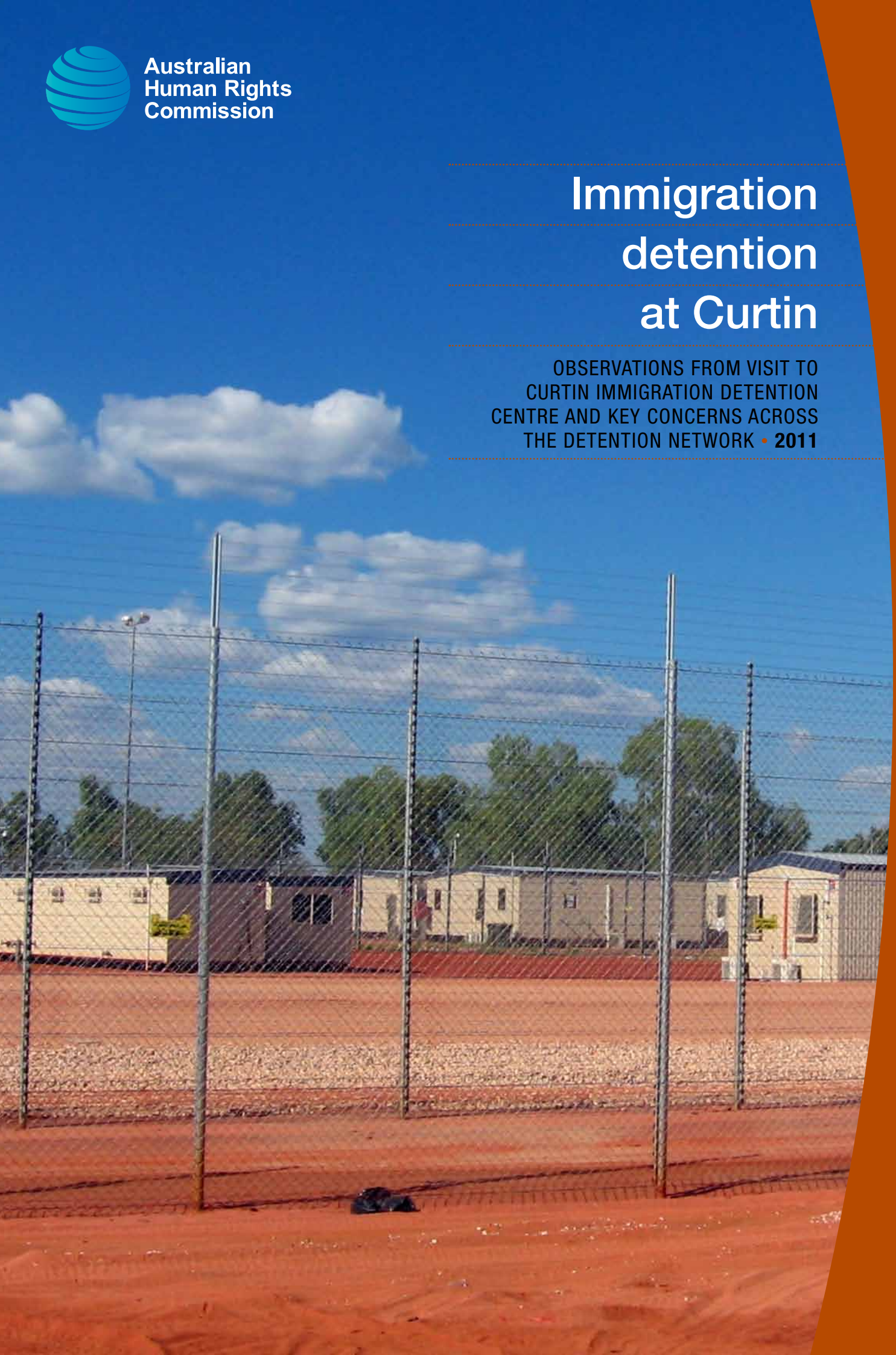
Australian Human Rights Commission

Immigration detention at Curtin

OBSERVATIONS FROM VISIT TO CURTIN IMMIGRATION DETENTION CENTRE AND KEY CONCERNS ACROSS THE DETENTION NETWORK • **2011**



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www.humanrights.gov.au/human_rights/immigration/idc2011_curtin.html

For further information about the Australian Human Rights Commission, please visit: www.humanrights.gov.au or email: communications@humanrights.gov.au
You can also write to: Communications Unit Australian Human Rights Commission GPO Box 5218 Sydney NSW 2001

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1. Introduction

For more than a decade, the Australian Human Rights Commission has called for reforms to Australia's system of mandatory and indefinite immigration detention – both in light of the impacts it has on people's mental health and wellbeing, and because it leads to breaches of Australia's international human rights obligations. During this time, the Commission has investigated numerous complaints from people in detention and conducted two national inquiries into the mandatory detention system.[1]

Because of its ongoing concerns, the Commission undertakes monitoring activities which include conducting visits to immigration detention facilities.[2] The overarching aim is to ensure that conditions of detention meet internationally accepted human rights standards. Further information about the Commission's detention visits and visit reports can be found on the Commission's website.[3]

The Commission visited the Curtin Immigration Detention Centre (IDC) from 16 to 20 May 2011. This report contains a summary of the key observations and concerns arising from the Commission's visit, focusing on conditions as they were at the time. The report pays particular attention to key issues of concern arising at Curtin IDC that are also of concern across the broader immigration detention network.

The Commission acknowledges the assistance provided by the Department of Immigration and Citizenship (DIAC) in facilitating the Commission's visit, and the cooperation received from DIAC officers and detention service provider staff during the visit. This report was provided to DIAC in advance of its publication in order to provide DIAC with an opportunity to prepare a response. DIAC's response is available on the Commission's website.[4]

2. Summary

The Commission's longstanding concerns about Australia's immigration detention system have escalated over the past two years as the number of people in detention has grown, people have been detained for longer periods, incidents of self-harm and suicide have increased and riots, protests and hunger strikes have become common.

The Commission's visit to Curtin IDC reinforced key concerns about Australia's detention system. Over recent months, Curtin has become the detention facility holding the highest number of people –1433 at the time of the visit. This has placed pressure on infrastructure, services, facilities, staff and detainees. A remote facility, Curtin IDC is not able to meet the needs of such a high number of people. The facility's remote location compromises adequate access to physical and mental health services, torture and trauma counselling, migration agents, legal representatives and community-based support networks.

The Commission acknowledges the constraints on DIAC and the efforts of staff working at Curtin IDC. However, the Commission has some significant concerns about conditions there. These include the impacts of detaining people in a remote location with a harsh physical environment; inappropriate infrastructure including intrusive security measures and crowded dormitories; limited access to communication facilities; limited opportunities for external excursions; limited recreational and educational activities; and claims of inappropriate treatment by some detention staff.

Many people at Curtin IDC have been detained for very long periods. The prolonged detention of particular groups is of increasing concern both there and across the detention network. This includes recognised refugees awaiting security assessments or other checks, recognised refugees with adverse security assessments, and stateless persons. The impacts of prolonged and indefinite detention are a major concern at Curtin IDC, and the Commission is troubled by the high rates of self-harm and the apparent suicide there earlier this year. Many people spoke about the psychological impacts of being deprived of their liberty for a long time with no certainty about when they would be released, and of delays with processing of their refugee claims, the lack of regular communication about progress with their cases, and perceptions of unfairness in decision-making.

For the above reasons and more, the Commission continues to urge the Australian Government not to detain people in remote locations such as Curtin IDC, and to implement its *New Directions in Detention* policy under which asylum seekers should only be detained for initial checks rather than for the duration of processing of their refugee claims.[5]

The Commission welcomes efforts by DIAC over the past few months to release a significant number of people from detention facilities nationwide – either through protection visa grants or placement into community detention. However, the Commission remains seriously concerned about the high number of people in detention facilities and the length of time for which many of them have been detained.

While the Australian Government considers mandatory detention to be an essential component of border control and necessary to ensure orderly immigration processing,[6] in the Commission's view the current system of mandatory, prolonged and indefinite detention is not necessary to achieve those goals. Most countries do not find it necessary to use such a system. In many respects, immigration processing is hampered, not facilitated, by detaining people for long periods and in remote locations.[7] Further, there is no evidence that mandatory detention deters irregular arrivals, and during almost twenty years of mandatory detention in Australia, the human and financial costs have been enormous. Rather than requiring the mandatory detention of broad groups of people, the Australian Government should only detain a person whose individual circumstances make detention necessary.

The Commission urges the Australian Government to end the current system of mandatory and indefinite detention, and to make greater use of community-based alternatives that allow for the protection of the community while at the same time ensuring that people are treated in line with human rights standards. Community-based alternatives can be cheaper and more effective in facilitating immigration processes, and are more humane than holding people in detention facilities for prolonged periods.

Further, the Commission reiterates its concerns about the Australian Government seeking to transfer asylum seekers to third countries.[8] Australia receives very few asylum seekers by international standards – in 2010, Australia received 8250 asylum claims, just two per cent of claims in major industrialised countries.[9] In 2009–10, asylum seekers arriving in Australia by boat made up less than three per cent of Australia's migration intake.[10] While the Commission recognises the need for regional cooperation on these issues, the Commission has serious concerns that third country transfer arrangements could lead to breaches of Australia's obligations under the *Convention relating to the Status of Refugees* and human rights treaties.[11]

Regardless of how or where they arrive in Australia, all people are entitled to protection of their human rights, including the right to seek asylum, the right not to be subjected to arbitrary detention, and the right to be treated with humanity and respect if they are deprived of their liberty.[12] The Commission continues to urge the Australian Government to ensure that the treatment of all asylum seekers and people in immigration detention in Australia is in line with these and other human rights obligations.

3. Overview: Curtin Immigration Detention Centre

Looking into Curtin IDC through perimeter fence.

Curtin IDC is located at the Curtin Royal Australian Air Force base, approximately 40 kilometres south-east of Derby in Western Australia. Derby is approximately 2500 kilometres north-east of Perth, and has a local population of around 3000 people.[13] The previously named Curtin Immigration Reception and Processing Centre was opened in September 1999 and closed in September 2002. The site was re-opened as Curtin IDC in June 2010.

Curtin IDC is a large, high-security Immigration Detention Centre. It is operated by Serco Australia, a private company contracted by the Australian Government as the immigration detention service provider.

Curtin IDC is used for the immigration detention of adult males who have arrived in Australia by boat and are seeking asylum (referred to by DIAC as irregular maritime arrivals or IMAs). When it was re-opened in June 2010, Curtin IDC was initially used to detain men from Afghanistan who were subject to the processing suspension imposed in April 2010.[14]

From March 2011, DIAC began to transfer other groups of asylum seekers to Curtin from the immigration detention facilities on Christmas Island.

At the time of the Commission's visit, the regular capacity of Curtin IDC was 1200 people and the surge capacity was 1500 people. There were 1433 men detained there at the time.[15] Afghan men comprised the vast majority, while smaller groups came from Sri Lanka, Iran, Pakistan and Iraq. There were also a number of men who were stateless.[16] More than three quarters of the men detained at Curtin IDC had been in immigration detention for longer than six months, and more than one third had been detained for longer than a year.[17] Almost half of the men had been subjected to the April 2010 suspension of processing of asylum claims.[18]

The Commission's key concerns about conditions of detention at Curtin IDC are discussed in section 9 below. Additional photos of the IDC are available on the Commission's website.[19]

Part B:
Key concerns arising from the Commission's visit to Curtin Immigration Detention Centre

4. Mandatory detention

"We do not understand why they treat us like criminals. We are not criminals. We have come here for protection."
(Afghan man detained at Curtin IDC)

"People cry for animals kept in cages – why aren't they crying for us, we are human beings in a cage."
(Sri Lankan man detained at Curtin IDC)

"First we were victims of Taliban, then of the Indonesian people smugglers and now we come here and we are a victim of this system."
(Afghan man detained at Curtin IDC)

"Just give us our freedom. This is more important than food."
(Iranian man detained at Curtin IDC)

The Commission's long-held concerns about Australia's mandatory immigration detention system were reinforced by its visit to Curtin IDC. People detained at Curtin spoke to the Commission about their incomprehension and feelings of injustice about being imprisoned despite having committed no crime.

Australia has one of the strictest immigration detention systems in the world – it is mandatory, it is not time limited, and people are not able to challenge the need for their detention in a court. The Commission has for many years called for an end to this system because it has devastating human impacts and because it leads to breaches of Australia's human rights obligations, including the obligation not to subject anyone to arbitrary detention.[20]

The Commission does not claim that no one should be held in immigration detention. Rather, in the Commission's view, instead of requiring the mandatory detention of broad groups of people, Australian law and policy should only require the detention of a person if it is necessary in their individual case. Further, time limits and access to judicial oversight should be introduced to ensure that if a person is detained, they are not detained for any longer than is necessary. These are basic protections and are required of the Australian Government under its international obligations.

Under the Australian Government's New Directions policy, immigration detention is to be used as a last resort and for the shortest practicable period, and there is a presumption that people will be permitted to reside in the community unless they pose an unacceptable risk.[21] Unfortunately, these principles have not been enshrined in law and they have not been implemented in practice for most asylum seekers who arrive by boat.

Entrance to Curtin IDC.

The Commission acknowledges that the use of immigration detention *may* be legitimate for a strictly limited period of time. However, the need to detain should be assessed on a case-by-case basis taking into consideration individual circumstances. A person should only be held in an immigration detention facility if they are individually assessed as posing an unacceptable risk to the Australian community and that risk cannot be met in a less restrictive way. Otherwise, they should be permitted to reside in community-based alternatives while their immigration status is resolved – if necessary, with appropriate conditions imposed to mitigate any identified risks.

As discussed in Part C below, there are alternatives to mandatory, prolonged and indefinite detention that allow for the protection of the community from identified risks, while at the same time ensuring that people are treated humanely and in line with internationally accepted human rights standards. The Commission continues to urge the Australian Government to end the current system of mandatory, prolonged and indefinite detention, and to make greater use of community-based alternatives.

5. Prolonged and indefinite detention

The Commission continues to be seriously troubled by the high number of people being held in immigration detention facilities for prolonged periods of time, and the impacts this is having on their mental health and wellbeing. These impacts were a major concern during the Commission's visit to Curtin IDC, as discussed in section 8.2 below.

As of 20 May 2011 there were 6729 people in immigration detention in Australia – 6165 of whom were in immigration detention facilities and 564 of whom were in community detention. Two thirds of people had been detained for longer than six months, and more than a quarter had been detained for longer than a year.[22] At the time of the Commission's visit to Curtin IDC, these proportions were higher for people detained there. More than three quarters of the 1433 men at Curtin had been detained for longer than six months, and more than one third had been detained for longer than a year.[23] Fourteen men, all Sri Lankans, had been detained for longer than 18 months.[24]

Various factors contribute to people being held in immigration detention facilities for prolonged periods. These include delays with processing asylum claims, delays with notification of decisions relating to refugee status, timeframes for security assessments conducted by the Australian Security Intelligence Organisation (ASIO) and other checks conducted by DIAC, and the limited use of community-based alternatives. Those issues are discussed in later sections of this report.

While prolonged and indefinite detention is a serious concern generally, the Commission has specific concerns about some groups facing particularly challenging circumstances. These include the following:

- People who were subjected to the processing suspension imposed in April 2010 on asylum seekers from Afghanistan and Sri Lanka.[25] At the time of the Commission's visit to Curtin IDC, almost half of the 1433 men detained there had been subjected to the suspension.[26] These men had been in detention for particularly lengthy periods – the longest was 402 days, the shortest was 230 days, and the average was 342 days or almost one year.[27]
- People who have been recognised as refugees, but who remain in detention facilities awaiting the completion of security assessments by ASIO or other checks by DIAC, as discussed in section 7 below.
- People who have been recognised as refugees, but who remain in detention facilities indefinitely because they have received adverse security assessments from ASIO, as discussed in section 5.1 below.
- People who have been assessed by the Australian Government as not being refugees, but who cannot be returned to their country of origin or habitual residence because they are stateless, as discussed in section 5.2 below.

Under the New Directions policy, immigration detention is to be used for the shortest practicable period, and detention that is arbitrary or indefinite is not acceptable.[28] Unfortunately, these principles have not been enshrined in law. Rather, Australia's mandatory detention system continues to lead to prolonged detention, and continues to permit indefinite detention. There is no set time limit on the period a person may be held in detention, and people are not able to challenge the need for their detention in a court.

The Commission has for many years advocated for reforms to bring this system into line with Australia's international obligations. The Commission continues to call for reforms including the following:

- Individual assessments of the need to hold each person in an immigration detention facility. This assessment should be conducted when a person is taken into immigration detention or as soon as possible thereafter. As noted above, a person should only be held in a facility if they are individually assessed as posing an unacceptable risk to the Australian community and that risk cannot be met in a less restrictive way. Otherwise, they should be permitted to reside in community-based alternatives while their immigration status is resolved.

- Implementation of detention review mechanisms required by the New Directions.[29] Under this policy, each person's detention was to be reviewed by DIAC every three months and by the Commonwealth Ombudsman every six months. The Commission welcomed this, but has since raised concerns about the lack of transparency surrounding review processes, the timeframes in which reviews are conducted, and the extent to which review recommendations are implemented.[30] In particular, the Commission is concerned that, after the initial three month DIAC review, subsequent DIAC reviews are conducted every six months instead of every three.[31] Further, the Ombudsman is not provided with adequate resources to conduct six monthly reviews for the high number of people in immigration detention. DIAC has informed the Commission that the Australian Government is considering ways of improving review mechanisms.[32] The Commission urges DIAC to conduct a review of each person's detention every three months, as required under the New Directions policy; and urges the Australian Government to allocate adequate resources to ensure that the Ombudsman is able to conduct effective six monthly reviews. In addition, the Commission continues to encourage the government to increase transparency surrounding the review processes and outcomes.[33]
- Judicial oversight of immigration detention. Under Australia's international obligations, anyone deprived of their liberty should be able to challenge their detention in a court.[34] The court must have the power to order the person's release if their detention is not lawful. The lawfulness of their detention is not limited to compliance with Australia's domestic law – it extends to whether their detention is compatible with the requirements of article 9(1) of the *International Covenant on Civil and Political Rights* (ICCPR), which protects the right to liberty and prohibits arbitrary detention.[35] Currently, in breach of its international obligations, Australia does not provide access to such review.
- Increased use of community-based alternatives to holding people in immigration detention facilities, as discussed in Part C below.

"Please send our voice – we are human beings too, we have never committed a crime. Why are we held here for thirteen, fourteen months?"
(Sri Lankan man detained at Curtin IDC)

"Every prisoner has a time frame – we don't have that."
(Sri Lankan man detained at Curtin IDC)

"It is the uncertainty and indefinite nature that makes it so hard. We have no idea when we will be interviewed or if we will be accepted. We are the guardians and breadwinners for our families – the long delays make us suffer a lot."
(Afghan man detained at Curtin IDC)

"If they tell us you will be here for three years, maybe it will be easier instead of always waiting for next month, next month and it never comes."
(Sri Lankan man detained at Curtin IDC)

5.1 People with adverse security assessments

As noted above, the Commission is particularly concerned about the prolonged and indefinite detention of people who have been recognised as refugees but remain in detention facilities because they have received adverse security assessments from ASIO. As of August 2011, there were more than 30 people in this situation across the detention network, including two at Curtin IDC.

The Commission has raised concerns about this issue in past reports, and has urged the Australian Government to ensure that durable solutions are provided for these people and they are removed from detention facilities as soon as possible.[36] This is particularly urgent in cases affecting children.[37]

The Commission is troubled that many of these people have been held in detention facilities for long periods – in some cases over two years – without any apparent progress in terms of finding solutions to their situation. There is no clear framework for considering placement options for people with adverse security assessments while their immigration status is resolved. Holding them in remote, high-security IDCs such as Curtin for long and indefinite periods is extremely restrictive. In the Commission's view, alternative options should be considered. These should include less restrictive places of detention than IDCs and community detention, if necessary with conditions to mitigate any identified risks.

Further, the Commission urges the consideration of possible visa options for these people. For example, the Minister for Immigration and Citizenship (the Minister) could exercise discretionary power to grant temporary visas with appropriate conditions attached.[38]

The Commission is also concerned about the following issues:

- The options that might be pursued as a means of resolving the situation of recognised refugees with adverse security assessments. In particular, DIAC has informed the Commission that the government is 'actively exploring durable solutions for individuals with adverse security assessments that are consistent with Australia's international obligations, including its *non-refoulement* obligations' and that these solutions may include 'safe return to their country of origin where… reliable and effective assurances can be received from the home country'.[39] The Commission has serious concerns that relying on diplomatic assurances from a recognised refugee's country of origin in returning the refugee to that country could breach Australia's *non-refoulement* obligations. The Australian Government must not involuntarily remove a recognised refugee to their country of origin, even if they have received an adverse security assessment. Further, the Australian Government should not propose the 'voluntary removal' of people in this situation to their country of origin.

- The lack of transparency surrounding adverse security assessments issued by ASIO, a concern previously raised by the Commission.[40] Under the *Australian Security Intelligence Organisation Act 1979* (Cth) (ASIO Act), a person who receives an adverse assessment is normally provided with a statement setting out information ASIO relied on in making the decision. However, this requirement does not apply to the vast majority of asylum seekers and refugees in immigration detention.[41] Generally, they are not entitled to be provided with information about the basis on which an adverse assessment is made, meaning they are not provided with the information necessary to challenge it. In the Commission's view there should be an obligation to provide these individuals with information sufficient for them to be reasonably informed of the basis of the adverse assessment.

- The limited access asylum seekers and refugees in detention have to merits review and judicial review of adverse security assessments issued by ASIO, another concern previously raised.[42] The Commission has recommended that access to merits review by the Administrative Appeals Tribunal be provided, and that the Australian Government adopt measures to strengthen substantive judicial review of adverse assessments. These measures should include options to ensure the provision of greater information to applicants for review or to another appropriate person – for example, a Special Advocate who would be security-cleared and able to view both an original and a redacted summary of a security assessment to ensure that, as far as possible, unclassified material and reasons are disclosed, and classified material is reviewed for probity. Such a mechanism is used in comparable countries.[43]

5.2 People who are stateless

As noted above, the Commission has particular concerns about the prolonged detention of people who have been assessed by the Australian Government as not being refugees, but who cannot be returned to their country of origin or habitual residence because they are stateless.

As of June 2011 there were 563 stateless persons in immigration detention across Australia, who had arrived by boat seeking asylum.[44] At the time of the Commission's visit to Curtin IDC, there were 17 stateless persons detained there, three of whom had been detained for longer than a year.[45]

Despite having obligations in respect of stateless persons as a party to the *Convention relating to the Status of Stateless Persons* and the *Convention on the Reduction of Statelessness*, Australia does not have a formal procedure for determining statelessness.[46] Further, statelessness in itself is not a ground for claiming refugee status. Therefore, while some stateless persons who seek asylum will be recognised as refugees on other grounds and granted protection visas, some will not. These people are left in limbo, with the only chance of a lasting resolution being the Minister exercising personal discretion to grant them a visa, or DIAC finding a third country willing to accept them as a lawful permanent resident. Such people may face prolonged and indefinite detention in the meantime.

The Commission has raised concerns about this issue for several years and has urged the Australian Government to introduce a specific mechanism to address the situation of stateless persons. This should include a statelessness determination process, mechanisms to ensure that people are not subjected to prolonged detention while they go through the process, and access to sustainable outcomes such as through the creation of a permanent visa class for stateless persons. The Commission understands that DIAC is exploring options for case resolution for stateless persons who are found not to be refugees, and that a statelessness determination process may be one option considered. The Commission urges the Australian Government to adopt such a process as quickly as possible.

In the meantime, the Australian Government should ensure that stateless persons are not subjected to prolonged or indefinite detention. Unless they have been individually assessed as posing an unacceptable risk to the Australian community and that risk cannot be met in a less restrictive way, they should be permitted to reside in community-based alternatives while their immigration status is resolved.

6. Assessment of asylum seekers' claims

"We suffered so much before we came here. I spent a long time hiding in the mountains. I came here only to try to save my life. I believe that as long as we could live in our motherland, we shouldn't come here."

(Afghan man detained at Curtin IDC)

"If people didn't have any great problems they would not be here in the first place. We require help. We are asking for refuge, not without reason."

(Afghan man detained at Curtin IDC)

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

(Afghan man detained at Curtin IDC)

During its visit to Curtin IDC, the Commission heard serious frustrations from those detained about issues relating to the processing and assessment of their refugee claims. These issues are discussed below. They primarily related to changes in the processing system and delays with processing; the quality and fairness of decision-making; communication about processes, timeframes, and progress with cases; access to migration agents and the quality of representation provided by migration agents; and limitations on their capacity to pursue judicial review.

The Commission was troubled to observe that, in combination with the impacts of prolonged and indefinite detention, these concerns and frustrations had led to a palpable sense of anxiety and despair among many of those detained at Curtin. These mental health impacts are discussed in section 8.2 below.

6.1 Processing changes and delays

Over the past 18 months there have been numerous changes and events that have impacted the processing of claims by asylum seekers in immigration detention. Key changes have included, or resulted from, the following:

- the processing suspension imposed in April 2010 on asylum seekers from Afghanistan and Sri Lanka[47]
- the recognition of judicial review rights for offshore entry persons in a November 2010 decision by the High Court of Australia[48]
- the conduct of a second independent merits review (IMR) for some affected asylum seekers following that High Court decision
- the introduction of the Protection Obligations Determination (POD) process, replacing the Refugee Status Assessment (RSA) process[49]
- amendments to the character provisions of the *Migration Act 1958* (Cth) (Migration Act), which could affect visa outcomes for recognised refugees if they are convicted of an offence committed in immigration detention[50]

- the announcement on 7 May 2011 that asylum seekers who arrived in Australia by boat after that date could be transferred to Malaysia or another third country[51]
- the announcements on 25 July 2011 that the Australian and Malaysian governments had signed an agreement for the transfer from Australia to Malaysia of up to 800 irregular maritime arrivals; that asylum seekers who arrived in Australia by boat after that date could be transferred to Malaysia; and that those who arrived in Australia before 25 July would not be transferred but would have their claims processed in Australia[52]
- the announcement on 19 August 2011 that the Australian and Papua New Guinean governments had signed an agreement for the transfer from Australia to Papua New Guinea of an unspecified number of irregular maritime arrivals and for the re-opening of an 'assessment centre' on Manus Island[53]
- the finding of the High Court of Australia on 31 August 2011 that Malaysia had not been validly declared as a country to which asylum seekers could be transferred.[54]

While some of the above process-related changes may lead to greater procedural fairness or expedited processing over the longer term, some changes have caused significant delays and others have provoked serious concerns about adverse impacts on asylum seekers and potential breaches of Australia's human rights obligations.[55]

During its visit to Curtin IDC, the Commission encountered acute frustration and distress among the asylum seekers with whom it spoke about the perceived continual changes affecting processing of their claims, the lengthy and uncertain timeframes involved, and their associated prolonged detention. Many people felt that the process was disorderly and unfair, and many spoke of the impacts of the changes and delays on their mental state.

"Please, please ask that the process be quicker."

(Afghan man detained at Curtin IDC)

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

(Afghan man detained at Curtin IDC)

"From February we were told that priority for merits review interviews would be given to people in detention the longest, but it hasn't been fixed yet. We were told there would be extra interviewers, but it hasn't been speeded up yet. One man has been waiting six or seven months. When he asks, his case manager says he is next on the schedule, but his turn never comes. It is very frustrating and causes mental issues. Most of us now have mental problems. We just want our cases to be processed. Every day the policies are changing. They are trying to pressure us to go back home."

(Afghan man detained at Curtin IDC)

The Commission was particularly concerned about the following issues:

- The impacts of the processing suspension imposed in April 2010.[56] DIAC has stated that these included an increase in the number of people in detention, and people spending a 'significantly greater' period of time in detention.[57] As noted above, almost half of the 1433 men detained at Curtin IDC had been subjected to the suspension and these men had been detained for particularly lengthy periods.[58] Many people who had been affected expressed frustration about waiting for up to six months in detention for processing of their claims to begin; waiting additional months for a primary decision; feeling devastated when this came back as a rejection; and then having to wait many more months for an IMR interview. As predicted by the Commission when the suspension was announced, its impacts have included prolonged detention and detrimental impacts on the mental health and wellbeing of those affected.[59]

- Some long delays with primary RSA decisions. This was not a widespread concern raised by people detained at Curtin IDC, but the Commission heard from a few individuals about considerable delays in receiving their primary RSA decisions. This included one person who had waited 11 months and one person who had waited 15 months.

- Widespread long delays with IMR interviews. This was one of the most serious concerns raised by people detained at Curtin IDC. A significant number said they had been waiting six or seven months to be given a date for their IMR interview, and one claimed to have been waiting ten months. As of 13 June 2011, there were 705 people detained at Curtin IDC waiting for an IMR interview. On average, they had been waiting almost three months since receiving their primary decision.[60] However, many had been in detention for much longer periods.[61]

  A number of factors have caused delays with IMR interviews across the detention network, including issues relating to the remoteness of detention facilities, as discussed below. Primary causes relate to the significant increase in the number of cases, and the limited number of IMR reviewers. While the number of reviewers has been increased since late 2010, the processing suspension created a large backlog of IMR cases. This should have been anticipated by the Australian Government and steps should have been taken earlier to increase the number of reviewers in preparation for managing that backlog. With the current number of cases and reviewers, it will still take months to clear the IMR backlog. Further reviewers should be appointed to ensure that waiting periods for IMR interviews and decisions are minimised.

- The system for scheduling IMR interviews. This was another serious concern raised by people detained at Curtin IDC. In March 2011, people in immigration detention, including those at Curtin, were informed that the Minister had appointed additional reviewers and that people who had not yet had an IMR interview and who had been in detention the longest would be given priority.[62] However, when the Commission visited Curtin two months later, this new priority system had not been fully implemented there. Many people were extremely distressed and frustrated about this, perceiving the process to be unfair because refugee claims were not being assessed in order of people's length of detention. The Commission has since been informed that the new IMR priority system is being followed at Curtin, but that factors other than length of detention – such as operational reasons or particular vulnerabilities – may also affect the order in which IMR interviews are conducted.[63]

The Commission is seriously concerned about delays with processing refugee claims made by people in detention, particularly those who have arrived by boat. According to DIAC, average processing times have increased from 103 days in 2008–2009 to 279 days as of mid-2011.[64] Even more concerning, these averages are based on timeframes for people who have been granted visas, so they do not adequately reflect the long delays faced by people who remain in detention awaiting a visa grant.

The decision to hold asylum seekers in remote detention facilities such as Curtin IDC slows down the processing of their claims. These facilities are much less accessible for decision-makers, migration agents and lawyers; there are difficulties with providing adequate infrastructure such as interview rooms and with ensuring adequate numbers of interpreters; and the communications capacity is limited. These logistical issues make it more time consuming and expensive to process people's claims when they are being held in remote detention facilities. For these and other reasons, the Commission continues to urge the Australian Government not to detain people in remote locations such as Curtin.

The impacts of processing delays can be devastating in human terms because those waiting for their claims to be assessed are not living freely in the community – they are held in detention for long periods of time, with no certainty about when they will be released. The longer it takes to process their claims, the longer they are held in detention – and in many cases, the more their mental health deteriorates.

The delays with processing refugee claims, and the impacts of those delays, would not be as severe if asylum seekers were not held in immigration detention facilities for the duration of processing. Under the New Directions policy, this should not be the case. Rather, detention is to be used for conducting health, identity and security checks, and once those checks are completed, 'continued detention while immigration status is resolved is unwarranted'. Thereafter, the presumption is that people will be allowed to live in the community unless they pose an unacceptable risk.[65] The Commission has long been concerned that this is not being implemented in practice for most asylum seekers who arrive by boat, and continues to urge the Australian Government to implement it.

6.2 Quality and fairness of decision-making

During its visit to Curtin IDC, the Commission heard numerous concerns from asylum seekers about the quality and consistency of decisions relating to their refugee status, and observed confusion and distress about the basis upon which some decisions had been made. These concerns fed into asylum seekers' perceptions that the processing of their claims was disorderly and unfair.

"I think that the decision makers are trained to either accept or reject. And then it's just a lottery which decision maker you get."

(Afghan man detained at Curtin IDC)

"Many of the facts in my statement of refusal are wrong, including where I was born. They have listed somewhere that is nowhere near my province."

(Afghan man detained at Curtin IDC)

"People rejected get told to relocate to another part of Afghanistan, but Afghanistan is not safe – even UN people get killed there, how can us ordinary people protect ourselves?"

(Afghan man detained at Curtin IDC)

"They are rejecting us because they say that we can live safely elsewhere in Afghanistan. But we're not here for economic reasons. We're here for our safety. In Afghanistan we have tried living for months in the mountainous areas, hiding. We are illiterate. I haven't been able to go to school. It is very hard for us to try to explain our situation to decision makers. And we don't have enough time. In the interview I suddenly got very nervous and couldn't tell all of my story. Mentally I found it very hard."

(Afghan man detained at Curtin IDC)

Specific concerns raised with the Commission by asylum seekers detained at Curtin IDC included the following:

- The quality of decision-making and the accuracy of decision records. Several people alleged that they had received a negative decision and that the decision record contained factual inaccuracies on matters such as their place of birth or the area in which they lived in their country of origin. The Commission has heard similar concerns from community-based advocates assisting asylum seekers in detention.
- Inconsistencies in decision-making. Some people claimed that asylum seekers in like circumstances had received different decisions on their refugee status, without apparent justification.
- Biased decision-makers. There was a perception that particular decision-makers were biased, and some people claimed that if an asylum seeker was allocated one of those decision-makers, they would know the likely outcome of their case before attending their interview. Similar concerns have been raised by asylum seekers detained in other locations.[66]
- Decisions based on the assumption that internal relocation was a viable option. A significant number of Hazara asylum seekers from Afghanistan expressed anxiety and bewilderment about having received a negative decision on the grounds that they could relocate to an area within Afghanistan other than the area they had fled from. These people felt that such decisions were based on unfounded assumptions about the degree of the threat posed by the Taliban, and other security risks, across a range of cities and regions in Afghanistan.

In response to the above concerns, DIAC informed the Commission that a quality assurance framework has been instituted to evaluate and strengthen the quality of primary decisions under the RSA and POD processes, and that new controls have been introduced to address some of the areas that early evaluations have identified as being in need of strengthening. The office responsible for conducting IMRs informed the Commission that quality assurance of IMR decisions is overseen by a senior reviewer; that high quality decision-making is supported by a range of professional development activities; and that internal analysis of IMR decision data has failed to substantiate complaints about biased decision-making by particular IMR reviewers.

The Commission acknowledges that the concerns raised at Curtin IDC are based on asylum seekers' perceptions of the process, and that they may or may not be fully borne out by the facts upon closer examination. Nevertheless, hearing such concerns from a significant number of people is troubling and indicates the need for the Australian Government to take ongoing steps to ensure the quality, fairness and rigour of the process used to assess people's refugee claims.

Further, it is important to recognise the impacts that such perceptions have on the wellbeing and mental state of people being held in detention facilities for long periods, isolated from society and with little access to transparent sources of information. The combination of these perceptions of unfairness along with the impacts of prolonged and indefinite detention has led to deteriorating mental health and significant frustrations and tensions within immigration detention facilities, including Curtin IDC.

6.3 Communication about processes, timeframes and cases

During its visit to Curtin IDC, the Commission heard expressions of frustration from many asylum seekers about the lack of clear and regular communication about processes relating to assessment of their claims, timeframes for those processes, and progress with their cases. Similar concerns have been raised by asylum seekers detained in other locations.[67]

Concerns raised by asylum seekers detained at Curtin IDC included the following:

- Lack of information about progress with their cases. While the Commission heard from some people that their DIAC case managers were kind and supportive, many people expressed extreme frustration about the lack of meaningful updates from case managers about where their case was up to and how much longer it might take to finalise. There was a widespread perception that case managers were not able to provide useful information in this regard. People claimed that

their case managers continually responded to their questions by saying "I don't know" or "be patient". Alternatively, case managers instructed people to consult their migration agents. This proved frustrating as people were often unable to contact their agents, or their agents were not able to provide meaningful updates either.

- Lack of regular contact with case managers. Many people claimed that they did not have regular meetings with their case managers, which exacerbated frustrations about the lack of regular provision of updates on their cases. In response, DIAC reported that 'shopfronts' were held regularly within Curtin IDC to allow people the opportunity to ask questions of their case managers should they wish to do so.
- Lack of consistent contact with the same case manager. Some people complained about the high turnover in case managers, with one man claiming to have had six case managers during his time in detention. In response, DIAC reported that most case managers were at Curtin IDC on six month rotations in an effort to minimise turnover, but that when those staff were on leave it was necessary to use short term case managers to fill the gaps.
- Perceptions of being misled about processes and timeframes. Many people were frustrated and distressed because they felt they had been told that processes would be completed in a certain timeframe or in a certain way, and that did not occur in practice. For example, on 17 March 2011 people in immigration detention were informed that those who had not yet had their IMR interview and who had been in detention the longest would be given priority, and that ASIO security assessments for most recognised refugees would be completed by the end of April.[68] However, when the Commission visited Curtin IDC in May, these assurances had not been fully met – as discussed in section 6.1 above, the new IMR priority system had not been fully implemented at Curtin, and as discussed in section 7.1 below, a significant number of refugees remained in detention awaiting their security assessments.

"Most people have been mentally affected because of the lack of clear policies and decisions and the lack of information about their cases."
(Sri Lankan man detained at Curtin IDC)

"Case managers do not tell us what is happening with our cases, even our migration agents don't tell us what is happening with our cases."
(Afghan man detained at Curtin IDC)

"I feel as though they are playing a game with our lives here. If we ever have a question the case manager just says I don't know."
(Afghan man detained at Curtin IDC)

"We have been told we can put up with it or leave and go back home. Our case manager told us this… None of us are keen to do this. We have come from a graveyard and battleground, how could we go back? How could he tell us to go back?"
(Sri Lankan man detained at Curtin IDC)

- Perceptions of being encouraged to go home. During the Commission's visit, some people expressed distress about case managers telling them that they could return to their country of origin through a 'voluntary removal' if they did not want to stay in detention. The Commission was particularly troubled to hear that this option had been suggested to recognised refugees who remained in detention awaiting ASIO security assessments. The Commission is concerned that the impacts of prolonged and indefinite detention in combination with the offer of reintegration assistance could potentially lead to recognised refugees agreeing to 'voluntary removal' to their country of origin, even though they may face persecution or danger upon return. The Commission also raised this concern in the report of its 2011 visit to Villawood IDC.[69] The Commission has urged DIAC to change its approach to case managers' engagement with recognised refugees in detention facilities about the option of 'voluntary removal'. Case managers should not propose the 'voluntary removal' of recognised refugees to their country of origin. Rather, DIAC efforts should be targeted towards ensuring that recognised refugees are removed from immigration detention facilities as quickly as possible.

The Commission acknowledges that DIAC case managers are in a difficult position, often being asked questions for which they cannot provide answers. However, the lack of clear and regular provision of information exacerbates asylum seekers' perceptions that the processing of their claims is disorderly and unfair, and it compounds the anxiety and uncertainty of being held in detention for an indefinite period of time. These factors can lead to deteriorating mental health as well as increased tensions in detention facilities – both of which the Commission observed at Curtin IDC.

DIAC should endeavour to increase the information flow to asylum seekers in detention so that each person is kept informed, in a meaningful way, about processing steps and estimated timeframes as well as progress with their individual case.

The Commission also acknowledges that many case managers are tasked with assisting a high number of people in detention at any given time, adding to the challenge of their task. At the time of the Commission's visit to Curtin IDC, each case manager had an average caseload of around 86 people. While more case managers were needed, the ability to base additional staff at Curtin was limited because of the lack of available accommodation at the time. This is one of the negative impacts of the Australian Government's decision to detain asylum seekers in remote locations such as Curtin.

6.4 Access to migration agents and quality of representation

Migration agents are provided for asylum seekers in detention through the Immigration Advice and Application Assistance Scheme (IAAAS). These migration agents receive government funding to provide services to asylum seekers in detention, but they are independent of DIAC.[70]

During its visit to Curtin IDC, the Commission heard concerns from many asylum seekers about limited access to their migration agents. In addition, while some people spoke highly of the support they had received from their agent, others complained about the quality of assistance and representation provided. The most significant concerns raised by asylum seekers at Curtin IDC included the following:

- Limited time with their agent in advance of their RSA or IMR interview. Many people said they did not have enough time with their agent in advance of their interview or prior to lodgement of their written claims for refugee status. The Commission and some IAAAS providers have raised this concern with DIAC in the past. The Commission has encouraged DIAC to ensure that IAAAS contractual and funding arrangements provide for agents to spend sufficient time with their clients preparing for interviews and lodgement of written submissions.
- Limited notice of their IMR interview date. Some people complained that they were not given adequate notice of their interview date, which meant they did not have adequate time to prepare with their agent. DIAC informed the Commission that it had requested the office responsible for

conducting IMRs for greater notice of the IMR interview schedule so that DIAC could inform asylum seekers of their interview dates further in advance. The office responsible for conducting IMRs noted that scheduling interviews was challenging due to a range of logistical issues relating to the remoteness of some detention facilities and the availability of reviewers, accommodation, interpreters and interview rooms. That office indicated an intention to move towards a system whereby people would be given greater notice of their IMR interview dates.

- Limited access to their agent. Because of the remote location, there are no agents based near Curtin IDC – they fly in for interviews and then fly out again. Many asylum seekers said it was extremely difficult to maintain effective communication with their agent from Curtin IDC. At the time of the Commission's visit there was only one phone line dedicated for asylum seekers to receive incoming phone calls and there was extremely limited internet access. The Commission also heard about difficulties with the transmission of documents between agents and their clients by fax. These issues are discussed in section 9.3 below.
- Complaints about the quality of assistance and representation provided by their agent. Some people complained that their agent had not consulted with them before lodging written submissions relating to their refugee claims, or that their agent did not keep them informed about progress with their case. Others claimed that some agents were using generic submissions or cutting and pasting submissions without making sufficient efforts to ensure that individual cases were well presented. Many of these people appeared to be unaware that they could lodge a complaint about their agent with the Office of the Migration Agents Registration Authority. Some were aware, but were fearful of lodging a complaint because it would prolong the process and their time in detention even further. DIAC has informed the Commission that issues relating to the quality of assistance provided by agents will be addressed through an enhanced performance management framework under new IAAAS contractual arrangements.

"I am the only person who knows my case, but my lawyer does not consult before putting in submissions."
(Sri Lankan man detained at Curtin IDC)

"A two hour interview is not long enough to be able to understand our stories."
(Afghan man detained at Curtin IDC)

"Lawyers treat us like numbers and are not committed to our case. They use standard submissions, we are not being given the opportunity to review, correct and personalise them."
(Sri Lankan man detained at Curtin IDC)

"I wasn't able to get in contact with my lawyer for forty days."
(Afghan man detained at Curtin IDC)

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

(Sri Lankan man detained at Curtin IDC)

"We have found another lawyer ourselves, and now we will be going to court… And now my case manager told us that yes, there is a way to go to court, but you will be in detention for years. We have already spent two years in detention."

(Afghan man detained at Curtin IDC)

6.5 Asylum seekers' capacity to pursue judicial review

The November 2010 High Court of Australia decision in *M61 and M69 v Commonwealth of Australia* recognised that asylum seekers who have arrived in excised offshore places are owed procedural fairness in the consideration of their refugee claims, and are able to seek judicial review of negative decisions about their refugee status.[71]

During its visit to Curtin IDC, the Commission was concerned that a number of factors were, in combination, compromising asylum seekers' capacity to pursue judicial review. The Commission was particularly concerned about the following issues during its visit:

- Access to information about judicial review. DIAC informed the Commission that all asylum seekers who received a negative IMR decision were advised by their case manager of their ability to seek judicial review. However, in the Commission's view, the information provided to asylum seekers was inadequate. It emphasised that judicial review was not a review of a person's claims for protection or a determination of a person's refugee status,[72] but failed to explain that a finding of legal error could result in the court requiring that the person's claims be reconsidered by the decision-maker, and this reconsideration might lead to a different decision about the person's refugee status. The Commission has recommended that DIAC rectify this matter by amending the explanation provided in various materials.
- Access to legal advice and assistance. Asylum seekers detained at Curtin IDC who had received a negative IMR decision raised serious concerns about their lack of access to legal representatives – both for advice about whether to apply for judicial review and assistance with doing so. The assistance provided to asylum seekers in detention under the IAAAS does not extend to the judicial review stage. This leaves asylum seekers in the challenging position of having to find and pay for their own legal representative, or find someone willing to assist on a pro bono basis.

People detained at Curtin IDC told the Commission about their difficulties in accessing legal assistance. These difficulties arose for three main reasons: people were not provided with contact details for legal or community groups that might assist; because of Curtin IDC's remote location there were no legal groups based nearby; and the communication limitations at Curtin IDC (discussed in section 9.3 below) made it very difficult for people to find their own legal assistance and to effectively communicate if they could find someone willing to assist. The 35 day timeframe on applying for judicial review added to these difficulties.

The Commission raised these concerns with DIAC and recommended that DIAC provide all asylum seekers in detention who receive a negative IMR decision with contact details for legal and community groups able to provide assistance with judicial review. DIAC has agreed to do so at Curtin IDC and has informed the Commission that it will consider doing so across the detention network.

- Potential deterrence from seeking judicial review. The Commission was concerned to hear that asylum seekers detained at Curtin IDC are informed that they will remain in immigration detention throughout the process if they seek judicial review.[73] This could act as a deterrent for asylum seekers who feel unable to cope with the prospect of being held in an immigration detention facility for an indefinite ongoing period while they await the outcome. This is particularly the case for people who have already spent a long period in detention, as is the case with most of those detained at Curtin IDC.[74] The Commission has also raised this concern in the past in relation to people detained elsewhere.[75]

Issues relating to capacity to pursue judicial review are a major concern for a significant number of asylum seekers at Curtin IDC. As of 17 June 2011, there were 42 people at Curtin IDC who were either eligible to apply for judicial review or who were undergoing judicial review after receiving a negative IMR decision.[76] These issues will become even more critical over the coming months as the number of asylum seekers reaching the judicial review stage grows at Curtin IDC and across the detention network.

The Commission is concerned that the majority of asylum seekers who arrive by boat are held in immigration detention facilities for the duration of processing of their refugee claims, including judicial review should they pursue it. As discussed in section 6.1 above, in the Commission's view this contradicts the New Directions policy – it wrongly conflates the period of a person's detention with resolution of their immigration status, instead of detaining a person based on risk they pose to the Australian community. When that detention is in remote facilities such as Curtin IDC, it also makes access to and communication with legal representatives much more difficult, and adds physical and logistical challenges in terms of asylum seekers' access to the courts. Asylum seekers pursuing judicial review should be permitted to reside in community-based alternatives in metropolitan locations in order to facilitate this access.

7. Security and other checks

7.1 ASIO security assessments

As discussed in section 5 above, various factors contribute to people being held in immigration detention facilities for prolonged periods. Among other things, these include timeframes for security assessments conducted by ASIO. For more than a year the Commission has been concerned that delays with ASIO security assessments have contributed to the prolonged detention of many people, including many recognised refugees.

As of 13 June 2011, there were 290 people detained at Curtin IDC who had been recognised as refugees, 77 of whom were awaiting ASIO security assessments. The average length of time they had been waiting since being recognised as refugees was 133 days, or more than four months.[77] That period was on top of the time they had already spent in detention awaiting a decision on their refugee claims.

During its visit to Curtin IDC the Commission met with many of those people, some of whom said they had been waiting for their security assessment for up to seven months after being recognised as a refugee. These people expressed serious frustration about the delays and the fact that they remained in detention despite being recognised as refugees. As discussed in section 6.3 above, some people were particularly frustrated and distressed because they felt they had been misled about how long their security assessment would take. On 17 March 2011 they were informed by DIAC that security assessments for most recognised refugees would be completed by the end of April.[78] However, when the Commission visited in May, this deadline had passed and a significant number of refugees remained in detention at Curtin waiting for their security assessments.

The Commission acknowledges that the number of asylum seekers arriving by boat over the past two years has led to an increase in the number of security assessments to be conducted by ASIO – between December 2009 and August 2011, ASIO completed 6182 security assessments for asylum seekers who arrived by boat.[79] Further, the logistical challenges associated with conducting assessments for people detained in remote facilities such as Curtin IDC can also contribute to delays.

The Commission welcomes progress made since March 2011 in reducing the number of people in immigration detention facilities awaiting ASIO security assessments, largely due to the introduction of a new security indicator triage method developed by ASIO.[80] A significant number of people have been granted protection visas and released from detention facilities since this new method was implemented – a positive and welcome development.

However, the Commission remains concerned that current government policy requires the majority of asylum seekers to remain in immigration detention facilities for the duration of processing of their refugee claims – it is only after a person has been found to be a refugee that the security indicator triage process commences. In the Commission's view this contradicts the intention of the New Directions policy, as discussed in section 7.3 below. It wrongly conflates the period of a person's detention with resolution of their immigration status, instead of detaining a person based on risk they pose to the Australian community.

Further, the Commission is concerned that there are still a significant number of asylum seekers and refugees in immigration detention facilities awaiting ASIO security assessments. Many of these people have been detained for long periods – in some cases more than a year. This is particularly troubling given that neither the Migration Act, the *Migration Regulations 1994* (Cth) (Migration Regulations) nor the ASIO Act require that a person receive a security assessment from ASIO prior to being released from an immigration detention facility.

The Commission has been informed that, with DIAC's agreement, ASIO is now prioritising long-standing and complex cases.[81] The Commission welcomes this and urges both ASIO and DIAC to take all possible steps to ensure that outstanding security assessments are completed as quickly as possible, particularly for those people who have already been detained for prolonged periods.

The Commission has also raised concerns in the past about the lack of transparency surrounding the ASIO security assessment process for people in immigration detention.[82] The Commission's visit to Curtin IDC reinforced those concerns. Refugees who remained in detention awaiting ASIO security assessments expressed significant frustration about the lack of information provided to them about the security assessment process, progress with their assessment, reasons for the delay, and the expected timeframes moving forward. The Commission has heard these same frustrations from people detained in other locations.[83]

Asylum seekers in immigration detention awaiting ASIO security assessments are provided with very little information about how and when the assessment will be conducted. In combination with the long delays for some security assessments, this lack of information can have significant impacts because people are not living freely in the community while they wait – they are held in detention for long periods of time, with no certainty about when they will be released.

The Commission has previously expressed the view that people in immigration detention subject to ASIO security assessments should be provided with greater information about the processes and timeframes involved and about progress with their individual assessments; and that ASIO should be required to provide DIAC with information that can be passed on to the individual concerned.[84]

7.2 DIAC checks

As noted in section 5 above, the Commission is concerned about the prolonged detention of people who have been recognised as refugees, but remain in detention facilities awaiting the completion of DIAC checks. These can include checks relating to character, identity, security and health matters.

As of 13 June 2011, there were 290 people detained at Curtin IDC who had been recognised as refugees, 77 of whom were awaiting ASIO security assessments and the remainder of whom were awaiting the completion of DIAC checks.[85] This is also an issue of concern across the detention network.

"Whenever we ask why we are still here they say 'I don't know'. Anyone we ask says this. In our history there is no connection between our peoples and the Taliban. So why is there a delay with security?"

(Afghan man detained at Curtin IDC)

"People from earlier boats have been processed and issued visas, but not later ones. There are some people here who were told that they were refugees three to six months ago."

(Afghan man detained at Curtin IDC)

"I have been waiting seven months for a security clearance. None of my friends have had to endure that. I've complained to everyone – inside and out – and I get no answers."

(Iranian man detained at Curtin IDC)

The Commission is particularly concerned that in some cases, people have been recognised as refugees and have received ASIO security assessments, yet they remain in detention for further weeks, or even months, awaiting the completion of DIAC checks. The Commission met a man in this situation during its visit to Curtin IDC. At the time, this man had been in immigration detention for around thirteen and a half months. He had been recognised as a refugee after around nine months in detention. His ASIO security assessment had been completed approximately two months prior to when the Commission met with him, yet he remained in detention for that additional time waiting for DIAC checks.

There is limited transparency about the range of checks conducted by DIAC prior to releasing a person from an immigration detention facility; when these checks are commenced; and the timeframes involved with their completion. However, it appears that many of the checks are not undertaken until after a person in detention has been recognised as a refugee, and in some cases, after they have received an ASIO security assessment.

In the Commission's view, any checks that are necessary before a person is released from an immigration detention facility should be commenced when a person is taken into immigration detention or as soon as possible thereafter, rather than towards the end of their immigration process after they have already been detained for a long period of time.

7.3 The New Directions approach

Under the New Directions policy, detention of unauthorised arrivals is for the purpose of conducting health, identity and security checks. Once those checks have been successfully completed, 'continued detention while immigration status is resolved is unwarranted'. Thereafter, the presumption is that an individual will be permitted to reside in the community unless he or she poses an unacceptable risk.[86]

In the Commission's view, the 'security check' under the New Directions policy should not be interpreted as requiring a full ASIO security assessment prior to a person being released from an immigration detention facility. As noted above, this is not required under the Migration Act, the Migration Regulations or the ASIO Act.

The 'security check' should instead consist of an assessment of whether there is reason to believe that a person would pose an unacceptable risk to the Australian community if they were given authority to live in the community. That assessment should be made when the person is taken into immigration detention or as soon as possible thereafter. As discussed in section 4 above, a person should only be held in an immigration detention facility if they are individually assessed as posing an unacceptable risk to the Australian community and that risk cannot be met in a less restrictive way. Otherwise, they should be permitted to reside in community-based alternatives while their immigration status is resolved. A full ASIO security assessment, if deemed necessary prior to the grant of a visa, could be conducted while the person was residing in the community.

In the Commission's view, this approach would reflect the intention of the New Directions policy – that asylum seekers would be detained for a brief period while initial checks were undertaken, then permitted to reside in the community while their refugee claims were assessed.

8. Physical and mental health

Under international human rights standards, all people have a right to the highest attainable standard of physical and mental health.[87] Each person in detention is entitled to medical care and treatment provided in a culturally appropriate manner and to a standard which is commensurate with that provided in the general community. This should include preventive and remedial medical care and treatment including dental, optometric and mental health care.[88]

The Commission has held serious concerns about the provision of physical and mental health services in detention facilities during visits over the past two years. The Commission has repeatedly recommended that an independent body should be charged with monitoring the provision of physical and mental health services in immigration detention, and that adequate resources should be allocated to that body to fulfil this function.[89] While the Detention Health Advisory Group (DeHAG) currently plays an important advisory role, it is not sufficiently resourced to monitor physical and mental health service provision in detention facilities on a regular and ongoing basis.

At the time of its visit to Curtin IDC, the Commission held some significant concerns about the provision of physical and mental health services for people detained there. These concerns, discussed below, were informed by advice from a consultant psychiatrist who was part of the team conducting the Commission's visit.

An overarching concern was that there were no formal memoranda of understanding between DIAC and state health providers in Western Australia, at either the departmental or local hospital level. The Commission understands that the absence of such agreements has contributed to some delays in accessing treatment for people detained at Curtin IDC. The Commission was informed that DIAC had been making efforts to negotiate a memorandum of understanding with the Western Australian Department of Health. The Commission urges DIAC to pursue the adoption of memoranda of understanding with relevant state authorities in order to facilitate adequate access to physical and mental health care for people detained at Curtin IDC and other immigration detention facilities in Western Australia.

"If we have a problem they just give us Panadol. The nurses tell us that they can't prescribe and send us to the doctors. But there are not enough doctors to see us all."
(Afghan man detained at Curtin IDC)

"It takes at least 3 months to see a dentist."
(Afghan man detained at Curtin IDC)

"If we have a physical problem they give us Panadol. If we have a mental problem they give us sleeping pills."
(Afghan man detained at Curtin IDC)

8.1 Physical health

During its visit to Curtin IDC, the Commission met with staff members of the detention health services provider, International Health and Medical Services (IHMS). IHMS provides onsite health services to people in detention at Curtin IDC under a contract with DIAC.

At the time of the Commission's visit, the IHMS physical health staff at Curtin included a Regional Manager, two full-time General Practitioners and twelve registered nurses. The health clinic was staffed until 7pm each day. Paramedics provided the primary response to health issues overnight. General Practitioners were onsite on weekdays and nurse clinics operated seven days per week.

At the time of the visit the IHMS health staff worked out of a very small clinic in the administration area. The clinic space was clearly inadequate to meet the needs of the high number of people detained at Curtin IDC. There were two small consulting rooms used by General Practitioners. Nurse clinics operated out of an open area, with inadequate screening. An additional medical clinic was due to open within weeks of the Commission's visit, which would alleviate the Commission's main concerns about appropriate clinic space.

During the Commission's visit the most common complaints from people detained at Curtin IDC were delays in obtaining appointments with doctors; that in response to medical complaints, they were often told to "take Panadol and drink water"; serious delays in obtaining dental and optometry appointments; and delays in obtaining medical specialist appointments.

The IHMS health staff with whom the Commission met appeared hardworking and committed to providing a high level of service to people in detention. However, the Commission had a number of concerns about physical health service provision at Curtin IDC, including the following:

- The impacts of remote detention on access to health services. In order to receive specialist medical care, people detained at Curtin IDC have to be transported to Broome (a two hour drive away) or to Perth (more than 2500 kilometres away). At the time of the visit, there were a limited number of vehicles and Serco officers available to transport people to medical appointments. It was also concerning that, should an ambulance be required at Curtin IDC, it would have to travel from Derby, approximately 40 kilometres away. This was especially troubling given the lack of an onsite trauma bed, cardiac monitor and intravenous infusion pump at the time of the visit.
- The inadequate level of health service staffing at Curtin IDC. People detained at Curtin reported some lengthy delays in obtaining an appointment with a General Practitioner. IHMS acknowledged that they were not meeting the target timeframe of 48 hours to see a patient following receipt of a request. The Commission was informed that DIAC was considering a proposal for increased IHMS staffing at Curtin IDC. The Commission urges DIAC to ensure that it is increased to an adequate level as soon as possible.
- Significant delays in accessing dental care. During the visit there was no onsite access to dental care at Curtin IDC and people had to be transported to Broome. Some people claimed they had waited between seven and ten months for a dental appointment. The Commission was informed that there were 340 people on a waiting list to see a dentist, with 42 of these having been identified as priority cases. The Commission also heard that a lack of available Serco escorts could lead to appointments being cancelled. There were plans for the new clinic to include a dental room which would be equipped with a remote dental kit. The Commission encourages DIAC to ensure that onsite dental services are provided as a matter of priority.
- Significant delays in accessing optometry care. The Commission was informed that there were 140 people waiting for optometry care. IHMS and DIAC were in the process of making arrangements for the provision of some onsite services. The Commission encourages DIAC to ensure that onsite optometry services are provided as a matter of priority.

8.2 Mental health

(a) Impacts of prolonged and indefinite detention

The Commission has long raised concerns about the impacts of prolonged and indefinite detention on people's mental health and wellbeing.[90] Recently, bodies including DeHAG, the Australian Medical Association, the Australian Psychological Society, the Australian College of Mental Health Nurses and the Royal Australian and New Zealand College of Psychiatrists have raised public concerns about the harmful impacts of detention and the difficulties faced by health professionals in attempting to provide adequate care within the detention environment.[91]

The impacts of prolonged and indefinite detention on people's mental health were a major concern during the Commission's visit to Curtin IDC. Most people the Commission spoke with expressed distress about the impacts of being deprived of their liberty for a long period of time with no certainty about when they would be released. In particular, people spoke of difficulties coping with the isolation caused by being detained in such a remote location; their constant stress about being separated from family members in their country of origin who may be facing danger or struggling without the family 'breadwinner'; their concern about witnessing mental distress and self-harm among others in detention; and their fears of 'going mad' themselves if their detention continued much longer. People said the impacts of their time in detention included sleeplessness, depression, frequent nightmares, irritability, tearfulness, physical complaints such as headache, tremor and back pain, and thoughts of self-harm or suicide.

Many people raised concerns about the impacts on their mental state of processing delays and their perceptions of unfairness in decision-making. As discussed in section 6 above, people were particularly frustrated about processing delays which had contributed to their prolonged detention, unfairness in the scheduling of IMR interviews, perceived inconsistencies between decision-makers and perceived bias among certain decision-makers.

"We feel that we have lost everything here – our hope, our health, our memories, our names, our ability to help our families, our minds. We are more than half way to dead now. We are all dying here, from the inside out. We see others who have gone mad and think that we are going there too. What has happened to those that have been taken away? What will happen to us when our day comes?"

(Afghan man detained at Curtin IDC)

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

(Afghan man detained at Curtin IDC)

"Most of us now have mental problems – they send us to mental doctors, but they have done this to us."

(Afghan man detained at Curtin IDC)

The consultant psychiatrist who accompanied the Commission on its visit reported that the combination of prolonged and indefinite detention and the widespread perception that processes and outcomes were unfair was leading to a sense of hopelessness, powerlessness, helplessness and significant anxiety. The combination of these factors was fuelling high levels of anger and resentment, and was also contributing to a culture of sleeplessness and to diminished interest in engagement in activities.

(b) Limited use of community detention for people with mental health concerns and survivors of torture and trauma

During its visit to Curtin IDC, the Commission was troubled by the limited use of community detention as an alternative to facility-based detention for people with mental health concerns or backgrounds of torture and trauma. At the time of the visit, only one person had been referred from Curtin IDC for community detention since the facility re-opened in June 2010. The Commission met with people who remained in detention at Curtin IDC despite appearing to meet one or more of the priority criteria for community detention.[92]

The Commission has been informed that approximately 20 people at Curtin IDC have since been referred to DIAC's national office for consideration for community detention.[93] This is a welcome development. However, the Commission remains concerned about the length of time it may take for these people to be moved into community detention. Furthermore, the Commission understands that a significantly larger number of people at Curtin IDC have mental health concerns or are survivors of torture and trauma.

The Commission has repeatedly raised concerns about the limited use of community detention nationwide, particularly for torture and trauma survivors and people with mental health concerns.[94] DIAC has informed the Commission that it is placing small numbers of low risk, compliant, vulnerable single adult men who may have experienced torture or trauma into community detention.[95] The Commission welcomes this. The Commission continues to urge the Minister and DIAC to make the greatest possible use of community detention, particularly for people who meet the priority criteria under the Residence Determination Guidelines. This includes people with significant mental health concerns and people who may have experienced torture and trauma.[96]

(c) Mental health services

During its visit to Curtin IDC the Commission met with IHMS staff who provide onsite mental health services under a contract with DIAC. The IHMS mental health staff at Curtin IDC included a team leader, three psychologists (one of whom was a clinical psychologist), three counsellors and four mental health nurses. A psychiatrist was visiting Curtin IDC periodically, the last time being a month prior to the Commission's visit. IHMS staff reported that they hoped to have a psychiatrist visit the centre every two weeks.

The IHMS mental health staff with whom the Commission met appeared hardworking and committed to providing a high level of service to people detained at Curtin IDC. The Commission was also pleased that, unlike in some other detention facilities, mental health staff were conducting outreach work in the IDC compounds. However, the Commission had a number of significant concerns about mental health service provision at Curtin IDC.

As has been the case during visits to other detention facilities over the past year, the Commission's primary concern related to clinical governance of the mental health service.[97] At the time of the visit, clinical responsibility fell on the mental health team leader. This is not appropriate given the significant number of people detained at Curtin IDC, many of whom are likely to face serious mental health concerns or come from backgrounds of torture or trauma.

The Commission has previously recommended that mental health services should be overseen by a consultant psychiatrist who can be clinically responsible for mental health service delivery including supervising staff in providing clinical care.[98]

In response to the Commission's report of its 2011 visit to Villawood IDC, DIAC stated that it was considering an IHMS proposal recommending the appointment of a dedicated Medical Director of Mental Health, a senior psychiatrist who would provide strategic and operational leadership for the mental health disciplines available at each place of detention.[99] DIAC has also informed the Commission that a program of visiting psychiatrists has been approved across the detention network and that they will provide clinical oversight.[100] The Commission urges DIAC to ensure that these psychiatrists visit all detention facilities with sufficient regularity to ensure that there is adequate clinical oversight of mental health services.

The Commission's additional concerns about mental health service provision at Curtin IDC included the following:

- The staffing level of the IHMS mental health service was clearly inadequate to meet the needs of the high number of people in detention. The Commission was informed that the mental health service was about 50 people behind in completing the six month mental health reviews required by DIAC's mental health policy. The Commission was informed that DIAC was considering a proposal for increased IHMS staffing at Curtin IDC. The Commission urges DIAC to ensure that the number of mental health staff is increased to an adequate level as soon as possible.
- The impacts of remote detention on the provision of mental health services. These include difficulties recruiting adequate staff, limited availability of staff accommodation and difficulties accessing inpatient mental health services. For example, if a person at Curtin IDC requires admission to a specialist psychiatric facility they must be transferred to Perth, approximately 2500 kilometres away.

(d) Torture and trauma

At Curtin IDC, torture and trauma counselling is provided onsite by the Perth-based Association for Services to Torture and Trauma Survivors (ASeTTS). During its visit, the Commission met with ASeTTS counsellors who appeared to be very hardworking and committed to providing appropriate services within a challenging environment.

The Commission's primary concern regarding torture and trauma survivors at Curtin IDC was the lack of implementation of DIAC's torture and trauma policy, which aims to ensure that survivors of torture and trauma are able to reside in the community or in the least restrictive form of detention while their immigration status is resolved.[101] Survivors of torture and trauma are also a priority group under the Residence Determination Guidelines governing the placement of people into community detention.[102] However, as discussed in section 8.2(b) above, at the time of the Commission's visit, only one person had been referred from Curtin IDC for community detention since the facility re-opened in June 2010. This was despite there being a large number of torture and trauma survivors detained at Curtin IDC – at the time of the visit, there were close to 100 people either seeing ASeTTS counsellors or on their waiting list.

The Commission also had some concerns about the provision of torture and trauma services at Curtin IDC, including the following:

- The impacts of remote detention on access to effective torture and trauma counselling services. In metropolitan detention facilities, torture and trauma services are routinely provided outside the detention environment, as it is considered inappropriate to provide such services within detention facilities. In remote locations such as Curtin IDC, it is extremely difficult to provide torture and trauma counselling services offsite, which may compromise the capacity of counsellors to work effectively with their clients.
- The staffing level of the torture and trauma service was inadequate. There were two counsellors at the time of the visit. The Commission was informed that each counsellor should have a case load of approximately 25 clients. However, one was seeing 37 clients and the other 30 clients. In addition, there were approximately 25 clients on a waiting list. The Commission has been informed that ASeTTS has approached DIAC to approve the appointment of extra counselling staff at Curtin IDC. The Commission urges DIAC to ensure that the torture and trauma counselling staff is increased to an adequate level as soon as possible.

"People here have been affected mentally and there is a lot of self-harm."
(Sri Lankan man detained at Curtin IDC)

"I just need freedom, that's the reason I am hurting myself."
(Sri Lankan man detained at Curtin IDC)

"In this period of our detention one has committed suicide, three have been saved and over one hundred have hurt themselves. Two have gone crazy."
(Sri Lankan man detained at Curtin IDC)

"The only thing that remains is that we can hang ourselves from a tree."
(Afghan man detained at Curtin IDC)

8.3 Self-harm and suicide

(a) Self-harm

The Commission has become increasingly concerned about the extent of self-harm across the immigration detention network over the past year. The Commission has raised this concern in a number of reports and directly with DIAC and the Minister.[103] DIAC statistics indicate alarming rates of self-harm: from 1 July 2010 to 30 June 2011 there were 700 instances of threatened self-harm, 46 serious self-harm attempts and 386 incidents of actual self-harm in immigration detention facilities.[104]

The Commission is troubled by the high incidence of self-harm at Curtin IDC. DIAC statistics indicate that during 2010 there was one incident of self-harm and there were six instances of voluntary starvation.[105] However, between January and June 2011, there were 47 incidents of actual self-harm, 57 incidents of threatened self-harm, five serious attempts at self-harm and 595 instances of voluntary starvation, 175 of which lasted for more than 24 hours.[106]

During its visit to Curtin IDC, the Commission heard about two incidents of mass voluntary starvation as well as other self-harm incidents including a person throwing himself through a glass window and people burning themselves with cigarettes or cutting themselves with razors. A significant number of people detained at Curtin told the Commission that they had considered harming themselves. Some people explicitly connected thoughts of self-harm or attempts at self-harm with their perceptions of unfairness in processing of their refugee claims or the length of time for which they had been in detention.

The prevention of self-harm in detention and psychological support for people at risk of self-harm are addressed by DIAC's Psychological Support Program (PSP).[107] The Commission is concerned that the PSP has not been adequately implemented across the detention network. In particular, the Commission has been concerned during a number of detention visits, including to Curtin IDC, to learn that many staff have not received PSP training. While some DIAC case managers at Curtin had received PSP training, the Commission had concerns that insufficient PSP training had been provided to Serco officers. DIAC has acknowledged that there are

gaps in PSP training across the detention network and has informed the Commission that it plans to implement a 'rolling' program of PSP training across all detention facilities.[108] The Commission urges the implementation of this program as soon as possible.

(b) Suicide

The Commission is deeply troubled by the deaths of six men in immigration detention over the past year, five of which appear to have been the result of suicide. These deaths have included an apparent suicide at Curtin IDC in March 2011 and the death of a Curtin detainee in August 2010.[109] The Commission has been informed that the Western Australian coroner is considering whether to conduct coronial inquests into these two deaths. There have also been a number of reported suicide attempts across the detention network, including an attempted hanging at Curtin IDC two days after the apparent suicide in March 2011.

The Commission notes that DIAC has expressed deep concern about the 'serious issues that exist in relation to deaths in immigration detention and the self-harm and suicide attempts that have occurred in recent months'.[110]

During its visit to Curtin IDC, the Commission held discussions with staff and people in detention about the response to the apparent suicide in March 2011, ongoing factors that may continue to pose suicide risks, and the adequacy of measures to mitigate those risks. Many people detained at Curtin expressed concerns about the apparent suicide and about other suicide attempts that had occurred there. People told the Commission of their distress at witnessing others being driven to attempt suicide and of their fear that they might be driven to similar action, and others reported that they often thought of death. The consultant psychiatrist who accompanied the Commission on the visit noted that there was a very high incidence of suicidal ideation at Curtin IDC.

The Commission holds grave concerns about the ongoing risk of suicide at Curtin IDC and across the detention network. The Commission has previously urged DIAC to consult with organisations that specialise in suicide prevention, as well as with mental health professionals including members of DeHAG, about measures that should be taken to mitigate the risk of suicide across the detention network.[111] In response, DIAC has informed the Commission that it is working to access expert opinion through a Suicide Prevention Working Group.[112]

The Commission has also previously recommended that DIAC conduct a full safety audit across each detention facility.[113] This should include Curtin IDC. While the Commission acknowledges that it is very difficult to make a detention environment 'suicide-proof', all appropriate measures should be taken to minimise risks of suicide and self-harm posed by infrastructure issues.

The Commission is also concerned about the impacts on staff of working in immigration detention facilities. Detaining people for prolonged and indefinite periods can lead to conditions which are stressful and sometimes traumatic for staff to work in. The Commission is concerned that some staff are required to perform tasks that they are not adequately qualified or trained to perform. This is a particular concern in the case of Serco officers required to conduct PSP observation of people in detention who may be at risk of self-harm, as discussed in section 8.3(a) above. The potential impact on staff was highlighted by the reported suicide in July 2011 of a security officer who had worked at Curtin IDC and was involved in the response to the apparent suicide of a detainee in March 2011.[114]

(c) Critical incident response

In addition to the apparent suicide in March 2011, there have been a number of critical incidents at Curtin IDC, some involving large numbers of people. These include two instances of mass voluntary starvation in January and April 2011.

During its visit, the Commission heard some positive examples of responding to critical incidents. For example, the Commission was informed that during the April 2011 mass voluntary starvation, IHMS staff responded to assist a large number of people in challenging circumstances, rehydrating individuals involved on over 130 occasions during a 24 hour period.

However, the Commission had a number of concerns about the management of critical incidents at Curtin IDC. Key concerns included the following:

- It appeared that critical incident reviews were not always being conducted in a timely manner at Curtin IDC. At the time of the Commission's visit, while initial reviews had been conducted, full critical incident reviews had not been completed for the apparent suicide that occurred in March 2011 or the mass voluntary starvation that took place in April 2011.
- It appeared that voluntary starvation was generally treated as protest action rather than self-harm, and DIAC had a general policy of non-engagement with people taking part in voluntary starvation. The Commission understands that this policy is aimed at not encouraging protest action. However, in the Commission's view, this policy should not be applied in a blanket manner. Voluntary starvation may be undertaken as a form of self-harm and those undertaking such action should be provided with all appropriate forms of engagement and assistance. Further, there may be cases where appropriate engagement by DIAC could assist to deescalate the situation.

Curtin IDC.

9. Conditions of detention

"I've been here for over a year now, and over two years away from my family. We're asylum seekers. Our families are in danger over there and we are in danger here. If a bird is kept in even a golden cage, and given food and water, it still suffers."
(Afghan man detained at Curtin IDC)

Under international human rights standards, authorities should seek to minimise differences between life in detention and life at liberty in the design and delivery of detention services and facilities.[115] In Australia, people are held in immigration detention under the Migration Act because they do not have a valid visa.[116] They are *not* detained because they are under police arrest or because they have been charged with or convicted of any criminal offence. The treatment of people in immigration detention should therefore be as favourable as possible, and in no way less favourable than that of untried or convicted prisoners.[117]

The Commission acknowledges that DIAC is working within considerable infrastructure and logistical constraints at Curtin IDC, and that many staff are making positive efforts to ensure that people in detention are provided with appropriate conditions.

However, during its visit to Curtin IDC the Commission had significant concerns about some aspects of the conditions of detention. Key concerns included the impacts of detaining people in a remote location with a harsh physical environment; inappropriate infrastructure including intrusive security measures and crowded dormitories; limited access to communication facilities; limited opportunities for people to leave the detention environment on excursions; limited recreational and educational facilities and activities; and claims of inappropriate treatment of people in detention by some detention staff. These issues are discussed in the following sections.

The Commission's overarching concerns with conditions at Curtin IDC relate to its remote location (discussed below) and the high number of people being detained there. The capacity of the IDC has been progressively increased since it was re-opened in June 2010. At that time the capacity was 600 people. In November 2010 it was increased to 900 people, and in December 2010 it was increased further to the current regular capacity of 1200 people and surge capacity of 1500 people.[118]

Over the past six months Curtin IDC has become the detention facility holding by far the highest number of people. Largely this has been due to the movement of significant numbers of people from the detention facilities on Christmas Island. At the time of the Commission's visit to Curtin IDC there were 1433 men detained there.[119] As of 1 September 2011, there were 1331 people detained at Curtin IDC – this compared to 631 people at the Christmas Island IDC, 455 people at Northern IDC in Darwin, 423 people at Scherger IDC in Queensland and smaller numbers of people at a range of other places of detention.[120]

The significant growth in numbers at Curtin IDC has placed pressure on infrastructure, services, facilities, staff and detainees. While the Commission welcomes the decrease in the number of people being detained on Christmas Island, it is concerned that the weight of numbers has now been shifted to Curtin IDC – a remote facility that is not able to meet the needs of such a high number of asylum seekers in detention.

The Commission continues to urge the Australian Government not to detain people in remote locations such as Curtin IDC. If it continues to do so, the Commission urges the Australian Government to reduce the number of people detained at Curtin IDC in order to ease pressures on detainees, staff, facilities and services. Wherever possible, this should be done by transferring people into community-based alternatives (as discussed in Part C below).

9.1 Detention in a remote and harsh location

The Commission's overarching concern with conditions of detention at Curtin IDC relates to its remote location. This has a wide range of impacts on people's access to services and support, and also affects the physical conditions of detention. The Commission was particularly concerned about the following issues during its visit:

- The impacts of the remote location on people's access to essential services. This was a particular concern in relation to access to physical and mental health services and torture and trauma services (discussed in section 8 above), and access to migration agents and legal representatives (discussed in section 6 above).
- The impacts of the remote location in terms of slowing down processing of refugee claims. As discussed in section 6 above, locations like Curtin IDC are much less accessible for decision-makers, migration agents and lawyers; there are difficulties with providing adequate infrastructure such as interview rooms and with ensuring adequate numbers of interpreters; and the communications capacity is limited. These and other logistical issues make it more time consuming and expensive to process people's claims in remote locations and lead to people being held in detention for longer periods.
- The limitations on people's access to communication facilities at Curtin IDC, in part due to the remoteness and its impacts on the communications infrastructure (discussed in section 9.3 below).
- The isolation caused by detaining people in a place as remote as Curtin IDC. Because of the distance to the nearest major city and the small size of the nearest local community, people detained at Curtin IDC have very limited access to community-based support networks, religious groups and visitors. People at Curtin told the Commission about the impacts on their mental health of being detained in such an isolated location for prolonged periods.

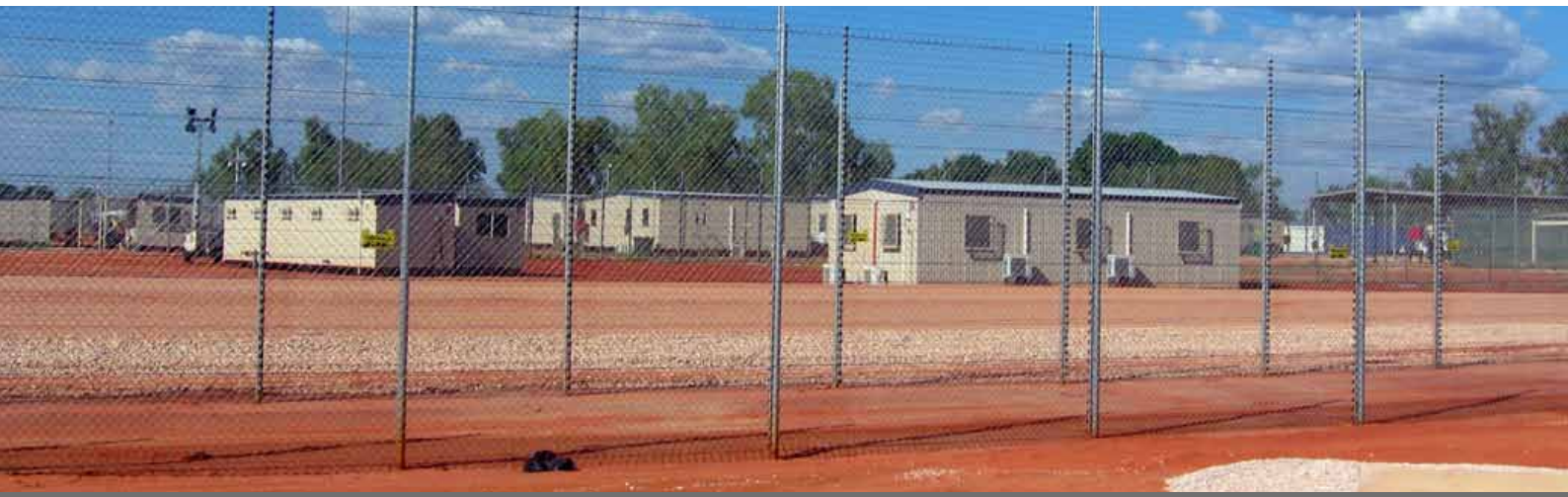
> ***"Everything is a problem. There is dust and dirt everywhere. The showers are not clean. It is so remote. How can this work? If you try living here in our situation for a month you will understand the problems."***
> (Iranian man detained at Curtin IDC)
>
> ***"We are cut off from the world and living in isolation."***
> (Sri Lankan man detained at Curtin IDC)

- The impacts of the remote location on the adequacy of staff numbers. At the time of the Commission's visit, it was apparent that Curtin IDC was understaffed in various respects including DIAC case managers, Serco officers, health and mental health staff and torture and trauma counsellors. Detaining people in locations as remote as Curtin makes adequate staffing difficult for a number of reasons, including the challenge of attracting and retaining sufficient numbers of qualified staff willing to be based in such locations for extended periods, and the lack of adequate staff accommodation in nearby towns. The Commission was informed during its visit to Curtin IDC that there were plans to increase staff numbers when more accommodation became available.
- The impacts of the remote location on the adequacy of transport and escorts. During the Commission's visit, it was apparent that the shortage of Serco officers and the challenge of sourcing sufficient vehicles were limiting detainees' access to external excursions (discussed in section 9.5 below). These issues can also affect access to health and mental health services (discussed in section 8 above), because Serco transport and escorts are required to take people to medical appointments in Broome, a two hour drive away.

Approaching Curtin IDC on the Curtin Royal Australian Air Force base.

- The harsh physical environment in which Curtin IDC is situated. The outdoor heat is often extreme and there are limited shady areas and virtually no grassy areas inside the IDC – most areas consist of red dirt or concrete. These concerns remain despite the recent construction of additional shade shelters and positive efforts to allow people to grow plants near their bedrooms. The harsh nature of the outdoor environment is exacerbated by the limited amount of indoor recreation space. These issues are discussed in section 9.4 below.

In practice, these concerns result from the Australian Government's decision to detain asylum seekers in locations as remote as Curtin IDC. The Commission has raised similar concerns in relation to other remote detention facilities including those on Christmas Island and in Leonora, Western Australia.[121] These issues can have very real impacts on people's physical and mental health and wellbeing, particularly when they are held in remote detention facilities for long periods of time and without any certainty as to when they might be released. For these and other reasons, the Commission continues to urge the Australian Government not to detain people in remote locations such as Curtin. If people must be held in immigration detention facilities, they should be located in metropolitan areas.



Looking into Curtin IDC through perimeter fence.

"This is the most prison-like place we have been detained."
(Sri Lankan man detained at Curtin IDC)

"We have to live in very cramped conditions and some are sick and that makes it a very difficult way to live."
(Sri Lankan man detained at Curtin IDC)

9.2 Infrastructure and accommodation

Curtin IDC is a large, high-security Immigration Detention Centre. It consists mostly of demountables used for accommodation, ablutions, dining and recreational and educational activities. Administrative areas, located outside the IDC fences, contain DIAC and Serco offices, interview rooms and rooms used for the delivery of health and mental health care. Additional photos of the IDC are available on the Commission's website.[122]

During its visit to Curtin IDC the Commission had significant concerns about some aspects of the infrastructure and accommodation.

The Commission's key concerns were as follows:

- The prison-like nature of the infrastructure. Areas used to accommodate people in detention are surrounded by high wire fences, some of which are electrified; accommodation compounds are surrounded by additional internal fences; many areas are under camera surveillance; and at the time of the Commission's visit there were static security guards stationed around the perimeter fence. In combination with the physical environment, these intrusive security measures create a detention facility that feels harsh and punitive.

  During its visit the Commission was pleased to see the IDC being operated in a relatively flexible manner, with freedom of movement between the internal compounds. However, in the Commission's view the security measures are excessive and inappropriate for accommodating asylum seekers, particularly those with a background of torture or trauma. They are also inconsistent with DIAC's *Standards for design and fitout of immigration detention facilities* (DIAC Standards), under which '[t]he underlying principle for security systems at all detention facilities is that security must be as unobtrusive as possible, and that a normalised environment must be provided to the greatest extent possible'.[123]

Curtin IDC.

Dormitory bedroom, Curtin IDC.

- Overcrowding, particularly in dormitory bedrooms. The majority of people detained at Curtin IDC share small bedrooms, with two people per room. However, people in excess of the regular capacity of 1200 are accommodated in dormitory bedrooms that have been set up in what were previously recreation rooms. Up to 40 people share each dormitory and the conditions are very cramped. People have no privacy and nowhere secure to store their personal belongings. These conditions fall short of the DIAC Standards which state that there should be a maximum of two persons accommodated in each bedroom during surge conditions.[124] Further, international human rights standards require accommodation in detention facilities to meet the requirements of health and human dignity, with appropriate regard paid to issues including minimum floor space.[125] They also require that each person be provided with a secure space for storing their personal belongings.[126]
- The long-term use of marquees. At the time of the Commission's visit there were a number of large marquees being used for recreational activities. The addition of the marquees was necessary because some recreation rooms were turned into dormitory bedrooms. While the Commission welcomes this attempt to compensate for the loss of indoor recreation space, the long-term use of marquees is far from ideal. The interiors of the marquees viewed by the Commission were dim, dirty and poorly ventilated (see section 9.4 below). The Commission has raised serious concerns in the past about the conditions in similar marquees previously used for accommodating detainees on Christmas Island.[127] The Commission has expressed the view that the marquees at Curtin IDC should not be used for accommodation, and DIAC has assured the Commission that there are no plans to do so.

The nature of infrastructure can have significant impacts on people held in immigration detention facilities, particularly when they are detained in remote locations for long periods of time. The lack of personal space and privacy can be particularly difficult for people to deal with, as many of them are already feeling tense, anxious or distressed about their ongoing detention, separation from family members and processing of their refugee claims.

People detained at Curtin IDC told the Commission about feeling as though they were imprisoned, isolated from society, in a hot and dusty environment. Some spoke of the difficulties associated with sharing dormitory bedrooms with large numbers of other people, in particular because of the noise and difficulties sleeping.

The Commission has raised similar concerns in past reports about infrastructure at other immigration detention facilities.[128] Some detention facilities have been purpose-built in recent years and contain more appropriate infrastructure. However, many of Australia's detention facilities, in particular the high-security IDCs, continue to be dominated by prison-like security measures; face issues of crowding; and contain infrastructure that is ageing, unsafe or inappropriate.

The Commission continues to urge the Australian Government to implement its New Directions policy under which people should be detained in the least restrictive form of detention appropriate to their individual circumstances, detention in IDCs is only to be used as a last resort, and conditions of detention should uphold the inherent dignity of the human person.[129]

9.3 Communications

For people deprived of their liberty, the capacity to communicate with the outside world is critical to allow regular contact with family members, friends and support networks, and to ensure effective contact with legal representatives and migration agents. Under international human rights standards, people in detention should be able to enjoy regular contact with family, friends and community members, facilitated through visits, correspondence and access to telephones. They should also be provided with facilities to communicate and consult in private with legal representatives.[130]

During its visit to Curtin IDC the Commission heard numerous complaints from people in detention about access to communication facilities and their inability to maintain effective communication with the outside world. The Commission was particularly concerned about the following issues during its visit:

- Extremely limited access to telephones for incoming calls. At the time of the Commission's visit, there were a significant number of landline telephones within Curtin IDC for people to make outgoing phone calls. However, there was only one telephone on which 1433 detainees could receive incoming calls. That telephone was located in an interview room outside the IDC fence. People wishing to contact a detainee were required to call a central number and to book a time to speak with that person, which could be up to a week later. A Serco officer would then escort the person to the interview room for the call at the allocated time. This was a major concern raised by people detained at Curtin, as it severely impacted their ability to maintain effective communication with their migration agents. It was also a particular concern for people trying to find a legal representative willing to assist them with judicial review. Given the time limits imposed at certain stages of processing and review of people's refugee claims, these delays with receiving calls could potentially have serious consequences. The Commission has urged DIAC and Serco to rectify this issue as a matter of urgency, so that all people detained at Curtin are provided with sufficient access to incoming telephone calls. DIAC has informed the Commission that steps are being taken to reconfigure the system to provide additional incoming telephone lines for use by people in detention.

- No access to mobile telephones. Asylum seekers who have arrived by boat are not permitted to have mobile telephones in immigration detention facilities including Curtin IDC. This policy can restrict access to prompt and effective communication with family members, support networks, legal representatives and migration agents. It also unnecessarily adds to the difficulties associated with people in the community attempting to contact people in detention. In the Commission's view, there has not been a reasonable justification provided for this policy and it should be reconsidered.
- Very limited access to the internet. At the time of the Commission's visit there were only 18 computers to be shared by 1433 detainees. Again, this is concerning because it limits people's ability to maintain contact with the outside world – particularly with legal representatives and migration agents with whom asylum seekers in detention may need to exchange written information or documents relating to their cases. Many people detained at Curtin raised the limited number of computers as a key concern, claiming they had to line up for hours to get access.

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

(Sri Lankan man detained at Curtin IDC)

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

(Sri Lankan man detained at Curtin IDC)

"There are only eighteen computers. We need to wake up very early and queue for two hours to use them. The internet is very slow, we can't download files."

(Iranian man detained at Curtin IDC)

People in detention using outdoor telephones, Curtin IDC.

Further, once they did get access they were unable to achieve much in their allocated hour due to the slow internet speed. In response to these concerns, DIAC has informed the Commission that two new rooms will be opened for internet use, and that additional computers will supplied in those rooms. However, internet access for those computers is dependent on securing additional bandwidth, a 'technical matter currently being worked on'.[131] The Commission continues to urge DIAC and Serco to address this issue as a matter of priority in order to ensure that all people detained at Curtin IDC are provided with sufficient access to the internet.

- Access to effective communication via fax. People detained at Curtin IDC are able to request that a document be sent or received by fax. However, they do not have direct access to the fax machine and are reliant on Serco officers actioning these requests. Some detainees claimed that faxes had not been sent on their behalf; they had not received faxes sent to them; or there had been long delays in sending or receiving faxes. This is a particular concern in situations where people are attempting to communicate with their legal representatives or migration agents about matters which might be time sensitive. Serco disputed detainees' claims, but noted that the 'virtual fax' used at Curtin IDC is susceptible to internet failures, which might cause delays. The Commission has encouraged Serco to investigate alternative fax machine options, and to ensure that transmission receipts are provided to detainees for all fax requests.

Problems with effective communication were one of the key concerns raised by people detained at Curtin IDC. As discussed in section 6 above, many people were particularly concerned about their limited ability to maintain effective communication with their migration agents, and their difficulties in using telephone or internet communication to try to find legal representatives willing to assist with judicial review.

Communication problems are particularly acute at Curtin IDC because of its remote location. This impacts the communications infrastructure available, particularly the internet capacity. It also means that visitors are few and far between, and detainees must rely on communication facilities to contact people in the community. For these and other reasons, the Commission continues to urge the Australian Government not to detain people in remote locations such as Curtin. If people must be held in immigration detention facilities, they should be located in metropolitan areas.

Garden area in 'Aqualand', Curtin IDC.

9.4 Recreation and education

Under international human rights standards, people in immigration detention 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.[132] In addition, each immigration detention facility should have a library stocked with materials in the principal languages spoken by people in detention.[133]

During its visit to Curtin IDC the Commission was pleased to note that DIAC and Serco were making some positive efforts to provide recreational and educational facilities and activities. In particular, in one part of the IDC an area called 'Aqualand' contains garden areas and large fish breeding tanks. People in detention who wish to do so are able to undertake supervised activities in this area, such as potting plants and looking after the fish. Potted plants from this area can also be used by people who wish to transplant them near their accommodation. This greenery has improved the otherwise harsh physical environment within Curtin IDC.

The Commission welcomes the 'Aqualand' initiative and encourages DIAC and Serco to adopt similar initiatives at other immigration detention facilities.

However, during its visit the Commission had concerns about some aspects of the recreational and educational facilities and activities at Curtin IDC. These included the following:

- Limited outdoor recreation areas. As noted, the heat at Curtin is often extreme and there are limited shady areas for sports or recreation. At the time of the visit there was a dirt soccer pitch and a recently refurbished volleyball court, but with limited shade they would be unsuitable for use during much of the day. There were some large shade shelters, many of which had been recently installed and were yet to be fitted with outdoor furniture or recreational facilities. Of particular concern, there was no large, open grassy space for sports. A new oval area was under construction outside the IDC fence, but it had taken months to prepare and was not yet ready. This will be a positive development once it is completed and accessible by people in detention. The Commission urges DIAC to ensure this happens as soon as possible.

Dirt area used as cricket pitch, Curtin IDC.

- Limited indoor space for recreational and educational activities. During the Commission's visit there were a number of education and recreation rooms at Curtin IDC including classrooms and rooms with gym equipment, television and pool tables. However, the amount of indoor space was not enough to meet the needs of more than 1400 detainees. This is a particular problem at Curtin IDC because of the harsh nature of the outdoor environment. As discussed above, the IDC had a greater amount of indoor recreation space, before some of these rooms were converted to dormitory bedrooms. While marquees have been installed in order to compensate for that, the long-term use of marquees is far from ideal. The interiors of the marquees viewed by the Commission were dim, dirty and poorly ventilated.
- Limited access to reading materials. At the time of the Commission's visit there was a small library room containing some English and foreign language reading materials. However, the size of the library area and the number and range of reading materials were not adequate to cater for more than 1400 detainees from various language groups. In response to this concern, Serco informed the Commission that efforts were being made to source additional foreign language books and newspapers.
- Access to recreational activities. The Commission welcomes efforts by Serco recreation staff to provide a range of activities at Curtin IDC. However, some detainees told the Commission there were not enough activities to help them occupy their time in detention in a constructive way. Just prior to the Commission's visit there was an increase in the number and range of recreational activities and facilities provided.

Looking out from inside the Curtin IDC perimeter fence over the unfinished oval.

This included additional exercise equipment and new sporting competitions and music classes. The Commission welcomes this increase. Some detainees claimed it was organised because of the Commission's visit and they were sceptical that it would continue. Serco has assured the Commission that it will.

- Limited access to English classes. The Commission welcomes efforts to provide onsite English classes for people detained at Curtin IDC. However, at the time of the Commission's visit there were not enough classrooms, teachers or classes to cater for the high number of people in detention. Detainees raised this as a concern, claiming that classes often had 50 or more people in them and some people had to sit on the floor. The Commission witnessed this during its visit. In response, Serco informed the Commission that teaching hours had recently been increased, and that a proposal for additional English teachers was being considered.

Marquee used for recreation, Curtin IDC.

The Commission has raised similar concerns in the past about the adequacy of recreational facilities and activities at other immigration detention facilities – issues that are extremely important in terms of their impact on people's physical and mental wellbeing, particularly when they are detained for prolonged and indefinite periods. These concerns are particularly acute at remote facilities such as Curtin IDC because of the harsh physical environment as well as the remote location, which increases detainees' sense of isolation and means they have fewer positive distractions such as visitors.

> ***"We have been more than one year inside Curtin and we have no idea what it is like outside."***
> (Sri Lankan man detained at Curtin IDC)

9.5 External excursions

The Commission has raised concerns for a number of years about the lack of regular opportunities for people to leave the immigration detention environment through participation in external excursions.[134] Regular excursions can be vital in assisting people to cope with the deprivation of their liberty, particularly when they are detained for prolonged and indefinite periods.

In the Commission's view, providing regular excursions is consistent with international human rights standards which require authorities to minimise differences between life in detention and life at liberty; as well as the government's New Directions policy, which requires that detention should be in the least restrictive form appropriate to an individual's circumstances and that conditions of detention should uphold the inherent dignity of the human person.[135]

During its visit to Curtin IDC, the Commission had serious concerns about the lack of excursions for people detained there. DIAC and Serco informed the Commission that there had been no excursions from the time the IDC re-opened in June 2010 until the week prior to the Commission's visit in May 2011.[136] The lack of excursions was attributed to a mix of factors including the remote location and the limited number of places that people could be taken on excursions; the high number of people in detention; and the limited availability of vehicles. Another key factor was the limited number of Serco officers available to act as escorts on excursions – partly due to the lack of available staff accommodation in Derby at the time.

At the time of the Commission's visit, some excursions had just begun from Curtin IDC. While the Commission welcomed this development, the excursions were only catering for a very small number of people – there had been four excursions with approximately eight people on each, meaning that approximately 32 people out of the 1433 detained at Curtin had been given the opportunity to go on an excursion.[137] People detained at Curtin expressed their desire to be able to leave the IDC on excursions and to see the surrounding area.

Since the visit, DIAC has informed the Commission that excursions are occurring from Curtin IDC to locations including a swimming pool, a community centre and a cricket club; and that the excursions program is being expanded.[138] While the Commission welcomes this, no information has been provided about the regularity of excursions or the number of people able to participate. The Commission urges DIAC and Serco to ensure that all people detained at Curtin IDC are able to participate in regular excursions. This should include ensuring that sufficient resources – in particular staff and vehicles – are allocated to enable this.

During this and other detention visits over the past two years the Commission has been concerned about the inconsistent approach to excursions across the detention network, and the inadequacy of Serco's contractual obligations in this area. The Commission is concerned that the contractual arrangements for service provision at IDCs set up a system that does not provide concrete financial incentives for Serco to conduct an adequate number of excursions, while

providing financial disincentives by applying penalties if people escape. While the Serco contract applicable to IDCs such as Curtin requires that Serco conduct supervised excursions, it fails to specify the number, frequency or type of excursions.

The Commission has recommended in past reports that DIAC should implement consistent standards for excursions across the detention network; that a minimum number of excursions should be specified in the Serco contracts applicable to all detention facilities; and that financial penalties should be applied if those standards are not met.[139]

In response, DIAC has stated that it supports the implementation, where possible, of consistent standards for excursions. It has also noted that 'availability and variety of suitable excursion destinations is not consistent at all locations across the network', but that within these constraints, it supports the Commission's recommendation.[140] The Commission therefore looks forward to seeing DIAC and Serco implement this recommendation in practice.

9.6 Staff treatment of people in detention

Under international human rights standards, all people deprived of their liberty should be treated with humanity and with respect for the inherent dignity of the human person.[141] While the Commission has observed a positive cultural shift over the past five or six years in the way people are treated in immigration detention facilities, some significant concerns remain.

During its visit to Curtin IDC, people in detention expressed mixed views about their treatment. While people generally expressed positive or neutral views about their treatment by DIAC staff, there were a significant number of claims of inappropriate treatment by Serco officers. The Commission was particularly concerned about the following issues:

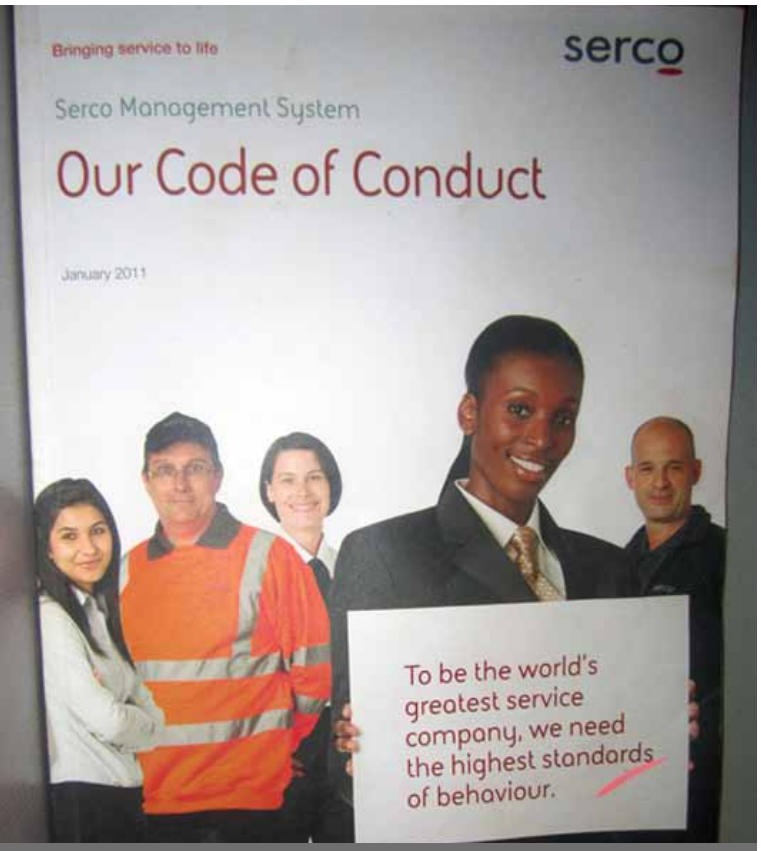
- People being called by their identification numbers rather than their names. The Commission was troubled to hear from almost all of the detainees it spoke with that Serco officers referred to them only by their identification number. Commission staff also witnessed this during the visit. This practice is dehumanising and does not afford people dignity or respect.

"I was given a name by my parents. But here I have forgotten it."
(Afghan man detained at Curtin IDC)

"They mostly call us by our number only. I can't remember my name now… It makes us feel sad. We have lost our identity here."
(Afghan man detained at Curtin IDC)

"Serco officers are telling us about the character changes and scaring us. We don't want to complain because we are scared to."
(Sri Lankan man detained at Curtin IDC)

"Why bother making complaints when no one listens or thinks you tell the truth?"
(Sri Lankan man detained at Curtin IDC)



Serco poster on display at Curtin IDC.

People detained at Curtin told the Commission that they felt as if they were forgetting their names and losing their identities.

DIAC has informed the Commission that Serco management has reiterated on several occasions that all staff must refer to people in detention by their name; that this is heavily promoted during training and induction programs and is regularly reiterated; and that when concerns are raised about this issue, DIAC ensures that Serco management reinforces the issue with staff.[142] This is welcomed. However, the Commission has heard concerns from detainees and witnessed this practice at multiple detention locations over the past year.[143] Consequently, the Commission is concerned that current training and performance management mechanisms are not adequate.

- People being treated with a lack of respect. While some people detained at Curtin IDC made positive comments about their treatment by particular Serco officers, others claimed that some Serco officers made comments such as "we didn't ask you to come here"; told them to "go back home"; or accused them of "eating our tax dollars". The Commission has heard similar concerns from people detained in other facilities.[144] In response, DIAC has informed the Commission that Serco officers receive cross-cultural training during which they should learn that such behaviour is inappropriate.
- Disruptive head counts at night. During the Commission's visit, people detained at Curtin IDC claimed that Serco officers conducted several checks on them during the night, and that some officers shone torches at them and slammed bedroom doors during those checks. Serco management at Curtin IDC informed the Commission that Serco conducted four checks each day, with the last one being a headcount that commenced at 11pm, but took some time to complete because of the size of the IDC and the number of detainees. DIAC has since informed the Commission that it has instructed Serco to cease the practice of conducting headcounts during the night, and that DIAC is negotiating a suitable solution.[145]
- Communication about changes to the character test. At the time of the Commission's visit, people detained at Curtin IDC had been informed about the Australian Government's plans to change the character provisions of the Migration Act, which could affect visa outcomes for refugees if they were convicted of an offence committed in detention.[146] Detainees raised concerns about a perceived change in attitude towards them by Serco officers following the announcement of these changes. Some claimed that Serco officers were using the changes to scare them into behaving or to convince them to refrain from taking part in protests or hunger strikes. Others expressed anxiety that they might be penalised for relatively minor transgressions or even imprisoned for taking part in hunger strikes. There appeared to be a significant level of misunderstanding about the scope of the character changes, and what penalties might apply to people in what circumstances.

- Fear of submitting complaints. Some people detained at Curtin IDC claimed they were unable to make confidential complaints to external scrutiny bodies such as the Commission and the Commonwealth Ombudsman – claims which DIAC and Serco disputed.

  Some people were concerned about their ability to make internal complaints free from fear of retaliation from staff, noting that the complaint boxes in their accommodation compounds were not locked and therefore did not ensure confidentiality. This was in comparison to medical request boxes, which were locked. In response, DIAC and Serco have agreed to ensure that all complaints boxes are locked.

  Other people said they were too scared to lodge complaints because they feared it might affect their visa outcome; that there was no use in submitting complaints because no one listened to them; or that if they did complain, they did not get a response. DIAC disputed those claims, noting that there is an internal complaints process in place at Curtin IDC which includes a complaints register and which is overseen through the contract management process.

The way in which people in detention are treated by staff can have significant impacts on their experience in detention, the fulfilment of their human rights, and their physical and mental wellbeing. The Commission therefore welcomed the inclusion in the New Directions policy of key values stating that people in detention will be treated fairly and reasonably within the law, and that conditions of detention will ensure the inherent dignity of the human person.[147] The Commission continues to urge the Australian Government to embed those values in legislation.

Further, the Commission urges DIAC and Serco to ensure that staff training and performance management mechanisms include a strong focus on treating all people in detention with humanity and with respect for their dignity; that all staff refer to people in detention by their name; and that people in detention are able to lodge both internal and external complaints confidentially and without fear of repercussions.

Unlocked complaints box next to locked medical request box, Curtin IDC.

Part C:
Community-based alternatives to mandatory, prolonged and indefinite detention

10. Community-based alternatives: underlying principles and effective examples

"Many of us want to be useful to society here. We could be part of the labour force. And that would stop us developing mental health issues."
(Afghan man detained at Curtin IDC)

"We are looking to the Australian community because this is a very hard time for us. We are hoping that the Australian community will support us to be out of here."
(Afghan man detained at Curtin IDC)

There are alternatives to Australia's system of mandatory, prolonged and indefinite detention that allow for the protection of the community from identified risks, while at the same time ensuring that people are treated humanely and in line with internationally accepted human rights standards. Community-based alternatives can be much cheaper, can be more effective in facilitating immigration processes, and are certainly more humane than holding people in detention facilities for prolonged periods of time.

Effective community-based alternatives are generally developed around some key principles. These include a presumption against detention; the use of individual screening and assessment procedures; and a risk-based approach under which detention is used as last resort.[148] Alternatives based on such an approach do not impede the government's ability to protect the community – secure detention may still be used, but only in situations where it it is necessary to meet an identified risk and other options are not sufficient.

Further, such alternatives do not impede the government's ability to maintain the integrity of immigration processes. Rather, effective alternatives ensure the provision of appropriate support to people while they reside in the community, which facilitates their ability to remain fully engaged with the immigration process. In particular, this might include active case management, legal advice, and assistance to ensure they can meet basic needs such as housing, food and healthcare.[149]

Many community-based alternatives allow for the imposition of certain conditions if they are considered necessary to mitigate risks or to ensure compliance with immigration processes. For example, these might include a requirement to reside at a specified location, curfews, travel restrictions and regular reporting requirements.

Other countries use a range of community-based alternatives rather than a system of mandatory, prolonged and indefinite immigration detention. For example:

- In Canada, people may be released from immigration detention on bail or bond and incur negative financial consequences if they breach the conditions of their release, which might include things such as reporting requirements or handing over travel documents.[150]
- In Spain, asylum seekers who enter the refugee determination process are either released into the community or accommodated in open reception centres from which they are free to come and go.[151]
- Sweden uses a 'reception program' under which asylum seekers are issued with identification documents on arrival which are used by immigration officials to track their cases. After spending around a week in a transit or processing centre, asylum seekers are released into the community and can use their documentation to access some basic services.[152]
- New Zealand uses a 'tiered system' of monitoring and detention. Reporting and residence requirements can be used to manage people's cases in the community rather than in detention. If asylum seekers living in the community fail to comply with certain conditions, they are subject to arrest and detention.[153]

The Commission continues to urge the Australian Government to end the current system of mandatory, prolonged and indefinite detention, and to make greater use of community-based alternatives.

11. Benefits of community-based alternatives

There are a wide range of benefits associated with community-based alternatives to holding people in immigration detention facilities for prolonged and indefinite periods. Depending on the particular mechanism used, benefits may include some or all of the following:

- **Physical and mental health implications.**
  As discussed in section 8.2 above, prolonged and indefinite detention in secure facilities can have significant impacts on the health and wellbeing of detainees, particularly on their mental health. It can also lead to conditions which are stressful and sometimes traumatic for staff. Community-based alternatives pose much lower risks in these areas and are therefore likely to lead to lower rates of self-harm and suicide, as well as fewer compensation claims by detainees and workers' compensation claims by staff.
- **Lower costs.**
  Community-based alternatives do not require the construction, maintenance, staffing or security of immigration detention facilities. They can be much cheaper than secure detention – particularly when detention facilities are located in very remote areas and people are detained for prolonged periods, as is often the case in Australia. For example, in Canada, providing for asylum seekers living in the community has been costed at $10–12 per person per day, compared with $179 for detention.[154] In Australia, the Community Assistance Support program, a program for some particularly vulnerable asylum seekers in the community, has been costed at a minimum of $38 per day compared with a minimum of $125 per day for detention.[155]
- **Facilitation of immigration processing.**
  It is quicker, easier and cheaper to process asylum seekers' claims for protection when they are living in the community in or near metropolitan areas. As discussed in section 6.1 above, detaining asylum seekers in remote facilities such as Curtin IDC slows down the processing of their claims. These facilities are much less accessible for decision-makers, migration agents and lawyers; there are difficulties with providing adequate infrastructure such as interview rooms and with ensuring adequate numbers of interpreters; and the communications capacity is limited.
- **High rates of compliance with immigration processes.**
  Asylum seekers living in community-based alternatives in Australia and overseas have maintained very high rates of appearance at immigration hearings and compliance with their immigration processes. There are also very low rates of absconding from community-based alternatives.[156]
- **Increased willingness to return.**
  Where asylum seekers are found not to be owed protection and are to be returned to their country of origin, people living in the community have been found to be more willing to return than those being held in detention facilities.[157]
- **Ease of transition to life as a resident.**
  Community-based alternatives allow for an easier transition to life in the community for asylum seekers who are recognised as refugees and granted visas to remain in Australia. Those who spend a prolonged and indefinite period in an immigration detention facility prior to their visa grant often face significant difficulties adapting from life in detention to life in the community. This is particularly the case if they have suffered negative physical or psychological impacts as a result of their prolonged detention, as many people do.
- **Fewer incidents in immigration detention facilities.**
  The use of community-based alternatives leads to fewer people being held in detention facilities and to people being detained in facilities for shorter periods of time. This can reduce overcrowding in detention facilities, and decrease the likelihood that tensions will build up and erupt in incidents such as protests, riots and hunger strikes. Consequently, detainees and staff are spared the negative impacts of such incidents, and authorities incur fewer costs in responding to such incidents.

In addition to all of these practical benefits, the use of alternatives to holding people in immigration detention facilities for prolonged and indefinite periods is required of the Australian Government under its international obligations. Community-based alternatives are more likely to protect people's human rights, and as a result, less likely to lead to complaints being lodged with independent scrutiny bodies such as the Commission and the Commonwealth Ombudsman.

The use of alternatives is also likely to decrease the number of wrongful detention claims in the courts, reducing the likelihood of costly compensation payments by the Australian Government. Perhaps most importantly of all, the use of community-based alternatives is a far more humane way to treat human beings than the current system of mandatory, prolonged and indefinite detention.

12. Use of community-based alternatives in Australia

As discussed above, the Commission continues to urge the Australian Government to end the current system of mandatory, prolonged and indefinite detention, and to make greater use of community-based alternatives – particularly for asylum seekers who arrive by boat, who currently make up the vast majority of those held in detention facilities for prolonged periods.

The Australian Government already uses some positive community-based alternatives for other arrivals in Australia, including asylum seekers who arrive by plane. Under the Refugee Convention, asylum seekers should not be penalised because of their unauthorised entry.[158] Yet, arguably, Australia's differential treatment of asylum seekers based on their mode of arrival does just that. Those arriving unauthorised by boat are subjected to mandatory detention, often for prolonged periods, while most of those arriving authorised by plane are granted bridging visas to live in the community while their refugee claims are assessed.

While it may be that those arriving by boat have less official documentation than those arriving by plane, that is not always the case, and it does not justify the blanket use of detention for all asylum seekers arriving by boat. Rather, asylum seekers who arrive by boat should be individually assessed to determine whether it is necessary to hold them in an immigration detention facility. Unless they are individually assessed as posing an unacceptable risk to the Australian community and that risk cannot be met in a less restrictive way, they should be permitted to reside in community-based alternatives while their immigration status is resolved.

In the Commission's view, this approach would be in line with the New Directions policy, under which immigration detention is to be used as a last resort, people are to be detained in the least restrictive environment appropriate to their circumstances, and there is a presumption that people will be permitted to reside in the community unless they pose an unacceptable risk.[159]

The Commission urges the Australian Government to make the greatest possible use of community-based alternatives including bridging visas and community detention.

Bridging visas – currently used for most asylum seekers who arrive by plane – should also be used for asylum seekers who arrive by boat. While people who arrive by boat in excised offshore places such as Christmas Island are barred from applying for a bridging visa under the Migration Act, the Minister retains discretionary powers to either lift that bar, or to grant a bridging visa to a person in immigration detention.[160]

Under the Migration Act the Minister also has the power to issue a residence determination permitting a person in immigration detention to live at a specified residence in the community.[161] People in community detention remain in immigration detention under law. However, they are generally not under supervision and can move about in the community subject to conditions attached to their residence determination. Such conditions might include, for example, a curfew, the requirement to sleep at a specified residence every night, travel restrictions and requirements to report regularly to DIAC. Accordingly, the community detention system allows for people to be subjected to much fewer restrictions on their liberty, while at the same time mitigating risks and promoting compliance with immigration processes.

Over the past two years the Commission has repeatedly raised concerns about the under-utilisation of community detention as an alternative to holding people in detention facilities.[162] During visits, the Commission has met significant numbers of people who remained in detention facilities despite appearing to meet one or more of the priority criteria under the Residence Determination Guidelines.[163] This has included families with children, unaccompanied minors, people with significant physical and mental health concerns, people who have self-harmed and torture and trauma survivors. As discussed in section 8.2 above, the Commission was concerned that at the time of its visit to Curtin IDC, only one person had been referred from Curtin for a community detention placement since the IDC re-opened in June 2010.

The Commission has welcomed the expanded use of community detention since late 2010, mostly for families and unaccompanied minors. Under this expansion, between October 2010 and August 2011, 1690 people were moved out of detention facilities and into community detention – 882 adults, 527 accompanied children and 281 unaccompanied minors.[164] This is a significant positive development.

The Commission urges the Australian Government to expand this program further. As of the start of September 2011, there remained almost 4000 asylum seekers in immigration detention facilities across Australia, including almost 300 accompanied children and unaccompanied minors.[165] If a person cannot be granted a bridging visa and must be held in immigration detention, the Minister and DIAC should make the greatest possible use of community detention as an alternative to holding people in detention facilities. This should apply to all people in immigration detention, particularly those who meet the priority criteria under the Residence Determination Guidelines.[166]

In addition to bridging visas and community detention, there is considerable scope for the Australian Government to develop and expand use of other community-based alternatives to holding people in secure detention facilities for prolonged periods. These might include, for example, transforming the use of current low security immigration detention facilities into open reception centres for asylum seekers. As discussed in sections 10 and 11 above, there are numerous examples in use in comparable countries which have a broad range of associated benefits.

Part D:
Recommendations

Recommendation 1

The Australian Government should end the current system of mandatory and indefinite immigration detention.

The Australian Government should implement reforms it announced in 2008 under which immigration detention is to be used as a last resort and for the shortest practicable period, people are to be detained in the least restrictive environment appropriate to their individual circumstances, and there is a presumption that people will be permitted to reside in the community unless they pose an unacceptable risk.

The need to detain should be assessed on a case-by-case basis taking into consideration individual circumstances. That assessment should be conducted when a person is taken into immigration detention or as soon as possible thereafter. A person should only be held in an immigration detention facility if they are individually assessed as posing an unacceptable risk to the Australian community and that risk cannot be met in a less restrictive way. Otherwise, they should be permitted to reside in community-based alternatives while their immigration status is resolved.

Recommendation 2

The Australian Government should comply with its international human rights obligations by providing for a decision to detain a person, or a decision to continue a person's detention, to be subject to prompt review by a court. To comply with article 9(4) of the ICCPR, the court must have the power to order the person's release if their detention is not lawful. The lawfulness of their detention is not limited to domestic legality – it includes whether the detention is compatible with the requirements of article 9(1) of the ICCPR, which affirms the right to liberty and prohibits arbitrary detention.

Recommendation 3

Until the above recommendations are implemented, the Australian Government should avoid the prolonged detention of asylum seekers by complying with its *New Directions in Detention* policy under which detention of asylum seekers is for conducting health, identity and security checks. The security check should not be interpreted as requiring a full ASIO security assessment before an individual is released from an immigration detention facility. Rather, the security check should consist of an assessment of whether an individual would pose an unacceptable risk to the Australian community if they were given authority to live in the community. That assessment should be made when the individual is taken into immigration detention, or as soon as possible thereafter.

Recommendation 4

The Minister for Immigration and DIAC should make the greatest possible use of community-based alternatives to holding people in immigration detention facilities. This should include:

- Alternatives to detention such as bridging visas. While people who arrive in excised offshore places are barred from applying for a bridging visa under the Migration Act, the Minister retains discretionary powers to either lift that bar, or to grant a bridging visa to a person in immigration detention.
- Alternative forms of detention such as community detention. If a person cannot be granted a bridging visa and must be held in immigration detention, the Minister and DIAC should make the greatest possible use of community detention. This should apply to all people in immigration detention, particularly those who meet the priority criteria under the Residence Determination Guidelines.

Recommendation 5

In relation to processing of refugee claims:

- the Australian Government should take ongoing steps to ensure the quality, fairness and rigour of the process used to assess people's refugee claims
- DIAC should increase information flow to asylum seekers in immigration detention so that each person is kept informed about processing steps, estimated timeframes and progress with their individual case
- DIAC should ensure that IAAAS contractual and funding arrangements provide for migration agents to spend sufficient time with their clients preparing for interviews and lodgement of written submissions
- DIAC should ensure that all asylum seekers in immigration detention are aware of their ability to lodge a complaint about their migration agent with the Office of the Migration Agents Registration Authority
- additional reviewers should be appointed to minimise waiting periods for independent merits review interviews and decisions
- DIAC should provide all asylum seekers in immigration detention who receive a negative decision on their refugee status with contact details for legal and community groups able to provide assistance with judicial review.

Recommendation 6

DIAC should change its approach to case managers' engagement with recognised refugees in immigration detention facilities about the option of 'voluntary removal'. Case managers should not propose the 'voluntary removal' of recognised refugees to their country of origin. Rather, DIAC efforts should be targeted towards ensuring that recognised refugees are removed from immigration detention facilities as quickly as possible.

Recommendation 7

The Australian Government should adopt a specific mechanism to address the situation of stateless persons. This should include a statelessness determination process, mechanisms to ensure that people are not subjected to prolonged detention while they go through the process, and access to sustainable outcomes such as through the creation of a permanent visa class for stateless persons. Pending the adoption of such a mechanism, the Australian Government should ensure that stateless persons are not subjected to prolonged or indefinite detention.

Recommendation 8

DIAC and ASIO should take all possible steps to ensure that outstanding ASIO security assessments for people in immigration detention facilities are completed as quickly as possible, particularly for those people who have already been detained for prolonged periods.

Recommendation 9

People in immigration detention subject to ASIO security assessments should be provided with greater information about the processes and timeframes involved and about progress with their individual assessments.

Recommendation 10

The Australian Government should ensure that durable solutions are provided for people who have received adverse security assessments from ASIO. In doing so:

- these people should be removed from immigration detention facilities as soon as possible
- alternative placement options should be considered including less restrictive places of detention than high-security Immigration Detention Centres and community detention, if necessary with conditions to mitigate any identified risks
- possible visa options should be considered, for example the Minister for Immigration could exercise discretionary power to grant temporary visas with appropriate conditions attached
- the Australian Government should not propose the 'voluntary removal' of recognised refugees in this situation to their country of origin.

Recommendation 11

The Australian Government should introduce reforms so that all people who have received adverse security assessments from ASIO:

- are provided with information sufficient for them to be reasonably informed of the basis of the adverse assessment
- are provided with access to merits review by the Administrative Appeals Tribunal
- are provided with access to greater information about the basis of the adverse assessment if they apply for judicial review, either directly or through an appropriate person – for example, a Special Advocate able to view both an original and a redacted summary of the assessment.

Recommendation 12

People should not be held in immigration detention in remote locations such as Curtin IDC. If people must be held in immigration detention facilities, they should be located in or near metropolitan areas.

If the Australian Government intends to continue to use Curtin IDC, it should reduce the number of people detained there, cease the practice of accommodating people in dormitory bedrooms and return those rooms to their original use as space for recreational activities.

Recommendation 13

DIAC should ensure that all people in immigration detention at Curtin IDC have access to:

- adequate outdoor recreation spaces including grassy and shaded areas
- adequate indoor areas for educational and recreational activities
- a range of recreational and educational activities conducted on a regular and frequent basis
- a freely accessible library area stocked with reading materials in languages spoken by people in detention
- adequate access to communication facilities including internet, fax, and incoming and outgoing telephones
- a secure space for storing their personal belongings.

Recommendation 14

DIAC and Serco should ensure that people in immigration detention at Curtin IDC are provided with regular opportunities to leave the detention environment on external excursions. DIAC should implement consistent standards for external excursions across the detention network. Standards for the conduct of a minimum number of external excursions should be specified in the Serco contracts applicable to all detention facilities, and financial penalties should be applied if those standards are not met.

Recommendation 15

DIAC and Serco should ensure that:

- staff training and performance management mechanisms include a strong focus on treating all people in immigration detention with humanity and with respect for their dignity
- all staff refer to people in immigration detention by their name – their identification number should only be used as a secondary identifier where this is necessary for clarification purposes
- people in immigration detention are able to lodge both internal and external complaints confidentially and without fear of repercussions.

Recommendation 16

An independent body should be charged with monitoring the provision of physical and mental health services in immigration detention, and adequate resources should be allocated to that body to fulfil this function.

Recommendation 17

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

- Ensure that all people detained at Curtin IDC are provided with timely access to appropriate physical and mental health services, including dental, optometry, physiotherapy and medical specialist care as required.
- Ensure that the IHMS physical and mental health staffing at Curtin IDC is increased to an adequate level as soon as possible.
- Overhaul the clinical governance framework for the delivery of mental health services at Curtin IDC and across the detention network. This should involve a consultant psychiatrist overseeing and being clinically responsible for mental health service delivery including supervision of staff in the provision of clinical care.

Recommendation 18

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

- Continue to consult with specialists in suicide prevention as well as mental health professionals about measures to mitigate the risk of further suicides across the detention network, and implement these measures as a matter of urgency.
- Ensure that a full safety audit is conducted across Curtin IDC and all other immigration detention facilities, and that all appropriate measures are taken to minimise the risk of suicide and self-harm.
- Ensure that all relevant staff are provided with adequate training on the Psychological Support Program as soon as possible.

Recommendation 19

With regard to people in immigration detention who are survivors of torture and trauma, DIAC should:

- Ensure that its policy, Identification and Support of People in Immigration Detention who are Survivors of Torture and Trauma, is implemented across the detention network. Under this policy, the continued detention of survivors of torture and trauma in Immigration Detention Centres is to occur only as a last resort where risk to the Australian community is considered unacceptable.
- Ensure that they are provided with adequate access to specialist counselling services.

Endnotes

1 The Commission's reports of complaints about alleged human rights breaches in immigration detention are available at http://humanrights.gov.au/legal/humanrightsreports/index.html. The Commission's national inquiry reports are *A last resort? National Inquiry into Children in Immigration Detention* (2004) (A last resort), at http://humanrights.gov.au/human_rights/children_detention_report/index.html, and *Those who've come across the seas: Detention of unauthorised arrivals* (1998), at http://humanrights.gov.au/human_rights/immigration/seas.html (viewed 6 July 2011).

2 Further information about the Commission's activities relating to immigration detention is available at http://humanrights.gov.au/human_rights/immigration/detention_rights.html#9.

3 See http://humanrights.gov.au/human_rights/immigration/detention_rights.html#9_3.

4 See http://humanrights.gov.au/human_rights/immigration/idc2011_curtin_response.html.

5 C Evans, *New Directions in Detention – Restoring Integrity to Australia's Immigration System* (Speech delivered at the Centre for International and Public Law Seminar, Australian National University, Canberra, 29 July 2008) (New Directions). At http://www.minister.immi.gov.au/media/speeches/2008/ce080729.htm (viewed 1 August 2011).

6 DIAC, *Response to the Australian Human Rights Commission Statement on Immigration Detention in Villawood* (2011) (DIAC response to 2011 Villawood report). At http://humanrights.gov.au/human_rights/immigration/idc2011_villawood_response.html (viewed 27 July 2011).

7 See sections 6.1, 6.4, 6.5, 7.1, 9.1 and 9.3 of this report.

8 See, for example Australian Human Rights Commission, 'Commission warns against revisiting aspects of Pacific Solution' (Media Release, 22 August 2011), at http://humanrights.gov.au/about/media/media_releases/2011/75_11.html (viewed 29 August 2011); Australian Human Rights Commission, 'Sending asylum seekers to Malaysia is not the answer to addressing people smuggling' (Media Release, 25 July 2011), at http://humanrights.gov.au/about/media/media_releases/2011/61_11.html (viewed 29 August 2011); Australian Human Rights Commission, 'Commission raises concerns about sending asylum seekers to Malaysia' (Media Release, 9 May 2011), at http://humanrights.gov.au/about/media/media_releases/2011/38_11.html (viewed 29 August 2011); Australian Human Rights Commission, *Submission to the Senate Standing Committees on Legal and Constitutional Affairs Inquiry into the Migration Amendment (Detention Reform and Procedural Fairness) Bill 2011* (2011), section 7, at http://humanrights.gov.au/legal/submissions/2011/20110623_detention_reform.html (viewed 30 August 2011).

9 United Nations High Commissioner for Refugees, *Asylum Levels and Trends in Industrialized Countries 2010* (2011). At http://www.unhcr.org/4d8c5b109.html (viewed 30 August 2011).

10 Commonwealth of Australia, *Official Committee Hansard: Senate Legal and Constitutional Affairs Legislation Committee – Estimates* (23 May 2011), p 11 (Andrew Metcalfe, Secretary, DIAC).

11 *Convention relating to the Status of Refugees* (1951) and *Protocol relating to the Status of Refugees* (1967) (Refugee Convention). At http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf (viewed 25 August 2011). See further note 8.

12 *Universal Declaration of Human Rights* (1948), arts 9, 14, at http://www.un.org/en/documents/udhr/ (viewed 30 August 2011); *International Covenant on Civil and Political Rights* (1966) (ICCPR), arts 9, 10, at http://www2.ohchr.org/english/law/ccpr.htm (viewed 30 August 2011); *Convention on the Rights of the Child* (1989) (CRC), art 37, at http://www2.ohchr.org/english/law/crc.htm (viewed 30 August 2011).

13 The most recent Australian census counted 3093 people usually resident in Derby. See Australian Bureau of Statistics, *2006 Census Quick Stats: Derby (Urban Centre/Locality)*. At http://www.censusdata.abs.gov.au/ABSNavigation/prenav/LocationSearch?collection=Census&period=2006&areacode=UCL507000&producttype=QuickStats&breadcrumb=PL&action=401 (viewed 24 June 2011).

14 On 9 April 2010, the Australian Government announced a suspension of processing of claims lodged by asylum seekers from Sri Lanka and Afghanistan who arrived on or after that date. See Minister for Immigration and Citizenship, Minister for Foreign Affairs and Minister for Home Affairs, 'Changes to Australia's Immigration Processing System' (Media Release, 9 April 2010). At http://www.minister.immi.gov.au/media/media-releases/2010/ce10029.htm (viewed 22 June 2011). The suspension for asylum seekers from Sri Lanka was lifted on 6 July 2010 and the suspension for asylum seekers from Afghanistan was lifted on 30 September 2010. See further Australian Human Rights Commission, *2010 Immigration detention on Christmas Island* (2010) (2010 Christmas island report), section 8. At http://humanrights.gov.au/human_rights/immigration/idc2010_christmas_island.html (viewed 6 July 2011).

15 Figures provided by DIAC, current as of 18 May 2011.

16 DIAC provided the Commission with figures current as of 18 May 2011, listing the citizenship of the 1433 men in immigration detention at Curtin IDC. According to these figures, Curtin's population comprised 1121 Afghani citizens, 131 Sri Lankan citizens, 127 Iranian citizens, 31 Pakistani citizens and 6 Iraqi citizens. There were also 17 men who were stateless.

17 DIAC provided the Commission with figures current as of 18 May 2011 listing the length of immigration detention for the 1433 men at Curtin IDC. According to these figures, 136 men had been in detention for 0–3 months, 192 men had been in detention for 3–6 months, 211 men had been in detention for 6–9 months, 367 men had been in detention for 9–12 months, 513 men had been in detention for 12–18 months and 14 men had been in detention for 18–24 months.

18 DIAC provided the Commission with figures current as of 18 May 2011 showing that there were 678 people in immigration detention at Curtin IDC (47 per cent of the detainee population) who were subject to the processing suspension. This comprised 669 men from Afghanistan and 9 men from Sri Lanka.

19 See http://humanrights.gov.au/human_rights/immigration/idc2011_curtin_photos.html.

20 ICCPR, note 12, art 9(1); CRC, note 12, art 37(b).

21 New Directions, note 5.

22 DIAC, *Immigration Detention Statistics Summary* (20 May 2011). At http://www.immi.gov.au/managing-australias-borders/detention/facilities/statistics/ (viewed 22 June 2011).

23 See note 17.

24 Figures provided by DIAC, current as of 18 May 2011.

25 See note 14.

26 See note 18.

27 Based on figures provided by DIAC, current as of 18 May 2011.

28 New Directions, note 5.

29 As above.

30 See, for example Australian Human Rights Commission, *2011 Immigration detention at Villawood* (2011) (2011 Villawood report), section 6, at http://humanrights.gov.au/human_rights/immigration/idc2011_villawood.html (viewed 1 August 2011); 2010 Christmas Island report, note 14, section 10.

31 DIAC, *Control Framework for Decision Making, Compliance and Case Resolution Division* (30 October 2010); DIAC response to 2011 Villawood report, note 6, p 3.

32 DIAC response to 2011 Villawood report, note 6, p 2.

33 See further 2010 Christmas Island report, note 14, section 10; Joint Standing Committee on Migration, *First report of the inquiry into immigration detention: Immigration detention in Australia, A new beginning* (2008), recommendations 10, 11. At http://www.aph.gov.au/house/committee/mig/detention/report.htm (viewed 2 August 2011).

34 ICCPR, note 12, art 9(4). See also CRC, note 12, art 37(d).

35 See, for example United Nations Human Rights Committee, *A v Australia*, Communication No. 560/1993, UN Doc. CCPR/C/59/D/560/1993 (1997), para 9.5, at http://www.unhchr.ch/tbs/doc.nsf/0/30c417539ddd944380256713005e80d3?Opendocument (viewed 2 August 2011); United Nations Human Rights Committee, *Baban et al v Australia*, Communication No. 1014/2001, UN Doc. CCPR/C/78/D/1014/2001 (2003), para 7.2, at http://daccess-ods.un.org/TMP/3557606.33945465.html (viewed 5 September 2011); United Nations Human Rights Committee, *C v Australia*, Communication No. 900/1999, UN Doc. CCPR/C/76/D/900/1999 (2002), para 8.3, at http://daccess-ods.un.org/TMP/5577843.1892395.html (viewed 5 September 2011).

36 See 2011 Villawood report, note 30, section 8.4; 2010 Christmas Island report, note 14, section 10.

37 See further 2011 Villawood report, note 30, section 8.4.

38 *Migration Act 1958* (Cth), s 195A.

39 DIAC response to 2011 Villawood report, note 6, p 5.

40 Australian Human Rights Commission, *Submission to the Independent Review of the Intelligence Community* (2011), at http://humanrights.gov.au/legal/submissions/2011/20110431_intelligence.html (viewed 5 September 2011); 2011 Villawood report, note 30, section 8.4.

41 Under section 36 of the *Australian Security Intelligence Organisation Act 1979* (Cth), this requirement does not apply to a person who is not an Australian citizen or permanent resident, or who is not the holder of a valid permanent visa or a special purpose visa.

42 Submission to the Independent Review of the Intelligence Community, note 40; 2011 Villawood report, note 30, section 8.4.

43 See further Submission to the Independent Review of the Intelligence Community, note 40.

44 Joint Select Committee on Australia's Immigration Detention Network, *Question 6 – The Department of Immigration and Citizenship's answers to questions on notice, received 10th August 2011*. At http://www.aph.gov.au/Senate/committee/immigration_detention_ctte/immigration_detention/submissions.htm (viewed 17 August 2011).

45 Figures provided by DIAC, current as of 18 May 2011.

46 *Convention relating to the Status of Stateless Persons* (1954), at http://www2.ohchr.org/english/law/stateless.htm (viewed 2 August 2011); *Convention on the Reduction of Statelessness* (1961), at http://www2.ohchr.org/english/law/statelessness.htm (viewed 2 August 2011).

47 See note 14.

48 *M61/2010E and M69/2010 v Commonwealth of Australia & Ors* [2010] HCA 41. A summary of the judgement is available at http://portsea.austlii.edu.au/au/other/HCASum/2010/40.html (viewed 3 August 2011).

49 Information about the Protection Obligations Determination process is available on the DIAC website at http://www.immi.gov.au/visas/humanitarian/onshore/protection-obligations-determination.htm (viewed 3 August 2011).

50 The character provisions under section 501 of the *Migration Act 1958* (Cth) were amended by the *Migration Amendment (Strengthening the Character Test and other Provisions) Act 2011* (Cth), which was passed by Parliament on 4 July 2011. See further DIAC, *Fact Sheet 79 – The Character Requirement* (28 July 2011), at http://www.immi.gov.au/media/fact-sheets/79character.htm (viewed 3 August 2011).

51 Prime Minister and Minister for Immigration and Citizenship, 'The regional cooperation framework' (Joint Media Release, 7 May 2011). At http://www.minister.immi.gov.au/media/cb/2011/cb165079.htm (viewed 3 August 2011).

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54 *M70/2011 and M106/2011 v Minister for Immigration and Citizenship* [2011] HCA 32. A summary of the judgment is available at http://www.hcourt.gov.au/publications/judgment-summaries/2011-judgment-summaries (viewed 1 September 2011).

55 In particular, the Commission has raised concerns about the processing suspension, changes to the character provisions of the Migration Act, and arrangements to transfer asylum seekers to third countries. See Australian Human Rights Commission, 'Suspension of processing asylum seekers raises serious concerns' (Media Release, 9 April 2010), at http://humanrights.gov.au/about/media/media_releases/2010/29_10.html (viewed 3 August 2011); 2010 Christmas Island report, note 14, section 8; Australian Human Rights Commission, *Submission to the Inquiry into the Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011* (2011), at http://humanrights.gov.au/legal/submissions/2011/20110531_migration.html (viewed 5 September 2011); note 8.

56 See note 14.

57 Evidence to Joint Select Committee on Australia's Immigration Detention Network, Canberra, 16 August 2011, p 11 (Andrew Metcalfe, Secretary, DIAC). At http://www.aph.gov.au/Senate/committee/immigration_detention_ctte/immigration_detention/hearings/index.htm (viewed 5 September 2011).

58 See section 5 and notes 18 and 27.

59 See Australian Human Rights Commission, 'Suspension of processing asylum seekers raises serious concerns' (Media Release, 9 April 2010), at http://humanrights.gov.au/about/media/media_releases/2010/29_10.html (viewed 3 August 2011); 2010 Christmas Island report, note 14, section 8.

60 As of 13 June 2011, the 705 people detained at Curtin IDC waiting for an independent merits review interview to be scheduled had been waiting, on average, for 84 days. Figures provided by DIAC.

61 For example, as of mid-June 2011, the people detained at Curtin IDC waiting for independent merits review interviews to be scheduled included people whose initial detention dated back to May 2010. Information provided by Independent Protection Assessment Office.

62 Australian Government, *Mainland detention centres: a notice to immigration detention clients* (17 March 2011). At http://www.newsroom.immi.gov.au/media_releases/913 (viewed 4 August 2011).

63 Information provided by Independent Protection Assessment Office.

64 Joint Select Committee on Australia's Immigration Detention Network, *Question 8 – The Department of Immigration and Citizenship's answers to questions on notice, received 16th August 2011*. At http://www.aph.gov.au/Senate/committee/immigration_detention_ctte/immigration_detention/submissions.htm (viewed 17 August 2011).

65 New Directions, note 5.

66 See, for example 2011 Villawood report, note 30, section 8.3.

67 See, for example 2011 Villawood report, note 30, sections 8.2, 8.3.

68 Australian Government, *Mainland detention centres: a notice to immigration detention clients*, note 62.

69 2011 Villawood report, note 30, section 8.5.

70 For further information about the IAAAS, see the DIAC website at http://www.immi.gov.au/media/fact-sheets/63advice.htm (viewed 9 August 2011).

71 See note 48.

72 This explanation was included in the script used by DIAC officers when informing irregular maritime arrivals of a negative independent merits review decision (dated 16 May 2011). See also DIAC, *Questions and Answers – Impact of the High Court of Australia's decision on Refugee Status Assessment (RSA) clients* (2011). At http://www.immi.gov.au/visas/humanitarian/onshore/protection-obligations-determination.htm (viewed 11 August 2011).

73 During its visit to Curtin IDC the Commission was advised by DIAC that irregular maritime arrivals are informed that if they seek judicial review, they will remain in immigration detention throughout the process. This position is reflected in DIAC materials including the script used by DIAC officers when informing irregular maritime arrivals of a negative independent merits review decision (dated 16 May 2011). See also DIAC, *Questions and Answers – Impact of the High Court of Australia's decision on Refugee Status Assessment (RSA) clients,* note 72; DIAC, *Changes to refugee status determination – Questions and answers* (2011), at http://www.immi.gov.au/visas/humanitarian/onshore/protection-obligations-determination.htm (viewed 11 August 2011).

74 At the time of the Commission's visit, more than three quarters of the men detained at Curtin IDC had been in immigration detention for longer than six months, and more than one third had been detained for longer than a year. See note 17.

75 See 2011 Villawood report, note 30, section 8.3.

76 Information provided by DIAC.

77 Figures provided by DIAC.

78 Australian Government, *Mainland detention centres: a notice to immigration detention clients*, note 62.

79 Between 11 December 2009 and 16 August 2011, ASIO completed 6182 security assessments for irregular maritime arrivals. Information provided by ASIO.

80 See DIAC response to 2011 Villawood report, note 6, p 4.

81 Information provided by ASIO, 25 August 2011.

82 See, for example 2011 Villawood report, note 30, section 8.2; Submission to the Independent Review of the Intelligence Community, note 40.

83 See, for example 2011 Villawood report, note 30, section 8.2; 2010 Christmas Island report, note 14, section 9.

84 Submission to the Independent Review of the Intelligence Community, note 40.

85 Figures provided by DIAC.

86 New Directions, note 5.

87 *International Covenant on Economic, Social and Cultural Rights* (1966), art 12, at http://www2.ohchr.org/english/law/cescr.htm (viewed 25 August 2011); CRC, note 12, art 24.

88 Human Rights and Equal Opportunity Commission, *Immigration Detention Guidelines* (2000), section 13. At http://humanrights.gov.au/human_rights/immigration/idc_guidelines2000.html (viewed 5 September 2011).

89 See 2010 Christmas Island report, note 14, section 19; Australian Human Rights Commission, *2010 Immigration detention in Darwin* (2010) (2010 Darwin report), section 8, at http://humanrights.gov.au/human_rights/immigration/idc2010_darwin.html (viewed 5 September 2011); Australian Human Rights Commission, *2011 Immigration detention in Leonora* (2011) (2011 Leonora report), section 8, at http://humanrights.gov.au/human_rights/immigration/idc2011_leonora.html (viewed 5 September 2011); 2011 Villawood report, note 30, section 11.

90 See, for example A last resort, note 1, chapter 9; Australian Human Rights Commission, *2008 Immigration detention report* (2009) (2008 Immigration detention report), sections 8, 10.3, at http://humanrights.gov.au/human_rights/immigration/idc2008.html (viewed 5 September 2011); Australian Human Rights Commission, *2009 Immigration detention and offshore processing on Christmas Island* (2009) (2009 Christmas Island report), section 12.5, at http://humanrights.gov.au/human_rights/immigration/idc2009_xmas_island.html (viewed 5 September 2011); 2010 Christmas Island report, note 14, section 19.2; 2010 Darwin report, note 89, section 8; 2011 Leonora report, note 89, section 8; 2011 Villawood report, note 30, section 11.2.

91 See, for example Australian Medical Association, Position Statement, *Health Care of Asylum Seekers and Refugees* (2011), at http://ama.com.au/node/7075 (viewed 27 August 2011); Australian College of Mental Health Nurses, Detention Health Advisory Group and Australian Psychological Society, 'Mental health costs of detention are too high, experts say' (Media Release, 18 August 2011), at http://www.psychology.org.au/Content.aspx?ID=3857 (viewed 27 August 2011); Australian College of Mental Health Nurses, Detention Health Advisory Group and Australian Psychological Society, 'Detention centres failing to meet minimum standards of mental health care, experts say' (Media Release, 29 August 2011), at http://www.psychology.org.au/Content.aspx?ID=3864 (viewed 29 August 2011); Royal Australian and New Zealand College of Psychiatrists, 'Mental health of asylum seekers must be considered' (Media Release, 10 August 2011), at http://www.ranzcp.org/latest-news/ (viewed 2 September 2011).

92 Under the Residence Determination Guidelines, children and their accompanying family members, persons who may have experienced torture or trauma, persons with significant physical or mental health concerns, persons whose cases will take a considerable period to substantively resolve, and other cases with unique or exceptional characteristics are to be given priority consideration for community detention. See Minister for Immigration and Citizenship, *Minister's Residence Determination Power Under s. 197AB and S.197AD of the Migration Act 1958: Guidelines* (2009) (Residence Determination Guidelines), para 4.1.4.

93 Information provided by DIAC, 16 August 2011.

94 See, for example 2009 Christmas Island report, note 90, section 13; 2010 Christmas Island report, note 14, sections 11, 13.2; 2010 Darwin report, note 89, sections 7, 8.2; 2011 Leonora report, note 89, sections 7, 8.2; 2011 Villawood report, note 30, sections 7, 11.2.

95 Information provided by DIAC, 30 August 2011.

96 Residence Determination Guidelines, note 92, para 4.1.4.

97 See 2010 Darwin report, note 89, section 8; 2011 Villawood report, note 30, section 11.2.

98 See, for example 2011 Villawood report, note 30, section 11.2.

99 DIAC response to 2011 Villawood report, note 6, p 8.

100 Information provided by DIAC, 8 June 2011.

101 DIAC, *Identification and Support of People in Immigration Detention Who are Survivors of Torture and Trauma* (April 2009), p 3.

102 Residence Determination Guidelines, note 92, para 4.1.4.

103 See, for example 2010 Darwin report, note 89, section 8.2; 2010 Christmas Island report, note 14, section 19.2; 2011 Villawood report, note 30, section 11.3.

104 Joint Select Committee on Australia's Immigration Detention Network, *Question 22 – The Department of Immigration and Citizenship's answers to questions on notice, received 16th August 2011*. At http://www.aph.gov.au/Senate/committee/immigration_detention_ctte/immigration_detention/submissions.htm (viewed 29 August 2011).

105 As above.

106 See note 104.

107 DIAC, *Psychological Support Program for the Prevention of Self Harm in Immigration Detention* (April 2009).

108 Information provided by DIAC on 8 June and 4 August 2011.

109 The deaths of people detained at Curtin IDC include the death on 22 August 2010 of a 30 year old Afghan man and the death on 28 March 2011 of a 20 year old Afghan man.

110 Commonwealth of Australia, *Official Committee Hansard: Senate Legal and Constitutional Affairs Legislation Committee – Estimates* (23 May 2011), p 12 (Andrew Metcalfe, Secretary, DIAC).

111 2011 Villawood report, note 30, section 11.

112 DIAC response to 2011 Villawood report, note 6, pp 8–9.

113 Villawood report, note 30, section 11.

114 See P Taylor, 'Detention misery cuts both ways on Christmas Island', *The Australian*, 13 July 2011.

115 Immigration Detention Guidelines, note 88, section 1.4(a).

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

117 Immigration Detention Guidelines, note 88, section 1.1.

118 Joint Select Committee on Australia's Immigration Detention Network, *Question 1 – The Department of Immigration and Citizenship's answers to questions on notice, received 10th August 2011*. At http://www.aph.gov.au/Senate/committee/immigration_detention_ctte/immigration_detention/submissions.htm (viewed 17 August 2011).

119 Figures provided by DIAC, current as of 18 May 2011.

120 Figures provided by DIAC.

121 2011 Leonora report, note 89; 2010 Christmas Island report, note 14; 2009 Christmas Island report, note 90.

122 See http://humanrights.gov.au/human_rights/immigration/idc2011_curtin_photos.html.

123 DIAC, *Standards for the design and fitout of immigration detention facilities* (October 2007) (DIAC Standards), section 14.

124 As above, section 8.

125 Immigration Detention Guidelines, note 88, section 9.1.

126 Immigration Detention Guidelines, note 88, section 11.2.

127 2010 Christmas Island report, note 14, section 17.

128 See, for example 2011 Villawood report, note 30; 2011 Leonora report, note 89; 2010 Darwin report, note 89; 2010 Christmas Island report, note 14; 2009 Christmas Island report, note 90; 2008 Immigration detention report, note 90.

129 New Directions, note 5.

130 Immigration Detention Guidelines, note 88, section 4.

131 Information provided by DIAC, 7 July 2011.

132 Immigration Detention Guidelines, note 88, section 7.2.

133 Immigration Detention Guidelines, note 88, section 4.6.

134 See, for example 2011 Villawood report, note 30, section 13; 2010 Christmas Island report, note 14, section 22.3; 2008 Immigration detention report, note 90, section 10.6.

135 Immigration Detention Guidelines, note 88, section 1.4(a); New Directions, note 5.

136 Information provided by DIAC and Serco management, Curtin IDC, 16 May 2011.

137 Information provided in meetings with DIAC and Serco officers, Curtin IDC, week of 16–20 May 2011.

138 Information provided by DIAC, 7 July 2011.

139 2011 Villawood report, note 30, section 13; 2010 Christmas Island report, note 14, section 22.3; 2009 Christmas Island report, note 90, section 12.6(c); 2008 Immigration detention report, note 90, section 10.6.

140 DIAC response to 2011 Villawood report, note 6, pp 15–16.

141 ICCPR, note 12, art 10; Immigration Detention Guidelines, note 88, section 1.3.

142 Information provided by DIAC, 7 July 2011.

143 See 2010 Darwin report, note 89, section 10; 2010 Christmas Island report, note 14, section 18.

144 See, for example 2010 Christmas Island report, note 14, section 18.

145 Information provided by DIAC, 7 July 2011.

146 See note 50; Submission to the Inquiry into the Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011, note 55.

147 New Directions, note 5, key immigration values 6 and 7.

148 See further International Detention Coalition and La Trobe Refugee Research Centre, *There are Alternatives: A handbook for preventing unnecessary immigration detention* (2011) (There are alternatives). At http://idcoalition.org/cap/handbook/ (viewed 8 August 2011).

149 See further There are Alternatives, above, pp 29–36.

150 See There are Alternatives, note 148, p 44, box 14.

151 See There are Alternatives, note 148, p 34, box 8.

152 See There are Alternatives, note 148, p 35, box 9.

153 See There are Alternatives, note 148, p 21, box 2.

154 Costs in Canadian dollars. See There are Alternatives, note 148, p 44, box 14.

155 See There are Alternatives, note 148, p 40, box 12.

156 See There are Alternatives, note 148, pp 17, 40, 51–52.

157 See There are Alternatives, note 148, pp 16–17, 51–52.

158 Refugee Convention, note 11, art 31(1). Article 31(1) of the Convention states: 'The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.' Under UNHCR guidelines, this provision covers 'a person who enters the country in which asylum is sought directly from the country of origin, or from another country where his protection, safety and security could not be assured.' It also covers 'a person who transits an intermediate country for a short period of time without having applied for, or received, asylum there.' UNHCR, *Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers* (1999), para 4. At http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3c2b3f844 (viewed 25 August 2011).

159 New Directions, note 5.

160 *Migration Act 1958* (Cth), ss 46A(1), 46A(2), 195A(1), 195A(2).

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

162 See, for example 2009 Christmas Island report, note 90, section 13; 2010 Christmas Island report, note 14, sections 11, 13.2; 2010 Darwin report, note 89, sections 7, 8.2; 2011 Leonora report, note 89, sections 7, 8.2; 2011 Villawood report, note 30, sections 7, 11.2.

163 See note 92.

164 These figures cover the period between 18 October 2010 and 31 August 2011. Information provided by DIAC.

165 Figures provided by DIAC, current as of 1 September 2011.

166 See note 92.

Further Information

Australian Human Rights Commission

Level 3, 175 Pitt Street
SYDNEY NSW 2000

GPO Box 5218
SYDNEY NSW 2001
Telephone: (02) 9284 9600

Complaints Infoline: 1300 656 419
General enquiries and publications: 1300 369 711
TTY: 1800 620 241
Fax: (02) 9284 9611
Website: www.humanrights.gov.au

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