\_rights/asylum\\_seekers/summary\\_idc\\_report07.pdf](http://www.humanrights.gov.au/pdf/human_rights/asylum_seekers/summary_idc_report07.pdf); Human Rights and Equal Opportunity Commission, *Summary of observations following the inspection of mainland immigration detention facilities 2006* (January 2007) (2006 Summary of Observations), at [http://www.humanrights.gov.au/pdf/human\\_rights/HREOC\\_IDC\\_20070119.pdf](http://www.humanrights.gov.au/pdf/human_rights/HREOC_IDC_20070119.pdf).

<sup>2</sup> At [http://www.humanrights.gov.au/human\\_rights/immigration/index.html](http://www.humanrights.gov.au/human_rights/immigration/index.html) (viewed 1 December 2008).

<sup>3</sup> C Evans, *New Directions in Detention – Restoring Integrity to Australia’s Immigration System* (Speech delivered at the Centre for International and Public Law Seminar, ANU, Canberra, 29 July 2008).

<sup>4</sup> The Executive Committee of the United Nations High Commissioner for Refugees Conclusion No. 44 states that where the detention of asylum seekers is deemed necessary, it should only be used to verify identity; to determine the elements on which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum seekers have destroyed their travel and/or identification documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order. See United Nations High Commissioner for Refugees, Executive Committee, *Conclusion No. 44 (XXXVII) - Detention of Refugees and Asylum Seekers* (13 October 1986). At <http://www.unhcr.org/refworld/docid/3ae68c43c0.html>.

<sup>5</sup> The Commission had made this recommendation and proposed potential alternative models for immigration detention in past reports. See, for example Human Rights and Equal Opportunity Commission, *A last resort? National Inquiry into Children in Immigration Detention* (April 2004), sections 17.3 and 17.4, at

[http://www.humanrights.gov.au/human\\_rights/children\\_detention\\_report/report/PDF/alr\\_complete.pdf](http://www.humanrights.gov.au/human_rights/children_detention_report/report/PDF/alr_complete.pdf);

Human Rights and Equal Opportunity Commission, *Those who've come across the seas – Detention of unauthorised arrivals* (May 1998), part 6, at [http://www.humanrights.gov.au/pdf/human\\_rights/asylum\\_seekers/h5\\_2\\_2.pdf](http://www.humanrights.gov.au/pdf/human_rights/asylum_seekers/h5_2_2.pdf).

<sup>6</sup> The 2000 *Immigration Detention Guidelines* state that any use of restraints on detainees being transported outside a detention centre should be commensurate with an assessment of the individual's likelihood and capacity to abscond. On the use of restraints in detention, the Guidelines provide that restraints should only be used to prevent a detainee from injuring themselves or another, damaging property or escaping. They should only be used by order of the manager of the detention centre; where all other control methods have failed; for no longer than is necessary; and only to the extent reasonably necessary for the purpose. See Human Rights and Equal Opportunity Commission, *Immigration Detention Guidelines* (March 2000) (*Immigration Detention Guidelines*), sections 10.1 and 18.10, at [http://www.humanrights.gov.au/pdf/human\\_rights/asylum\\_seekers/idc\\_guidelines.pdf](http://www.humanrights.gov.au/pdf/human_rights/asylum_seekers/idc_guidelines.pdf). The *Standard Minimum Rules for the Treatment of Prisoners* state that restraints should be removed when the prisoner appears before a judicial or administrative authority. See *Standard Minimum Rules for the Treatment of Prisoners* (1955), rule 33(a), at [http://www.unhchr.ch/html/menu3/b/h\\_comp34.htm](http://www.unhchr.ch/html/menu3/b/h_comp34.htm).

<sup>7</sup> See, for example Human Rights and Equal Opportunity Commission, *A last resort? National Inquiry into Children in Immigration Detention* (April 2004); Human Rights and Equal Opportunity Commission, *Those who've come across the seas – Detention of unauthorised arrivals* (May 1998).

<sup>8</sup> Human Rights and Equal Opportunity Commission, *Submission to the Joint Standing Committee on Migration Inquiry into Immigration Detention in Australia* (4 August 2008) (Commission submission to Joint Standing Committee on Migration). At [http://www.humanrights.gov.au/legal/submissions/2008/20080829\\_immigration\\_detention.html](http://www.humanrights.gov.au/legal/submissions/2008/20080829_immigration_detention.html).

<sup>9</sup> Human Rights and Equal Opportunity Commission, *A last resort? National Inquiry into Children in Immigration Detention* (April 2004) (A last resort). At [http://www.humanrights.gov.au/human\\_rights/children\\_detention\\_report/report/PDF/alr\\_complete.pdf](http://www.humanrights.gov.au/human_rights/children_detention_report/report/PDF/alr_complete.pdf).

<sup>10</sup> Human Rights and Equal Opportunity Commission, *Those who've come across the seas – Detention of unauthorised arrivals* (May 1998) (*Those who've come across the seas*). At [http://www.humanrights.gov.au/pdf/human\\_rights/asylum\\_seekers/h5\\_2\\_2.pdf](http://www.humanrights.gov.au/pdf/human_rights/asylum_seekers/h5_2_2.pdf).

<sup>11</sup> For general information on the Commission's complaint handling functions, see [http://www.humanrights.gov.au/complaints\\_information/index.html](http://www.humanrights.gov.au/complaints_information/index.html) (viewed 1 December 2008). For reports of complaints regarding alleged breaches of human rights under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth), see [http://www.humanrights.gov.au/legal/HREOCA\\_reports/index.html](http://www.humanrights.gov.au/legal/HREOCA_reports/index.html) (viewed 1 December 2008).

<sup>12</sup> *Migration Act 1958* (Cth). At <http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200401592?OpenDocument> (viewed 27 November 2008).

<sup>13</sup> See *Immigration Detention Guidelines*, note 6, section 1.1.

<sup>14</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) (ICCPR). At [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm).

<sup>15</sup> *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 12 October 1984, 1465 UNTS 85 (entered into force 16 June 1987) (Convention against Torture). At <http://www2.ohchr.org/english/law/cat.htm>.

<sup>16</sup> *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954) (Refugee Convention). At [http://www.unhchr.ch/html/menu3/b/o\\_c\\_ref.htm](http://www.unhchr.ch/html/menu3/b/o_c_ref.htm).

<sup>17</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) (CRC). At <http://www.unhchr.ch/html/menu3/b/k2crc.htm>.

<sup>18</sup> Refugee Convention, art 33(1). This obligation is also implied in the ICCPR, art 6 and 7, the Convention against Torture, art 3 and the CRC, art 6 and 37.

<sup>19</sup> ICCPR, art 9(1); CRC, art 37(b).

<sup>20</sup> ICCPR, art 9(4); CRC, art 37(d).

<sup>21</sup> ICCPR, art 10(1); CRC, art 37(c).

<sup>22</sup> ICCPR, art 7; CRC art 37(a).

<sup>23</sup> CRC, art 37(b).

<sup>24</sup> CRC, art 3.

<sup>25</sup> CRC, art 37(d); *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (1988), principles 13, 14 and 17, at [http://www.unhchr.ch/html/menu3/b/h\\_comp36.htm](http://www.unhchr.ch/html/menu3/b/h_comp36.htm).



<sup>26</sup> ICCPR, art 2(1), 26; CRC art 2(1).

<sup>27</sup> *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (1988). At [http://www.unhchr.ch/html/menu3/b/h\\_comp36.htm](http://www.unhchr.ch/html/menu3/b/h_comp36.htm).

<sup>28</sup> *Standard Minimum Rules for the Treatment of Prisoners* (1955). At [http://www.unhchr.ch/html/menu3/b/h\\_comp34.htm](http://www.unhchr.ch/html/menu3/b/h_comp34.htm).

<sup>29</sup> *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (1990). At [http://www.unhchr.ch/html/menu3/b/h\\_comp37.htm](http://www.unhchr.ch/html/menu3/b/h_comp37.htm).

<sup>30</sup> United Nations High Commissioner for Refugees, *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers* (February 1999). At <http://www.unhcr.org.au/pdfs/detentionguidelines.pdf>.

<sup>31</sup> Immigration Detention Guidelines, note 6.

<sup>32</sup> The Commission has made this recommendation on several prior occasions. See, for example Commission submission to Joint Standing Committee on Migration, note 8, recommendation 11; A last resort, note 9, recommendation 4; Human Rights and Equal Opportunity Commission, *Comments on Australia's Compliance with the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* (April 2008), para 24, at [http://www.hreoc.gov.au/legal/submissions/2008/080415\\_torture.html](http://www.hreoc.gov.au/legal/submissions/2008/080415_torture.html) (viewed 1 December 2008).

<sup>33</sup> It is noted, however, that s 13(1) of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) gives the Commission the power to 'do all things that are necessary or convenient to be done for or in connection with its functions'. Section 11(1)(p) of the Act also gives the Commission the function of doing 'anything incidental or conducive to the performance of' any of the functions in ss 11(1)(a) – (o). Section 26 of the Act provides that it is an offence for a person to 'hinder, obstruct, molest or interfere with: (a) a member participating in an inquiry or examination under this Act; or (b) a person acting on behalf of the Commission, while that person is holding an inquiry or carrying out an investigation under this Act'. The Commission also has statutory information gathering powers and powers to examine witnesses under ss 21-24 of the Act.

<sup>34</sup> This is due to the fact that the Convention against Torture is not scheduled to, or declared under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth).

<sup>35</sup> See section 11(1)(f) of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth). Note that 'human rights' are defined by s 3 of the Act and relate only to the six international instruments scheduled to, or declared under the Act. The instruments scheduled to, or declared under the Act are the ICCPR, the *Declaration on the Rights of the Child*, the *Declaration on the Rights of Mentally Retarded Persons*, the *Declaration on the Rights of Disabled Persons*, the CRC, and the *Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief*.

<sup>36</sup> If conciliation of the complaint is unsuccessful or inappropriate and the Commission finds that there has been a breach of human rights, it can prepare a report of the complaint for the Attorney General, which must be tabled in Parliament. However, the Commission cannot legally enforce the recommendations made in these reports.

<sup>37</sup> Report to the Australian Human Rights Commission by Professors Richard Harding and Neil Morgan, Centre for Law and Public Policy, The University of Western Australia, *Implementing the Optional Protocol to the Convention against Torture: Options for Australia* (December 2008). At [http://www.humanrights.gov.au/human\\_rights/publications/opcat/index.html](http://www.humanrights.gov.au/human_rights/publications/opcat/index.html).

<sup>38</sup> Detention and Offshore Services Division, DIAC, *Immigration Detention Statistics Summary* (20 June 2008).

<sup>39</sup> Detention and Offshore Services Division, DIAC, *Immigration Detention Statistics Summary* (5 September 2008).

<sup>40</sup> See C Evans, note 3.

<sup>41</sup> Commonwealth and Immigration Ombudsman, *Submission to the Joint Standing Committee on Migration Inquiry into Immigration Detention in Australia* (August 2008), p 4. At <http://www.aph.gov.au/house/committee/mig/detention/subs/sub126.pdf>.

<sup>42</sup> DIAC, note 38.

<sup>43</sup> DIAC, note 39.

<sup>44</sup> See, for example A last resort, note 9, chapter 9.

<sup>45</sup> See, for example Commission submission to Joint Standing Committee on Migration, note 8; A last resort, note 9; Those who've come across the seas, note 10.

<sup>46</sup> See C Evans, note 3, pp 7-8.

<sup>47</sup> See note 4.

<sup>48</sup> See note 5.

- <sup>49</sup> Department of Immigration and Citizenship, *Standards for the design and fitout of immigration detention facilities* (October 2007) (DIAC Standards).
- <sup>50</sup> DIAC, above, p 7.
- <sup>51</sup> DIAC, note 49, section 14.
- <sup>52</sup> DIAC, note 49, section 8.
- <sup>53</sup> See, for example *Those who've come across the seas*, note 10, p viii; 2007 Summary of Observations, note 1, section 15; 2006 Summary of Observations, note 1, section 21.
- <sup>54</sup> See C Evans, note 3, p 14.
- <sup>55</sup> See C Evans, note 3, p 15.
- <sup>56</sup> See *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, note 27, principle 25; Immigration Detention Guidelines, note 6, section 13.9.
- <sup>57</sup> See 2007 Summary of Observations, note 1, p 24.
- <sup>58</sup> See, for example *A last resort*, note 9, chapter 9; L Briskman, S Latham & C Goddard, *Human Rights Overboard: Seeking Asylum in Australia* (2008), pp 138-158, 345-359.
- <sup>59</sup> See 2007 Summary of Observations, note 1, pp 24-25; 2006 Summary of Observations, note 1, section 6.
- <sup>60</sup> See, for example Commission submission to Joint Standing Committee on Migration, note 8; *A last resort*, note 9; *Those who've come across the seas*, note 10.
- <sup>61</sup> See 2007 Summary of Observations, note 1, pp 25-27; 2006 Summary of Observations, note 1, section 6.3.
- <sup>62</sup> See 2007 Summary of Observations, note 1, pp 43-44; 2006 Summary of Observations, note 1, section 15.
- <sup>63</sup> See 2007 Summary of Observations, note 1, pp 25-27; 2006 Summary of Observations, note 1, section 6.3.
- <sup>64</sup> Immigration Detention Guidelines, note 6, section 7.2.
- <sup>65</sup> Immigration Detention Guidelines, note 6, section 7.3.
- <sup>66</sup> Immigration Detention Guidelines, note 6, section 4.6.
- <sup>67</sup> See 2007 Summary of Observations, note 1, pp 33-34.
- <sup>68</sup> Immigration Detention Guidelines, note 6, section 6.6. This is based on articles 6(2) and 13(2)(c) of the *International Covenant on Economic, Social and Cultural Rights*, rule 71(5) of the *Standard Minimum Rules for the Treatment of Prisoners*, rule 42 of the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* and guideline 10(vii) of the *UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers*.
- <sup>69</sup> See 2007 Summary of Observations, note 1, pp 37-38; 2006 Summary of Observations, note 1, section 9.
- <sup>70</sup> See 2006 Summary of Observations, note 1, section 9.
- <sup>71</sup> These figures are taken from statistics provided to the Commission by DIAC on 19 September 2008. The statistics cover detention of alleged 'illegal foreign fishers' at the Northern IDC between 1 September 2007 and 31 August 2008.
- <sup>72</sup> See 2007 Summary of Observations, note 1, pp 37-38; 2006 Summary of Observations, note 1, section 9.
- <sup>73</sup> See 2006 Summary of Observations, note 1, section 8.1.
- <sup>74</sup> Some people are in immigration detention because their visa has been cancelled on character grounds under section 501 of the Migration Act.
- <sup>75</sup> See 2007 Summary of Observations, note 1, pp 28-32.
- <sup>76</sup> Immigration Detention Guidelines, note 6, section 10.1.
- <sup>77</sup> Immigration Detention Guidelines, note 6, section 18.10.
- <sup>78</sup> See note 6.
- <sup>79</sup> See 2007 Summary of Observations, note 1, pp 19-20.
- <sup>80</sup> See C Evans, note 3, pp 7-8.
- <sup>81</sup> The DIAC Global Feedback Unit collects, analyses and reports on all forms of feedback received from detainees and other people. This includes complaints, suggestions and compliments.
- <sup>82</sup> Immigration Detention Guidelines, note 6, section 2.6.
- <sup>83</sup> See 2007 Summary of Observations, note 1, pp 40-41; 2006 Summary of Observations, note 1, section 15.
- <sup>84</sup> Commonwealth Ombudsman, note 41, p 25.
- <sup>85</sup> See DIAC Standards, note 49, section 3.1.2.
- <sup>86</sup> See DIAC Standards, note 49, section 3.

- <sup>87</sup> See 2007 Summary of Observations, note 1, p 47.
- <sup>88</sup> See 2007 Summary of Observations, note 1, p 43.
- <sup>89</sup> See DIAC Standards, note 49, section 6.
- <sup>90</sup> See Immigration Detention Guidelines, note 6, sections 3.6, 3.7 and 4.3.
- <sup>91</sup> See 2007 Summary of Observations, note 1, pp 39-40; 2006 Summary of Observations, note 1, sections 15, 16 and 17.
- <sup>92</sup> See 2007 Summary of Observations, note 1, p 40.
- <sup>93</sup> In its 2006 inspection report, the Commission noted that the introduction of an activities kitchen at Baxter had been highly successful, and recommended that other detention centres establish similar facilities. See 2006 Summary of Observations, note 1, section 16.
- <sup>94</sup> See Immigration Detention Guidelines, note 6, section 8.2.
- <sup>95</sup> Commonwealth Ombudsman, note 41, p 11.
- <sup>96</sup> See Question 423, Senate Hansard (17 June 2008), p 2625-2627. At <http://www.aph.gov.au/HANSARD/senate/dailys/ds170608.pdf> (viewed 17 November 2008).
- <sup>97</sup> See Commonwealth Ombudsman, *Administration of s 501 of the Migration Act 1958 as it applies to Long-Term Residents* (February 2006), recommendation 7. At [http://www.comb.gov.au/commonwealth/publish.nsf/AttachmentsByTitle/reports\\_2006\\_01.pdf/\\$FILE/s501\\_immigration\\_feb-2006.pdf](http://www.comb.gov.au/commonwealth/publish.nsf/AttachmentsByTitle/reports_2006_01.pdf/$FILE/s501_immigration_feb-2006.pdf).
- <sup>98</sup> See Commission submission to Joint Standing Committee on Migration, note 8, recommendation 5.
- <sup>99</sup> See C Evans, note 3, pp 7-9, 13.
- <sup>100</sup> See Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning - First report of the inquiry into immigration detention in Australia* (December 2008), p 53. At <http://www.aph.gov.au/house/committee/mig/detention/report/fullreport.pdf> (viewed 3 December 2008). In making this statement, the Committee noted testimony given to the inquiry by the Commonwealth Ombudsman, Prof John McMillan.
- <sup>101</sup> Statistics provided to the Commission by DIAC regarding people in immigration detention in NSW as at 6 June 2008.
- <sup>102</sup> See, for example Human Rights and Equal Opportunity Commission, *Immigration Detention: Human Rights Commissioner's 1998-99 Review* (1999), pp 7-8, at [http://www.humanrights.gov.au/pdf/human\\_rights/asylum\\_seekers/idc\\_review.pdf](http://www.humanrights.gov.au/pdf/human_rights/asylum_seekers/idc_review.pdf); Those who've come across the seas, note 10, pp v, viii; 2006 Summary of Observations, note 1, section 15; 2007 Summary of Observations, note 1, section 21.
- <sup>103</sup> See 2007 Summary of Observations, note 1, pp 43-44; 2006 Summary of Observations, note 1, section 15.
- <sup>104</sup> See C Evans, note 3, p 15.
- <sup>105</sup> See C Evans, note 3, p 15.
- <sup>106</sup> See Human Rights and Equal Opportunity Commission, *Immigration Detention: Human Rights Commissioner's 1998-99 Review*, note 102, p 7.
- <sup>107</sup> See C Evans, note 3, p 8.
- <sup>108</sup> Commonwealth Ombudsman, note 41, p 20.
- <sup>109</sup> GSL management at the Villawood IDC provided the Commission with records indicating that between July 2007 and June 2008 there were 16 uses of onsite interpreters at Villawood. This is approximately 1.3 times per month.
- <sup>110</sup> See *GSL Response to Summary of HREOC's Observations following the Inspection of Mainland Immigration Detention Facilities 2007* (20 December 2007). At [http://humanrights.gov.au/human\\_rights/immigration/GSLresponse07.html](http://humanrights.gov.au/human_rights/immigration/GSLresponse07.html).
- <sup>111</sup> See, for example Those who've come across the seas, note 10, pp vi, ix.
- <sup>112</sup> See 2007 Summary of Observations, note 1, pp 46-47.
- <sup>113</sup> See DIAC Standards, note 49, section 10.
- <sup>114</sup> See 2007 Summary of Observations, note 1, pp 45-46; 2006 Summary of Observations, note 1, section 17.
- <sup>115</sup> See DIAC Standards, note 49, section 10.
- <sup>116</sup> See DIAC Standards, note 49, section 8.
- <sup>117</sup> GSL management at Maribyrnong IDC provided the Commission with copies of the incident reports for thirteen incidents involving actual, alleged or suspected assaults among detainees occurring between 9 January 2008 and 10 August 2008.

<sup>118</sup> These figures are taken from statistics provided to the Commission by DIAC on 19 September 2008. The statistics cover detention of alleged 'illegal foreign fishers' at the Northern IDC between 1 September 2007 and 31 August 2008.

<sup>119</sup> See 2007 Summary of Observations, note 1, pp 42-43; 2006 Summary of Observations, note 1, section 14.

<sup>120</sup> See DIAC Standards, note 49, section 14.

<sup>121</sup> See DIAC Standards, note 49, section 14.

<sup>122</sup> *Fisheries Management Act 1991* (Cth). At

<http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/current/bytitle/8A2822893CF392E4CA256F71004DF50B>.

<sup>123</sup> Detention and Offshore Services Division, DIAC, *Immigration Detention Statistics Summary* (20 June 2008).

<sup>124</sup> Detention and Offshore Services Division, DIAC, *Immigration Detention Statistics Summary* (5 September 2008).

<sup>125</sup> See, for example Commission submission to Joint Standing Committee on Migration, note 8.

<sup>126</sup> See C Evans, note 3, p 8.

<sup>127</sup> See 2007 Summary of Observations, note 1, pp 13-14; 2006 Summary of Observations, note 1, section 15.

<sup>128</sup> See 2007 Summary of Observations, note 1, pp 13-14.

<sup>129</sup> Since the Commission's 2008 visit, the number of detainees at the Perth IDC has dropped due to detainees being removed from Australia or relocated to other detention centres while renovations are undertaken at the Perth IDC.

<sup>130</sup> For example, there were two children at the Perth IRH as of 24 October 2008. See Detention and Offshore Services Division, DIAC, *Immigration Detention Statistics Summary* (24 October 2008).

<sup>131</sup> This policy was set out in a briefing paper provided by DIAC in advance of the Commission's visit to the Melbourne ITA in August 2008.

<sup>132</sup> Prior to the Commission's visit to the Brisbane ITA in August 2008, DIAC provided the Commission with statistics for immigration detainees held at various locations in Queensland between 1 November 2007 and 30 July 2008.

<sup>133</sup> For example, there was one child detained at the Brisbane ITA in October-November 2008. See Detention and Offshore Services Division, DIAC, *Immigration Detention Statistics Summary* (31 October 2008); Detention and Offshore Services Division, DIAC, *Immigration Detention Statistics Summary* (7 November 2008).

<sup>134</sup> Prior to the Commission's visit to the Melbourne ITA on 27 August 2008, DIAC provided the Commission with statistics showing that as of 8 August 2008 there were 24 detainees at the Melbourne ITA.

<sup>135</sup> For example, there was one child detained at the Melbourne ITA in October 2008. See Detention and Offshore Services Division, DIAC, *Immigration Detention Statistics Summary* (31 October 2008).

<sup>136</sup> Detention and Offshore Services Division, DIAC, *Immigration Detention Statistics Summary* (20 June 2008).

<sup>137</sup> See 2007 Summary of Observations, note 1, pp 16-18; Commission submission to Joint Standing Committee on Migration, note 8, pp 38-39.

<sup>138</sup> See, for example Commission submission to Joint Standing Committee on Migration, note 8.

<sup>139</sup> The eligibility criteria are specified under draft Guidelines on the Minister's Detention Intervention Powers (sections 197AB and 195A of the Migration Act). The Commission commented on a draft of the Guidelines in March 2006. The Commission has been informed that the draft is awaiting finalisation. In the meantime, the draft guides DIAC's assessment of individual cases for referral to the Minister.

<sup>140</sup> See 2007 Summary of Observations, note 1, pp 18-19; Commission submission to Joint Standing Committee on Migration, note 8, pp 39-40.

<sup>141</sup> See 2007 Summary of Observations, note 1, p 18; Commission submission to Joint Standing Committee on Migration, note 8, p 40.

<sup>142</sup> Condition 4 in the conditions attached to Residence Determinations states: 'You must not engage in paid work or receive a salary while you are under a Residence Determination. However, it is possible for you to engage in suitable unpaid voluntary work with prior approval from DIAC.'

<sup>143</sup> See Human Rights and Equal Opportunity Commission, *A Report on Visits to Immigration Detention Facilities by Human Rights Commissioner 2001*. At [http://www.humanrights.gov.au/human\\_rights/immigration/idc2001.html](http://www.humanrights.gov.au/human_rights/immigration/idc2001.html).

<sup>144</sup> DIAC provided the Commission with statistics that indicate that between 1 August 2007 and 1 August 2008, there were 22 people detained on Christmas Island, including six adult males, four adult females, eight male minors and four female minors.

<sup>145</sup> See, for example Commission submission to Joint Standing Committee on Migration, note 8, pp 15-16; Human Rights and Equal Opportunity Commission, *Submission to the Senate Legal and Constitutional Legislation Committee on the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006* (22 May 2006), at <http://www.humanrights.gov.au/legal/submissions/migration20060522.html>.

<sup>146</sup> See C Evans, note 3, p 4.

<sup>147</sup> See, for example Commission submission to Joint Standing Committee on Migration, note 8, pp 15-16; Human Rights and Equal Opportunity Commission, *Submission to the Senate Legal and Constitutional Legislation Committee on the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006*, note 145; *A last resort*, note 9, chapter 7.

<sup>148</sup> See *Migration Act 1958* (Cth), s 46A.

<sup>149</sup> See *Migration Act 1958* (Cth), s 494AA.

<sup>150</sup> See Commission submission to Joint Standing Committee on Migration, note 8, pp 15-16; Human Rights and Equal Opportunity Commission, *Submission to the Senate Legal and Constitutional Legislation Committee on the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006*, note 145.

<sup>151</sup> See *A last resort*, note 9, chapter 7.

<sup>152</sup> See CRC, art 22(1).

<sup>153</sup> See CRC, art 2; *A last resort*, note 9, pp 273-274.

<sup>154</sup> See C Evans, note 3, p 5.

<sup>155</sup> See C Evans, note 3, p 5.

<sup>156</sup> *A last resort*, note 9.

<sup>157</sup> See *Migration Act 1958* (Cth), s 4AA.

<sup>158</sup> CRC, art 3(1).

<sup>159</sup> CRC, art 37(b).

<sup>160</sup> CRC, art 37(c).

<sup>161</sup> CRC, art 37(a), 37(c).

<sup>162</sup> CRC, art 37(d).

<sup>163</sup> CRC, art 6(2), 39.

<sup>164</sup> CRC, art 22(1).

<sup>165</sup> CRC, art 2.

<sup>166</sup> ICCPR, art 9(1); CRC, art 37(b).

<sup>167</sup> CRC, art 37(b).

<sup>168</sup> See *A last resort*, note 9, p 95.

<sup>169</sup> See C Evans, note 3, p 7.

<sup>170</sup> CRC, art 37(d); ICCPR, art 9(4).

<sup>171</sup> *A last resort*, note 9, pp 860-864.

<sup>172</sup> *A last resort*, note 9, pp 862-864.

<sup>173</sup> See *A last resort*, note 9, pp 865-867.

<sup>174</sup> See *A last resort*, note 9, pp 856-857.

<sup>175</sup> For example, there were two children at the Perth IRH as of 24 October 2008. See Detention and Offshore Services Division, DIAC, *Immigration Detention Statistics Summary* (24 October 2008).

<sup>176</sup> For example, there was one child detained at the Brisbane ITA in October-November 2008, and one child detained at the Melbourne ITA in October 2008. See Detention and Offshore Services Division, DIAC, *Immigration Detention Statistics Summary* (31 October 2008); Detention and Offshore Services Division, DIAC, *Immigration Detention Statistics Summary* (7 November 2008).

<sup>177</sup> CRC, art 37(b).

<sup>178</sup> See *A last resort*, note 9, p 95.

<sup>179</sup> These figures are taken from statistics provided to the Commission by DIAC on 19 September 2008. The statistics cover detention of alleged 'illegal foreign fishers' at the Northern IDC between 1 September 2007 and 31 August 2008.

<sup>180</sup> See 2006 Summary of Observations, note 1, section 5.

<sup>181</sup> See 2007 Summary of Observations, note 1, pp 21-24.

<sup>182</sup> CRC, art 37(b).

<sup>183</sup> In its weekly immigration detention statistics summaries, DIAC counts detainees being held in the construction camp facility in the category referred to as 'Alternative Temporary Detention in the Community.' See, for example Detention and Offshore Services Division, DIAC, *Immigration Detention Statistics Summary* (7 November 2008).

<sup>184</sup> CRC, art 37(b).

<sup>185</sup> See A last resort, note 9, pp 698-699; CRC, art 20 and 22(1).

<sup>186</sup> See, for example A last resort, note 9, chapter 14 and section 17.4.7; 2007 Summary of Observations, note 1, pp 23-24.

<sup>187</sup> See A last resort, note 9, chapter 14 and section 17.4.7.

<sup>188</sup> See A last resort, note 9, p 857, recommendation 3.

<sup>189</sup> See United Nations High Commissioner for Refugees, *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum* (1997), para 5.7. At <http://www.unhcr.org/publ/PUBL/3d4f91cf4.pdf>.

<sup>190</sup> See United Nations High Commissioner for Refugees, above, para 7.6.

<sup>191</sup> See A last resort, note 9, pp 700-701; United Nations High Commissioner for Refugees, note 189, para 7.7.

<sup>192</sup> See A last resort, note 9, pp 699-701, 873-877.

<sup>193</sup> See A last resort, note 9, pp 699-700.

<sup>194</sup> See 2007 Summary of Observations, note 1, pp 23-24.

<sup>195</sup> See A last resort, note 9, pp 857, 873-877, 698-701.