Australian Government

Comcare

INVESTIGATION REPORT

Investigation Number: EVE00205473

Brief Overview

1. Comcare for some time has had concerns about the occupational health and safety (OHS) of federal workers, contractors and detainees at Immigration Detention Facilities (IDFs) that the Department of Immigration and Citizenship (DIAC) controlled. The concerns included the impact of work pressure and the risk of harm and mental stress.

2. In 2008, Comcare commenced an investigation into an attempted suicide of a detainee at the Perth IDF. In this investigation, Comcare focussed on contractual arrangements with IDF operators to ensure that DIAC's duty of care under the *Occupational Health and Safety Act 1991* (the OHS Act) was being met. At the conclusion of the investigation, Comcare recommended that, *"DIAC provides employees and contractors with clear and unambiguous policies and procedures to be followed while performing custodial care to detainees at risk of suicide and self harm"*.

3. In early 2010, Comcare entered into *Cooperative Compliance*[1] activities with DIAC in an attempt to resolve concerns about the unique factors at the Christmas Island (CI) IDF. By the end of 2010, the lack of cooperation exhibited by DIAC became such that a meeting between Comcare's senior executive and DIAC was held to flag Comcare's intentions of escalation.

4. Comcare's concerns increased with the adverse findings on similar issues in a number of independent reports on DIAC's management of detention facilities, for example, the Commonwealth and Immigration Ombudsman's February 2011 report on Christmas Island and the Australian Human Rights Commission May 2011 report on Villawood. Significant concerns were also raised in both the domestic and international media that warranted Comcare's attention.

5. In February 2011, Comcare investigators accompanied DIAC Canberra staff to CI. DIAC set Comcare an extremely tight itinerary that restricted Comcare's ability to conduct ad hoc conversations with people or undertake inspections outside DIAC's agenda.

[1] *Cooperative Compliance* is a targeted strategy to improve work health and safety compliance by working with employers that have been identified as requiring significant improvements.

6. As a consequence of the tight itinerary, Comcare sought the documentation (Attachment A) they had hoped to gain during their visit. On leaving CI, DIAC advised Comcare that they were unable to provide the requested information because the DIAC hierarchy would not allow its release.

7. A meeting was later held between senior executive staff from DIAC and Comcare where documentation originally sought at CI was discussed. DIAC advised that it would consider providing the information but that it would take some time.

8. Comcare's concerns about DIAC's monitoring of and responding to health and safety issues at IDFs were mounting. Comcare engaged with relevant state and territory OHS regulators to identify OHS concerns and safety gaps. It was agreed that a joint visit to the seven IDFs identified as most critical be conducted.

9. On 25 March 2011, Comcare commenced an investigation under the OHS Act into DIAC's management of the health and safety of detainees at IDFs and the potential impact on the health and safety of DIAC employees and contractors at the following workplaces controlled by DIAC:

   - Christmas Island – Murray Road, North West Point, Christmas Island WA
   - Curtin – Curtin RAAF Base, Derby Highway, Derby WA
   - Inverbrackie – 100 Woodside-Nairne Road, Inverbrackie SA
   - Maribyrnong – 53 Hampstead Road, Maidstone Vic
   - Northern – Stuart Highway, Berrimah NT
   - Scherger – RAAF Base Scherger, Mission River Qld and
   - Villawood – 15 Birmingham Avenue, Villawood NSW.

10. The scope of the investigation was to verify that DIAC was complying with the broad overarching health and safety requirements of the OHS Act and the *Occupational Health and Safety (Safety Standards) Regulations 1994* (the OHS Regulations).

11. The DIAC Secretary, when advised about the commencement of the investigation, committed to work cooperatively with Comcare in every possible way to ensure that DIAC's obligations were met.

12. An IDF-specific verification checklist was used as a prompt for investigators. The checklist provided a consistent and systematic process for investigators to use as the basis of verifying DIAC's OHS obligations in respect to its: structures, policies, procedures and practices. This included their implementation in IDFs to determine whether they effectively supported the health and safety of employees, contractors and third parties in matters over which DIAC had responsibility under their duty of care in accordance with the legislation. At the request of DIAC, a template verification checklist is attached, should DIAC want to use it as the basis for future self-audits (Attachment B).

13. Joint visits between Comcare and state and territory OHS inspectors were conducted at the above-mentioned IDFs over a two week period in March and April 2011. State regulators issued a range of improvement notices at a number of IDFs.

14. At the commencement of each IDF visit, Comcare investigators provided an opening briefing to staff nominated by DIAC and highlighted the purpose of the investigation and laid a foundation of cooperation. The verification process included: physical inspections of the site and plant, conversations with detainees, and staff from both DIAC and Serco Australia Pty Ltd (Serco) (DIAC's contracted IDF management).

15. At the conclusion of each visit, Comcare debriefed staff to highlight in real-time any site-specific areas of concern as well as relevant findings across other IDFs visited.

16. During the Villawood visit in April 2011, significant and pressing health and safety issues were identified and an Improvement Notice (Attachment C) was issued. The notice focussed on:

    16.1. Villawood's lower level of security arrangements, and

    16.2. the lack of risk management concerning the transfer to Villawood of the group of 10 alleged ring-leaders from the March 2011 riots at CI.

17. Three additional investigations were also commenced by Comcare into an incident at the Scherger IDF as well as the death of a detainee at both the Scherger and Curtin IDFs. Findings of these additional investigations will be reported separately.

Conclusions

18. Comcare's investigation was conducted during a period of extraordinary demand on DIAC's facilities and challenging pressures on IDF systems and people. The investigation found that overcrowding consistently presented itself as the most prevalent health and safety concern to staff across IDFs. While Comcare acknowledges that DIAC systems were under enormous strain, the effects of overcrowding in IDFs placed the health and safety of DIAC staff, their contractors and detainees at risk.

19. Standards of OHS varied across IDFs, with Inverbrackie (Adelaide) having the highest standard at the time of the visits. This higher standard was attributed to the open plan layout of the facility, low level of physical security and that the predominant detainee group was families; including young children. Villawood IDF was assessed as the facility with the most serious risks.

20. A number of improvements based on feedback provided by investigators have since been observed in IDFs; these were particularly apparent at Villawood.

21. Key areas of non-compliance were evident across all facilities. Of particular concern was the lack of effective risk assessment of DIAC's systems of work.

22. A further area of non-compliance evident across all facilities was the lack of established local OHS leadership in operation. While fundamental OHS practices were seen to be in place, there was little evidence of local staff engaging in them. Instead evidence showed that 'Canberra' was seen to own OHS – not staff on the ground. DIAC's approach to controlling OHS through its corporate support processes is seen to disempower local leadership from taking ownership of health and safety outcomes; a consequence that can lead to avoidance behaviours.

23. Based on the evidence gathered and the findings of fact below, I find that DIAC failed to comply with its health and safety obligations in the following five areas of significant risk across all IDFs in the period leading up to and during the Comcare investigation:

23.1. **Risk Management**
1.05(1) OHS Regulations

DIAC failed to have a documented site/role-specific risk assessment process across the IDFs or to ensure that Serco conducted effective risk assessment on its behalf. Such failure posed a risk to the health or safety of DIAC employees or contractors at work

23.2. **Staffing Ratios**
Section 16(2)(a) OHS Act

DIAC failed to have a staff/detainee ratio level identified and implemented. Nor did it have a system for ensuring that ratios are adjusted according to identified levels of risk. In doing so, it failed to take all reasonably practicable steps to provide a working environment (including systems of work) that was safe for DIAC employees and contractors (and without risk to their health)

23.3. **Staff Training**
Section 16(2)(e) OHS Act

DIAC failed to take all reasonably practicable steps to ensure that DIAC and Serco staff were sufficiently trained and therefore competent and confident in performing their required roles

23.4. **Critical Incident Management**
Sections 16(2)(a) and 16(2)(e) OHS Act

DIAC failed to take all reasonably practicable steps to protect the health and safety at work of DIAC employees and contractors by:

23.4.1. failing to ensure that effective critical incident management plans were in place to deal with high risk situations such as threatened suicide, detainee violence etcetera

23.4.2. failing to provide to the employees and contractors, in appropriate languages, the information, instruction, training and supervision necessary to enable them to perform their work in a manner that was safe and without risk to their health (specifically in relation to critical incidents)

23.5. **Diversity of Third Parties i.e. detainees**
Section 17 OHS Act

DIAC failed to take all reasonably practicable steps to ensure third parties i.e. detainees were not exposed to risk to their health and safety arising from the conduct from DIAC's undertaking by failing to identify and appropriately manage the diversity of detainees in areas such as: religion, culture, ethnic origin and individual needs.

Recommendations

24. I recommend that DIAC focus on developing OHS policy at the national level and invest in local leaders for their engagement and effective localised implementation of OHS policy and practice in order to maximise consistency while at the same time encouraging local leadership to own their OHS problems and solutions.

25. I recommend that the current level of DIAC's reporting of notifiable incidents to Comcare be further explored by DIAC to:

    25.1. identify whether recent significant increases are caused by an actual increase in the number of incidents or an increase in the number of incidents being reported

    25.2. ensure that DIAC can be satisfied that all notifiable incidents are captured and notified.

26. I recommend that the best-practice positive behaviours (of Serco in particular) being implemented in an IDF (CI in particular) be identified by DIAC and considered for implementation at other IDFs (see paragraphs 78 and 79 below).

27. I recommend that a comprehensive risk assessment process that accords with AS/NZS 4801:2001 and AS/NZS 4360:2004 be conducted to assess and manage the risks to staff, contractors, detainees and visitors to IDFs associated with the conduct of DIAC's detention of asylum seekers and addresses:

    27.1. documenting a staff/detainee ratio to identify adequate staff/detainee levels and coping strategies should the ratio be unachievable

    27.2. the effectiveness of the current risk assessment methodology used to determine the individual level of risk of each Irregular Maritime Arrivals (IMAs) at the time of entering Australia

    27.3. the necessary training needs specific to each IDF role and that the identified training requirements be reflected in duty statements

    27.4. critical incident planning across all IDFs, and

    27.5. the management of overcrowding.

28. I recommend that a staff awareness campaign be conducted to emphasise:

    28.1. DIAC's OHS policies and procedures to highlight their existence and how they should be applied on the ground at each individual IDF

    28.2. OHS responsibility of DIAC staff in respect of DIAC's responsibilities to its contractors and detainees.

29. I recommend that the differences between detainees, whether they be cultural, racial, religious or their personal stage in detention, be further explored by DIAC and considered when accommodating them.

Findings of Fact

30. The conclusions listed above are based on the following findings of fact:

31. I find that DIAC was an employer (as defined by section 5 of the OHS Act) at the time of the investigation.

32. I find that as an employer, DIAC must take all reasonably practicable steps to protect the health and safety of employees, contractors and third parties i.e. detainees in accordance with section 16(1) of the OHS Act.

33. I find that as an employer, DIAC must provide a working environment that is safe for both the physical health and the psychological wellbeing of DIAC employees and (subject to some limitations) contractors such as Serco in accordance with section 16(1) of the OHS Act.

34. I find that as an employer, DIAC also has a general duty to take all reasonably practicable steps to ensure that third parties, including detainees, are not exposed to a risk to their health and safety arising from any activity done in the course of DIAC's business in accordance with section 17 of the OHS Act.

35. I find that as an employer, DIAC failed, in relation to the five matters summarised in paragraph 23 of this report, to take all reasonably practicable steps to protect the health and safety of its employees, contractors and third parties such as detainees in the period leading up to and including the conduct of this investigation.

36. I find that DIAC retains a high level of control over the manner in which and the arrangements in place for the management of detainees by Serco.

37. I find that as an employer, DIAC must notify Comcare of injuries, illnesses or diseases that meet the notification criteria required by section 68 of the OHS Act.

38. I find that there is level of under-reporting of notifiable incidents in accordance with s68 of the OHS Act.

39. I find no evidence that the positive behaviours (by Serco staff in particular) in one IDF (see paragraphs 78 and 79 below) are being identified by DIAC and considered for uniform implementation at other IDFs.

40. I find no evidence of a comprehensive risk assessment process consistent with AS/NZS 401:2001 and AS/NZS 4360:2004 that assesses and manages the risks to staff, contractors, detainees and visitors to IDFs, associated with the conduct of DIAC's operations in the detention and management of immigration detainees.

41. I find that the rudimentary risk assessment methodology used to determine the individual level of risk of IMAs entering Australia is inadequate (see paragraphs 61 to 63 below).

42. I find that DIAC staff are generally unaware of their OHS responsibilities as employees under s21 of the OHS Act in respect to themselves, their colleagues, contractors, detainees and visitors. They are also generally unaware of their role in implementing DIAC's duties under section 16(1) of the OHS Act and instead see the DIAC National Office as being solely responsible.

43. I find that DIAC has not made its staff sufficiently aware of DIAC OHS policies and procedures and how they should be applied on the ground at each individual IDF.

44. I find that the differences between detainees and their associated needs, whether they be: cultural, racial, religious or their personal stage in detention are not sufficiently identified by DIAC to ensure that they are taken into consideration so that the current levels of tension might be reduced.

45. I find that the staff/detainee ratio is not sufficiently risk assessed and documented to identify and ensure adequate levels of staffing at all times.

46. I find that the current levels of DIAC staff training are insufficient and not targeted to the particular requirements of roles.

47. I find that the current levels of critical incident planning for DIAC or Serco staff are insufficient.

Reasons for Findings of Fact

48. I made the findings of fact listed above because:

Overcrowding and Staffing Ratios

49. The most common concern raised by DIAC and Serco staff as well as detainees was the significant levels of overcrowding at most centres. The increase in numbers of IMAs fluctuates and the overcrowding has been exacerbated by detainee accommodation and DIAC buildings being destroyed during the recent CI and Villawood riots. DIAC is currently exploring other accommodation options to address the current and potential future levels of overcrowding. In the meantime the health and safety of DIAC staff, their contractors and third parties including detainees, may be at risk.

50. The current Detention Services Contract between DIAC and Serco states, *"The Service Provider will ensure that the personnel levels at the Facilities are adequate to deliver the Services in accordance with this Contract".* It also provides capacity details for each centre, which are not complied with. As an example, the current detainee numbers at the CI Northwest Point Immigration Detention Centre (IDC) is said to be over 1000; however the DIAC/Serco contract states, *"Northwest Point IDC has an operational capacity of 400 and a surge capacity of 800".*

51. What the contract fails to provide is any guidance on staff/detainee ratios.

Legislative Obligations

52. DIAC must take all reasonably practicable steps to protect the health and safety of employees, contractors and third parties in accordance with the OHS Act. The OHS Act provides for a number of general duties that aim to protect the health, safety and welfare of DIAC employees and contractors at work as well as that of other persons at or near DIAC workplaces, including IDFs.

53. DIAC has a general duty to take all reasonably practicable steps to protect the health and safety of its employees and contractors under section 16 of the OHS Act. This includes ensuring that DIAC provides a working environment that is safe for both the physical health and the psychological wellbeing of DIAC employees and (subject to some limitations) contractors such as Serco and International Health Management Services (IHMS) staff. The duty also extends to providing safe systems of work, plant and any necessary information, instruction and training.

54. Under section 17 of the OHS Act, DIAC also has a general duty to take all reasonably practicable steps to ensure that third parties, including detainees, are not exposed to a risk to their health and safety arising from any activity done in the course of DIAC's business. Similarly, this duty extends to the protection of physical and psychological health and safety.

55. Under section 68 of the OHS Act, DIAC is required to notify Comcare of accidents and dangerous occurrences that meet the notification criteria. The Notification Decision Flowchart (Attachment D) provides further details.

56. Although the management of detainees is contracted to Serco at the IDFs, the contract in place indicates that DIAC retains a very high level of control over how that management takes place and associated arrangements.

Risk Management

57. Comcare was unable to identify any site-specific risk management procedures. DIAC Canberra staff accompanying the investigators on their IDF site visits during the investigation provided Comcare with a number of general risk policies; however local DIAC staff were unaware of the existence of the policies.

58. The lack of effective risk assessment of DIAC's systems of work was of particular concern, for example, the focus of the Improvement Notice issued to DIAC at Villawood was the obvious risk associated with transferring the group of alleged ringleaders of the CI riots to Villawood. Less than three weeks after the group transfer, riots occurred at Villawood. While it is acknowledged that the alleged CI ringleaders were not involved in the Villawood riots, there were clear indicators (that Villawood staff advise were present at the time) that the riots were reasonably foreseeable. Despite the apparent clear indications, no critical incident plans were in place for staff to follow, should such a situation occur.

59. The inherent risk of not having a site-specific risk assessment is that staff are likely to be unaware that certain equipment, processes or training is required to reduce the level of risk to an acceptable level. s37(2)(c) [redacted] s37(2)(c) [redacted]

60. Based on information received from DIAC and Serco staff, Comcare had concerns about two particular areas of the detainee-specific risk assessment process:

Risk Assessment of Incoming IMAs

61. The first area of concern relates to the risk assessment process used to assess the individual risk level of IMAs when they first seek asylum in Australia. Serco and DIAC staff advised that all incoming IMAs are initially rated at the 'Low risk level' unless something adverse is known about the asylum seeker.

62. Serco staff, who are left to manage the IMAs once they are detained, raised concerns about the rationale behind this hard and fast risk assessment process. Staff suggested that IMAs should, as a matter of course, be initially rated at the High level until more is known that would warrant reducing the level of risk.

63. s37(2)(c) [redacted]

Individual Risk Assessment Documentation IMAs

64. The second area of concern relates to the individual risk assessment documentation of detainees where clear evidence was found of information having been cut and pasted from other detainees' records, with part of the previous detainee's details still in place. In addition, staff advised that the detainee's risk profile is not, as a matter of course, transferred with the detainee to the next IDF.

Critical Incident Management

65. Comcare was unable to identify any holistic or site-specific critical incident management procedures in existence. Critical incidents are not unheard of occurrences at IDFs. With riots, detainees self-harming, escapes and the like, Comcare is concerned that there are no established procedures or training on how DIAC or Serco staff on the ground are to manage these types of situations.

Staff Training

66. Both DIAC and Serco staff across all IDFs cited staff training as being significantly deficient. Many DIAC staff deployed to remote locations such as CI highlighted that their pre-deployment training fell well short of meeting their personal and professional needs, for example, pre-deployment training was of a generic nature with little to no information specific to their new location.

67. Serco staff also advised investigators that they did not feel sufficiently trained to do their role, for example, what to do in case of an evacuation and the expected response to a riot or a detainee self-harming.

68. DIAC staff also raised concerns about role-specific training not being identified as a job requirement for certain roles with significant responsibility, for example, those in senior roles needing critical incident management training.

Culture within IDFs

69. The culture in each IDF is different, but is commonly one where the majority of staff are committed to their role and well aware of the importance of their role and their impact on the workplace. While there was little evidence that staff were aware of OHS policies and procedures, Comcare recognises that staff in general were seen to be working well and doing what was expected of them. In the more remote IDFs, such as CI, it was readily apparent that the staff of DIAC and Serco work together as a community both within and outside of the IDF.

Responsibility at the IDFs

70. A consistent concern identified at each IDF was the lack of understanding by DIAC staff of their OHS responsibilities on the ground. When asked about safety or the wellbeing of detainees, DIAC staff consistently replied that the responsibility for detainees was with Serco. Furthermore, when DIAC staff were asked about OHS policies and procedures, for example, how to manage risks or critical incidents, the usual response was, "Canberra looks after that".

71. The majority of DIAC staff at IDFs were unable to put their hands on or explain the contents of a policy or necessary practice when asked. A consequence of this lack of awareness and/or understanding of policies is that staff are generally unable to assist DIAC to roll out national policies at the local level. Staff are also not sufficiently familiar with their individual OHS responsibilities as employees.

72. This approach was seen by Comcare investigators as a significant contributor to local leaders not accepting responsibility for OHS. It was also seen as a cause for local leaders not having engaged with or rolled out national OHS policies and practices and therefore weakening the health and safety on the ground at each facility.

73. At some IDFs, OHS improvements were being implemented while Comcare investigators were at the facility, for example, the list of Health and Safety Representatives at the Darwin IDF was placed on the noticeboard during the day of the Comcare visit.

Differences at IDFs

74. A significant difference in DIAC and Serco staff responsibilities at IDFs is that DIAC staff deliver the outcomes of visa applications to detainees. Delivering a 'negative hand-down' i.e. when a visa application has been disallowed, can and does lead to animosity being directed by detainees towards DIAC staff. The planning before delivering a negative hand-down is extensive and takes into account the mental health of the detainee and more often than not, involves IHMS to assist in the OHS needs of detainees and staff.

Christmas Island

75. When first visiting CI in February 2011, Comcare investigators noted the high level of tension felt at the facility. There seemed a reluctance of detainees to engage with staff, whether they were Serco, DIAC or Comcare investigators.

76. During the CI riots in March 2011, it was reported and confirmed by the Australian Federal Police (AFP) that at the time of rioting, detainees pushed Serco staff into rooms to protect them and went about burning DIAC buildings. Serco staff seemed well aware of the protection offered to them by detainees. However, the DIAC staff spoken to seemed unaware that DIAC buildings had been targeted and that DIAC staff may be at greater risk.

77. In April 2011, when Comcare investigators returned to CI, there was still evidence of agitation among the detainees; however the level of agitation seemed to have reduced significantly from the February visit. During the April visit, detainees approached Comcare investigators and openly discussed a number of issues. The

level of trust built so quickly between detainees and investigators that the detainees offered the investigators cold soft drinks and confectionary from their own personal supplies. In their discussions, the detainees seemed relaxed and praised the cooperative approach of Serco staff.

78. Indications of cultural change were observed in a number of detainees who were seen to be self-regulating their own behaviour and that of others. Initiatives recently rolled out by Serco staff at CI appear to be increasing detainees' morale and reducing conflict. Initiatives affecting this cultural change appear to be:

    - Stopping all-day breakfasts, to motivate detainees to be awake when the majority of staff are rostered on
    - Restricting access to accommodation areas, to allow detainees to have a 'home' of sorts and a place to take refuge if necessary. This concept has seen detainees for the first time take pride in *their* areas
    - Encouraging racial integration through Australian culture lesson as well as mixed-race teams to participate in sporting activities, for example, Aussie Rules teams comprising of different countries.

79. A senior Serco officer explained the new CI approach to detainees as being, *"80% of a Serco officer's work is social work, the other 20% is to make sure they don't climb the fence".* Evidence of this more humanitarian approach was readily apparent throughout Comcare's recent CI visit.

Villawood

80. Serco staff provided information about the level of serious assaults on staff, witnessing the deaths of detainees and the distress of having to deal with it. Staff also advised of feeling inadequately trained and the lack of instruction and supervision/support during times of critical incidents. Morale among staff at Villawood at this time was acknowledged by staff as being very low.

81. In mid-May 2011 Comcare revisited Villawood and observed significant improvements, particularly in the areas of: culture, safety and morale of both staff and detainees and the staff/detainee ratio.

82. While the Improvement Notice issued at Villawood on 1 April 2011 was never fully complied with, the immediate safety concerns pertaining to the notice had passed. Comcare has since worked with DIAC to ensure it has a better understanding of the substantiating information it needs to demonstrate for complete compliance with any future Improvement Notice. This information was provided to DIAC in writing at their request (Attachment E).

83. Improvements observed during this investigation, at Villawood in particular, need to be acknowledged. Investigators were pleased to see the significant changes in OHS that had occurred from Comcare's first visit in April, to their second visit in mid-May 2011, for example, necessary training was being provided for key staff and vital security equipment was replaced.

Tension Amongst Detainees

84. A concern raised by detainees at each IDF visited was the lack of understanding and lack of consideration of differences between detainees. Cultural and religious differences were the main issues raised, for example, rooming detainees together with no regard to their religious beliefs or the long history of extreme conflict between their countries.

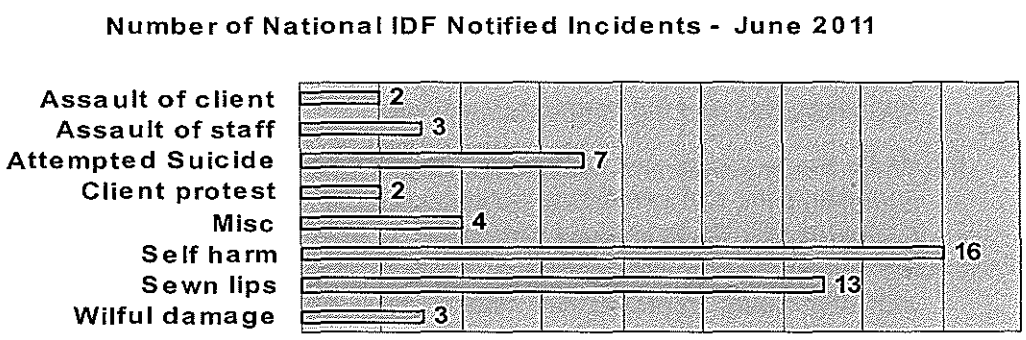
85. This lack of understanding was said to be a significant cause of tension between detainees and Serco/DIAC staff, which often resulted in disputes. A common situation mentioned was when new arrivals are given a room to themselves (without valid explanation) while those in detention for lengthy periods continue to have to share a room.

Reporting of Notifiable Incidents

86. In 2008, Comcare provided DIAC with a *Process for Incident Notification* (Attachment F) in an attempt to assist with DIAC's reporting requirements. Comcare acknowledges that this schedule caused DIAC some confusion in respect to what is and what is not a notifiable incident. The schedule is now significantly outdated and as such DIAC has been advised in writing that the schedule is no longer recognised by Comcare.

87. The reporting of notifiable accidents and dangerous occurrences by DIAC has significantly increased since the commencement of this investigation. In March 2011, DIAC reported 14 incidents to Comcare for all IDFs – at the time, this was an increase on the eight reported the month before. By June 2011, the number of incidents reported in that month had increased to 50.

88. The following graph depicts the type of incidents reported during June 2011:



89. Evidence confirms that DIAC continues to fail to notify Comcare of incidents within the required time frame. DIAC has on a number of occasions advised of their preference to first of all confirm the extent of the incident before notifying Comcare. This decision-making process causes Comcare to often be alerted by the media (rather than DIAC) of DIAC's notifiable incidents. Recent examples include:

- In July 2011, the media reported an alleged incident at the Maribyrnong IDF as: *'an escape, attempted escape and injuries to a detainee'*. DIAC later confirmed to Comcare that a detainee had undergone surgery to treat injuries received in an attempted escape. DIAC also acknowledged that the matter should have been notified.

- In July 2011, the media reported an alleged incident at the Darwin IDF as: *'detainees protesting on detention centre rooftop'*. DIAC confirmed to Comcare that the protest had occurred.

89. At the time of writing this report, Comcare has not received a notification from DIAC for either of the above-mentioned incidents.

Relevant Evidence Collected

90. During the investigation, I collected the following evidence and information which are relevant to and support my findings of fact listed above:
    - Personal observations during IDF site visits
    - Contemporaneous notes
    - Photographs taken during IDF site visits
    - Audio recordings of conversations conducted during IDF site visits
    - Signed witness statements taken during IDF site visits
    - Documents provided by DIAC and Serco
    - Notes of Comcare investigators taken during IDF site visits and completed investigator tool kits.

Notices Issued

91. An Improvement Notice was issued to DIAC at the Villawood IDF on 1 April 2011.

s47F [redacted]

Rhonda Murray
Investigator appointed under section 40 of the *Occupational Health and Safety Act 1991*

21 July 2011

Attachments

A. List of information sought by Comcare from DIAC at Christmas Island, February 2011
B. IDF specific Investigator Verification Checklist
C. Incident Notification Flowchart
D. Comcare Improvement Notice
E. Process for Incident Notification
F. Comcare's ongoing concerns re Improvement Notice

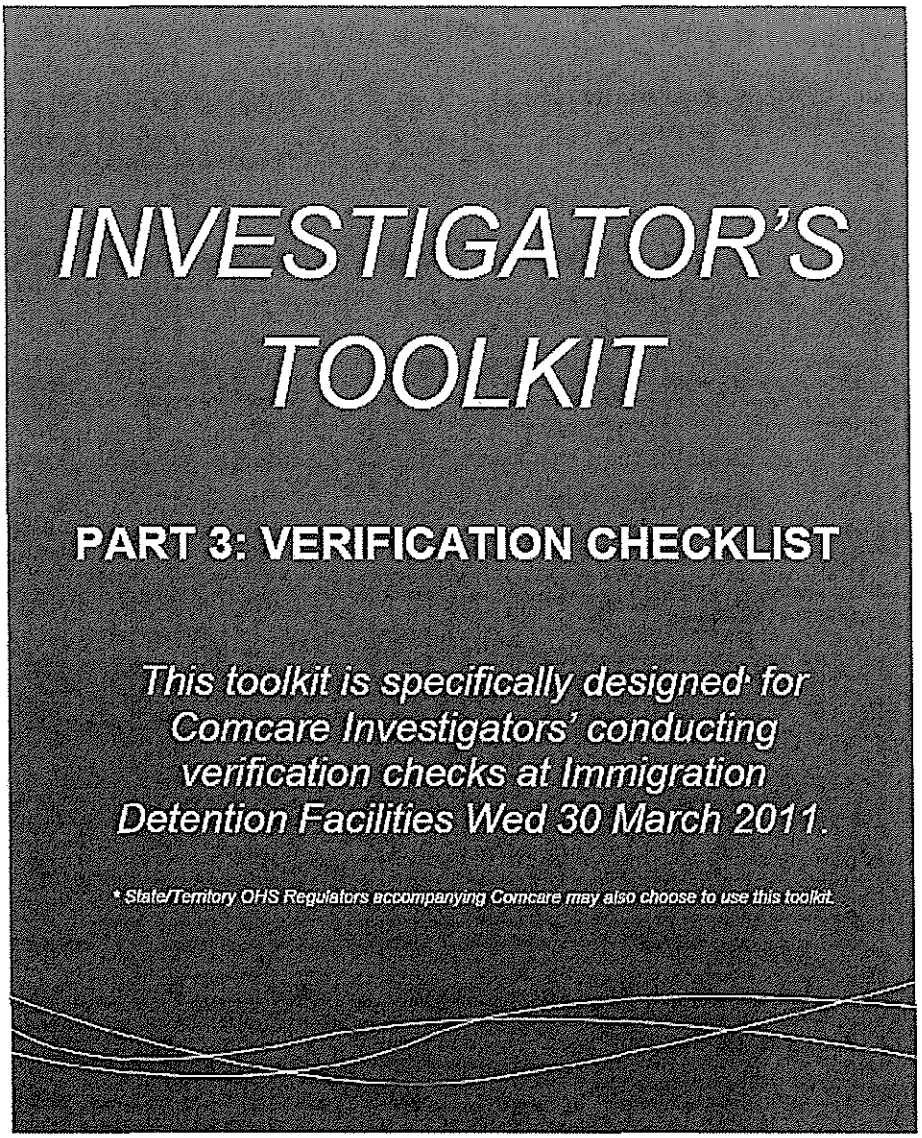
ATTACHMENT **A**

List of information sought by Comcare from DIAC at Christmas Island, February 2011

Information is sought for Christmas Island from 1 January to 31 December 2010	
Information Sought	**DIAC Comment**
1. Copies of all health and safety incident reports from the Immigration Detention Centre (IDC)	
2. Copies of all security incident reports from the IDC	
3. Copies of all records of injuries requiring first aid and/or emergency treatment for IDC detainees	
4. Copies of all records of injuries requiring first aid and/or emergency treatment for staff	
5. Copy of all OHS Committee meeting minutes	
6. Record of training of managers in hazard Inspections	
7. Record of hazard inspections conducted	
8. Record of HSR training	
9. Record of emergency evacuation drills conducted	
10. Record of all incident notifications Serco to DIAC	
11. Record of all incident notifications DIAC to Comcare	
12. Record of OHS induction for employees and contracted staff	
13. Policy/guideline to manage the language and/or cultural barriers	

ATTACHMENT B

IDF specific Investigator Toolkit Part 3



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PUTTING YOU FIRST

Further pages of this attachment can be accessed by double-clicking the above image on the original electronic (NON-PDF) version or contacting the author

ATTACHMENT C

Villawood Improvement Notice

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Form 5

Improvement notice

Occupational Health and Safety (Safety Arrangements) Regulations 1991
(paragraph 34 (d))

No. EVE0020547301

To: **The Secretary, Department of Immigration and Citizenship ('DIAC') (the 'responsible person')**

Att: Tracey Bell, OHS Manager, DIAC

I, Rhonda Murray, an investigator appointed under section 40 of the *Occupational Health and Safety Act 1991* ('the Act'), am satisfied that the person named above as the responsible person is breaching or has breached and is likely to breach s 16(1) of the Act and regulations 1.05 and 1.06 of the *Occupational Health and Safety (Safety Standards) Regulations 1994* (the 'SS Regulations') at:

Villawood Immigration Detention Facility, 15 Birmingham Avenue, Villawood NSW 2163

The reasons for my opinion are:

On 25 March 2011, Comcare commenced an investigation into DIAC's management of the health and safety of detainees at the Immigration Detention Facilities ('IDFs') and the potential impact of these arrangements on the health and safety of DIAC employees and contractors. As a part of this investigation, Comcare investigators Paul Stevens, John MacNamara and I conducted a site inspection ('the inspection') of the Villawood IDF on 1 April 2011 where we:

1. physically inspected the IDF;
2. took photographs inside and outside the IDF premises and the facility generally;
3. conducted discussions and interviews with DIAC staff including the Director of the Villawood IDF;
4. conducted discussions and interviews with Serco contractors performing work at the Villawood IDF; and
5. conducted discussions and interviews with current detainees at the Villawood IDF.

During the course of the inspection, we were advised that a group of 10 detainees from the Christmas Island IDF ('the Christmas Island detainees') are to be relocated to the Villawood IDF on Monday 4 April 2011. We were advised and are aware that these detainees had previously been involved in violent behaviour at the Christmas IDF.

Having conducted an investigation into the incident, including lengthy discussions with the Director of the Villawood Detention Centre, Serco contractors and detainees and for the following reasons, I have formed the opinion that DIAC has not taken all reasonably practicable steps to identify hazards and assess risks to health and safety associated with the relocation of the Christmas Island detainees and consequently to eliminate or minimise those risks:

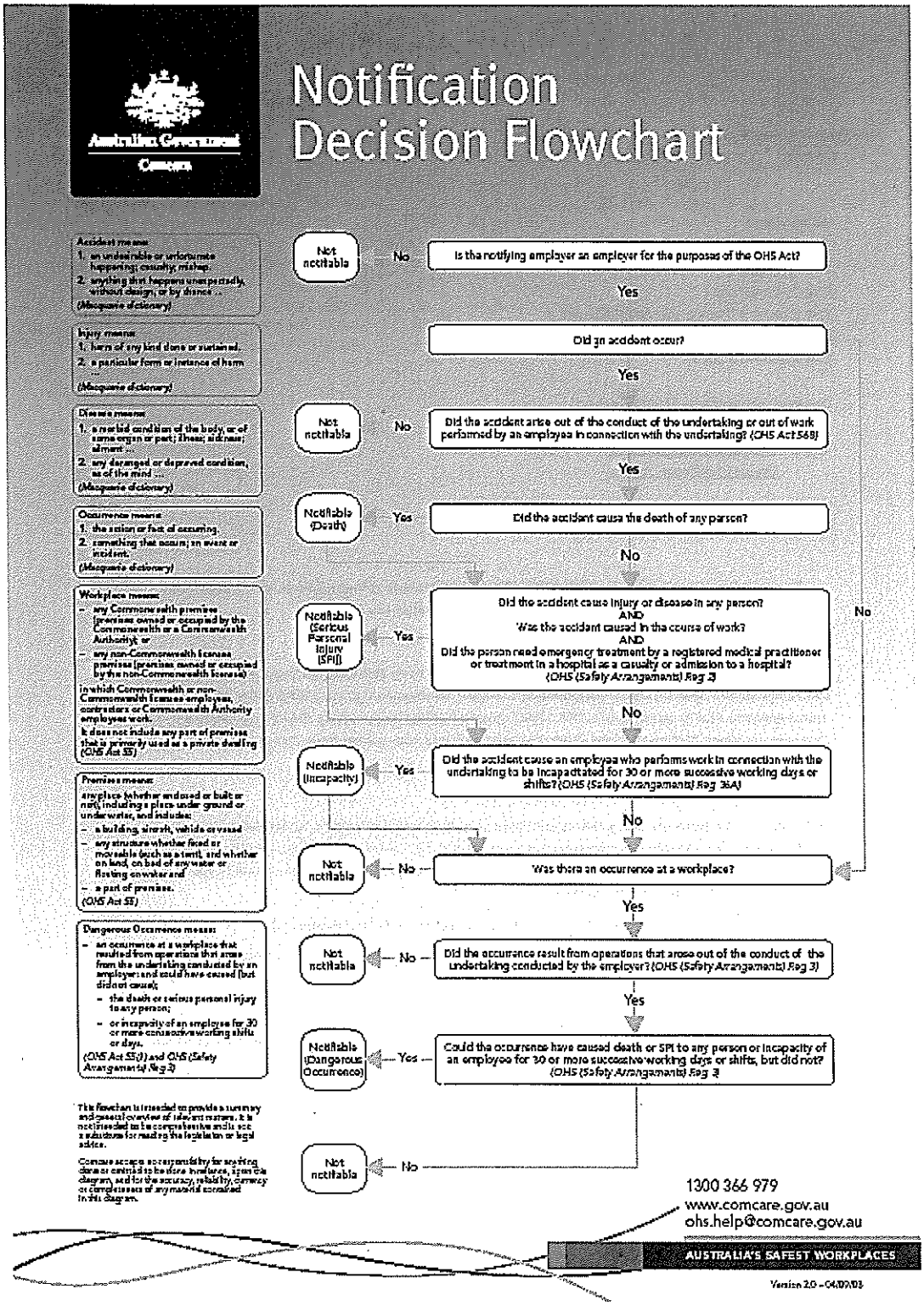
- A lower level of security arrangements exists at the Villawood IDF than that in place at the Christmas Island IDF including in relation to detainee recreation areas and the existence of broken and missing video cameras;
- There are likely to be significant risks to health and safety associated with the relocation of the Christmas Island detainees to the Villawood IDF;
- During the inspection, the Villawood IDF Director and others were unable to provide evidence to satisfy me that hazards had been properly identified and risks assessed associated with relocation of the Christmas Island detainees to the Villawood IDF;
- During the inspection, the Villawood IDF Director and others were unable to provide evidence to satisfy me that appropriate control measures had been put in place to control the risks associated with the relocation of the Christmas Island IDF detainees to the Villawood IDF;
- During the inspection, the Villawood IDF Director and others were unable to provide evidence to demonstrate that DIAC employees and Serco contractors at the Villawood IDF had been provided with information, instruction and training regarding the risks associated with the relocation and arrival of the Christmas Island detainees at the Villawood IDF.

(see additional notes over)

Copy 1 Responsible person
Copy 2 Comcare
Copy 3 Investigator

ATTACHMENT D

The Notification Decision Flowchart



ATTACHMENT E

Comcare's ongoing concerns re Improvement Notice

Australian Government
Comcare

PUTTING YOU FIRST

31 May 2011

Jackie Wilson
Deputy Secretary
Department of Immigration and Citizenship
PO Box 25
Belconnen ACT 2616

By email: jackie.wilson@immi.gov.au

Copies: craig.farrell@immi.gov.au
Tracey.Bell@immi.gov.au

Dear Jackie

Comcare Improvement Notice EVE0020547301: Department of Immigration and Citizenship ('DIAC'), Villawood Immigration Detention Facility

I am writing in response to a request on 24 May 20111 from Tracey Bell that DIAC be provided with Comcare's written views on DIAC's response to Comcare improvement notice EVE0020547301 ('the improvement notice'), dated 1 April 2011. DIAC provided written responses to the improvement notice to Comcare on 4 April 2011 and 10 May 2011 (the latter resulting from a letter from Comcare (dated 4 April 2011) requesting further and more detailed information).

I note that the immediate safety issues regarding the proposed relocation of the 10 detainees from Christmas Island to Villawood Immigration Detention Facility ('IDF') which the improvement notice sought to address at the time of its issue, have now passed. As you know (and as the improvement notice makes clear), these issues related predominantly to:

- the comparatively lower level of security arrangements at the Villawood IDF;
- the clear risks to health and safety associated with the relocation of high risk detainees to the Villawood IDF;
- staffing levels at the Villawood IDF; and
- the adequacy of DIAC's hazard identifcation, risk assessment and risk control arrangements regarding the proposed relocation.

GPO BOX 9905
CANBERRA ACT 2601
P 1300 366 979
COMCARE.GOV.AU

Further pages of this attachment can be accessed by double-clicking the above image on the original electronic (NON-PDF) version or contacting the author

ATTACHMENT F

Process for Incident Notification

Critical Incidents			
A critical incident is an incident or event which critically affects the good order and security of the facility or where there is serious injury or a threat to life. *These must be reported orally immediately (no later than 1 hour after the incident) and a written report within 4 hours to Detention Operations and National Office OHS Coordinator*. Including but not limited to:		**Reportable to Comcare?**	**Comcare comments**
Assault – occasioning grievous bodily harm	Detainee on detainee	Yes	
	Detainee on staff	Yes	
	Staff on detainee	Yes	
	Other [eg. Visitor]	Yes	
Assault – sexual assault	Detainee on detainee	Yes	
	Detainee on Staff	Yes	
Biological/chemical threat		Not unless threat is actually carried out with a hazardous biological or chemical substance	
Bomb threat		As above	
Complaints	Any known complaint about critical incident	No	
Damage to facility: serious, including fire		Yes	
Death	Detainee	Yes – within 2 hours to Comcare	
	Staff	As above	
	Other [eg. Visitor]	As above	
Accident	To detainee – serious	Yes	
	To staff – serious	Yes	
Demonstration	Outside facility	No	We assume peaceful
Disturbance	Riot/hostage situation	Yes	
Escape	Successful (includes mass escapes)	No – unless SPI or could cause SPI/psychological injury	Difficult to assess risk as we do not know DIAC responds.
Force Majeure	Actual	As above	
Industrial action	Withdrawal of labour	No	
Public Health risk	Serious (includes epidemics)	No – unless it arose through DIAC's conduct	
Self Harm	Actual	Yes	
Use of Observation Room/mgmt support Unit – over 7 days		No	
Visits	High profile visitor refused access	No	
Voluntary Starvation	By a minor	No – unless SPI or could cause SPI/psychological injury	

ADDENDUM TO INVESTIGATION REPORT EVE00205473

INVESTIGATION REPORT — ADDENDUM

Investigation Number: EVE00205473

Background

1. This is an addendum to the report (dated 21 July 2011) of a Comcare investigation into the health and safety of federal workers, contractors and detainees at Immigration Detention Facilities (**IDFs**) controlled by the Department of Immigration and Citizenship (**DIAC**) (**the Report**).

2. The addendum sets out some minor amendments to the report. The amendments (which should be read with the report) provide clarification only, and do not alter the findings and conclusions contained in the report.

Amendments

3. The following paragraphs of the report to which the amendments relate are:

    - **Paragraph 50:** the amendment removes the reference to 'current' numbers at the CI Northwest Point Immigration Detention Centre and is amended to read:

    50. The current Detention Services Contract between DIAC and Serco states, *"The Service Provider will ensure that the personnel levels at the Facilities are adequate to deliver the Services in accordance with this Contract."* It also provides capacity details for each centre, which are not complied with. As an example, as at 12 April 2011 the detainee numbers at the CI Northwest Point Immigration Detention Centre (IDC) is said to be over 1000; however the DIAC/Serco contract states, *"Northwest Point IDC has an operational capacity of 400 and a surge capacity of 800".*

- **Paragraph 89:** the amendment reflects that DIAC sent a notification about the incident which occurred at Maribyrnong IDF on 5 July [redacted] in which the attempted escape by a detainee resulted in injuries treated by surgery. The notification was received by Comcare on 19 July 2011, two days in advance of the Report being finalised. Paragraph 89 is amended to read:

89. Evidence confirms that DIAC continues to fail to notify Comcare of incidents within the required timeframe. DIAC has on a number of occasions advised of their preference to first of all confirm the extent of the incident before notifying Comcare. This decision-making process causes Comcare to often be alerted by the media (rather than DIAC) of DIAC's notifiable incidents. Recent examples include:

    - In July 2011, the media reported an alleged incident at the Maribyrnong IDF as: *'an escape, attempted escape and injuries to a detainee'.* DIAC later confirmed to Comcare that a detainee had undergone surgery to treat injuries received in an attempted escape. DIAC also acknowledged that the matter should have been notified and subsequently notified it to Comcare on 19 July 2011. Serious personal injuries are required to be notified to Comcare within 24 hours of the employer becoming aware that the person has, or is likely to have suffered the injury.

    - In July 2011, the media reported on an alleged incident at the Darwin IDF as: *'detainees protesting on detention centre rooftop'.* DIAC confirmed to Comcare that the protest had occurred.'

89. At the time of writing this report, Comcare had received notification of the former incident only. This notification was made some two weeks after the incident occurred, which is not within the legislatively prescribed timeframe.

4. The above amendments are the only amendments made to the Report.

s47F [redacted]

Rhonda Murray

Investigator appointed under section 40 of the *Occupational Health and Safety Act 1991*

5 August 2011

Australian Government
Comcare

PUTTING YOU FIRST

21 July 2011

File Ref: EVE00205473

Mr Andrew Metcalfe
Secretary
Department of Immigration and Citizenship
6 Chan St
Belconnen ACT 2617

Dear Mr Metcalfe

Investigation conducted under the *Occupational Health and Safety Act 1991*: Immigration Detention Facilities.

I am writing to advise you of the findings of an investigation conducted by Comcare into concerns about the occupational health and safety (OHS) of federal workers, contractors and third parties including detainees at Immigration Detention Facilities (IDFs) that the Department of Immigration and Citizenship (DIAC) controls. The investigation is now complete. A copy of the investigation report is attached.

The investigator concluded that there are a number of non-compliances evident nationally across all facilities which mean that DIAC is failing to comply with its duties under the *Occupational Health and Safety Act 1991* (the Act) and associated regulations (further details appear on the attached investigation report). The investigator has provided a number of recommendations in the attached report related to these non-compliances and does not believe at this stage that they warrant enforcement action.

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CANBERRA ACT 2601
P 1300 366 979

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Would you please provide to me by 22 August 2011, a plan addressing the action taken or proposed to be taken in relation to the recommendations contained in the investigation report and the expected date of completion of each outstanding action? This request is made under section 53(4) of the Act. Comcare reserves the right to review the implementation of the above action plan by DIAC.

If you have any questions, please contact Miss Rhonda Murray by telephone on (03) 9914 6336 or by email at rhonda.murray@comcare.gov.au.

Please direct your response to:

Rhonda Murray
Director, Regional Service, Victoria/Tasmania
Work Health and Safety Group
GPO Box 9905
Canberra ACT 2601

Yours sincerely,

s47F [redacted]

Neil Quarmby
General Manager
Work Health and Safety Group

P: Ph 02 6275 0075
M: 0434 070 866
F: 02 6274 8625

Encl: Final Investigation Report

13 May 2004

AUSTRALIA BREACHES CHILDREN'S HUMAN RIGHTS

A Human Rights and Equal Opportunity Commission Inquiry has found that children in Australian immigration detention centres have suffered numerous and repeated breaches of their human rights.

In its *National Inquiry into Children in Immigration Detention Report- A Last Resort?*, tabled in Federal Parliament today, the Commission found Australia's immigration detention policy has failed to protect the mental health of children, failed to provide adequate health care and education and failed to protect unaccompanied children and those with disabilities.

The two-year, comprehensive Inquiry also found that the mandatory detention system breached the *UN Convention on the Rights of the Child*. It failed, as required by the Convention, to make detention a measure of "last resort", for the "shortest appropriate period of time" and subject to independent review.

The system failed to make the "best interests of the child" a primary consideration in detaining them and it failed to treat them with humanity and respect.

Furthermore, the Government's failure to implement repeated recommendations by mental health professionals to remove children with their parents from detention amounted to "cruel, inhumane and degrading treatment".

The Report is the result of two years of careful consideration of evidence and submissions. The Inquiry visited all detention centres in Australia and took evidence from a vast range of individuals and organisations - detainee children and parents, human rights advocacy groups, medical and legal experts, State governments, Australasian Correctional Management (ACM) and the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) amongst others.

DIMIA and ACM were offered several opportunities to make oral and written submissions to the Inquiry. The Inquiry treated DIMIA and ACM's responses, along with all other evidence, very seriously in reaching its final conclusions.

Human Rights Commissioner Dr Sev Ozdowski said it was time to release all children with their families from detention centres and residential housing projects and for steps to be taken by federal Parliament to ensure that no child who arrives in Australia ever suffers under this system again.

"With every right there is a responsibility. The Government has a right to develop its migration policy, but it has a responsibility to uphold the conventions it has signed," said Dr Ozdowski. "Remember these are children with human rights. They are not numbers, or acronyms."

"There have been more than 2000 children in immigration detention over the past few years. We can act to ensure we do not repeat the mistakes we made in their care and treatment. We have the opportunity to change the system to ensure these breaches do not happen again."

"Last Christmas, there were more than 100 children in detention centres and housing projects in Australia and there are still a significant number of children in detention now," Dr Ozdowski said. "This is not ancient history. We are still abusing the rights of children in detention today. Children are still behind barbed wire now."

The Commissioner called on the Government to release all remaining children within four weeks, for federal Parliament to change the law to ensure that detention is no longer the first and only resort for asylum seeker children and to ensure that decisions about the detention of children be made by an independent court.

"For a country that is a passionate advocate of human rights internationally and is currently the Chair of the Human Rights Commission at the United Nations, this is a great opportunity to be a leader," Dr Ozdowski said.

"All Australians should look at these findings, read the examples and think of their children, their grandchildren or the children of their friends and ask themselves – how would I feel if my children were raised behind barbed wire and their human rights were abused?" asked Dr Ozdowski.

"Almost 93 per cent of these families have been accepted as 'genuine refugees' so why do we lock them up for years behind barbed wire?" asked Dr Ozdowski.

"The treatment of some of these children has left them severely traumatised and with long-term mental health problems. Children with emotional and physical scars will be a legacy of our mandatory detention policy," the Commissioner said.

For copies of the *National Inquiry into Children in Immigration Detention Report – A Last Resort?*, the summary guide, media kit and audio grabs from Dr Ozdowski go to:
http://www.humanrights.gov.au/human_rights/children_detention_report/index.html

Commissioner Ozdowski will hold a press conference to launch the Report on Friday, 14 May at 10.30am in the HREOC conference room (Level 8, 133 Castlereagh St, Sydney).

Media inquiries:	Paul Oliver	02 9284 9677 or 0408 469 347
	James Iliffe	02 9284 9880

INQUIRY COMMISSIONERS

INQUIRY COMMISSIONER

Human Rights Commissioner & Acting Disability Discrimination Commissioner – Dr Sev Ozdowski OAM

Until his appointment as Human Rights Commissioner and Acting Disability Discrimination Commissioner, Dr Sev Ozdowski OAM was Chief Executive of South Australia's Office of Multicultural and International Affairs.

Dr Ozdowski has a long-term commitment to human rights and his relationship with the Human Rights Commission dates back to the original Commission of the early 1980s. He is the author of many papers on sociology of law, human rights, immigration and multiculturalism.

His five-year term as Human Rights Commissioner and Acting Disability Discrimination Commissioner began on 8 December 2000.

Born in Poland in 1949, Dr Ozdowski migrated to Australia in 1975. He has held senior positions in the Federal portfolios of the Prime Minister and Cabinet, Attorney-General's and Foreign Affairs and Trade. He has also worked as Secretary of the Human Rights Commission inquiry into the *Migration Act 1958* and for the Joint Parliamentary Committee on Foreign Affairs, Defence and Trade.

Dr Ozdowski has a Master of Laws and Master of Arts in Sociology from Poznan University, Poland, and a PhD in Sociology of Law from the University of New England, Armidale, NSW. He was awarded a Harkness Fellowship in 1984 for post-doctoral work on race relations, international human rights and immigration law and public administration - studies that took him from Harvard University (Cambridge, Massachusetts) to Georgetown University (Washington DC) and the University of California (Berkeley, California).

Dr Ozdowski's work for the Polish community, including refugees, and his commitment to enhancing Australia-Poland relations was rewarded with an OAM in 1995 and with the Chevalier of the Order of Merit of the Republic of Poland in 2000.

ASSISTANT COMMISSIONERS

Two Assistant Commissioners were appointed to assist the Inquiry. Prof Trang Thomas and Dr Robin Sullivan assisted the Inquiry in providing advice in their respective fields of expertise (as set out below) and assisted with public hearings.

Commissioner for Children and Young People, Queensland – Dr Robin Sullivan (CertTch (KGTC), HA, H.Ed(Qld), M.Ed (JCU), D.Univ (QUT), FACE, FQIEA)

Dr Sullivan was appointed Children's Commissioner in April 1999 after a distinguished career in the Queensland Department of Education. Her contribution to the education system includes a wealth of practical experience and theoretical research. She was trained as a teacher of History and English, and advanced through the school based administrative hierarchy to become a secondary school principal.

Dr Sullivan was promoted to a number of senior positions in the Queensland State Education Department culminating in her appointment as the first female Deputy-Director General of Education in 1997. Many of these positions had a focus on curriculum, learning and teaching, including a specific interest in disadvantaged children.

As the Queensland Commissioner for Children and Young People, Dr Sullivan is a member of various groups including the Child Protection Council, the Queensland Crime and Misconduct Commission Reference Group, and the Queensland Child Care Forum. In 2001, she was appointed by the Premier of Queensland as Honorary Mediator for the Commonwealth Heads of Government Meeting (CHOGM). She was awarded the Qld Chapter Medal of the Australian College of Education for 2001.

Dr Sullivan contributes to a range of children's issues and policy agendas at the state and national levels.

Professor of Psychology at the Royal Melbourne Institute of Technology – Professor Trang Thomas AM

Trang Thomas graduated with Bachelor of Arts with First class Honours (University of NSW), Master with Honours (Macquarie University) and Ph.D in Psychology (La Trobe University). She was former Director of the Centre for Applied Social Research at RMIT and is currently Director of Science of the Australian Psychological Society.

She has conducted numerous research projects in Developmental Psychology and has produced over 100 research papers, keynote addresses and conference presentations; as well as many feature articles in the print and television media.

Professor Thomas chaired a major inquiry into the adequacy of State government services in Victoria for non-English speaking people in 1996. The Inquiry's five-volume report included 160 recommendations of which many have been implemented. Her dedication to research with applied social impact has brought her several awards, including the Alumni Achievement award from the University of New South Wales, the Inaugural Distinguished Alumni award from La Trobe University, and the Order of Australia (AM).

Her past appointments include Chair of the Victorian Multicultural Commission, Board of SBS, Board of the Council for Adult Education, Advisory Board of the International Conflict Resolution Centre and the Victorian Casino and Gambling Authority. She was also a delegate to the 1998 Constitutional Convention in Canberra. Current appointments include member of the National Council for Multicultural Australia, the National Council for the Centenary of Federation, and National Health and Medical Research Council.

ABOUT THE INQUIRY

The Human Rights and Equal Opportunity Commission was established in 1986. It is an independent statutory organisation and reports to the federal Parliament through the Attorney-General.

The Commission's goal is to foster greater understanding and protection of human rights in Australia and to address the human rights issues facing a broad range of individuals and groups.

When the Commission was established it was given a responsibility to advise the Commonwealth Government on Australia's commitments under international laws and whether these are reflected in Commonwealth laws, policies and practices.

In November 2001, Human Rights Commissioner, Dr Sev Ozdowski, announced the Commission would hold a National Inquiry into Children in Immigration Detention.

WHY DID WE HOLD AN INQUIRY?

Since 1992, asylum seekers who arrive in Australia without a visa – both adults and children – have been subject to mandatory detention. In all but a few rare cases, their detention ends only when they are recognised as refugees and granted a protection visa or when they are removed from the country.

From 1999 the number of children in detention rose significantly and there was widespread community concern about their treatment.

The Inquiry was established to examine whether the laws requiring the detention of children and the treatment of children in immigration detention met Australia's obligations under international law, especially the *Convention on the Rights of the Child*.

WHAT DID THE INQUIRY LOOK AT?

First, the Inquiry considered whether Australia's detention laws comply with international law and looked at alternatives to placing children in immigration detention centres.

The Inquiry also looked at the treatment of child asylum seekers held in immigration detention centres between 1999 and 2002. In particular, it examined:

- the safety and security of children in detention
- the effect of detention on children's mental and physical health
- whether children in detention received an appropriate education
- the care available to children with a disability in detention
- the opportunity for children in detention to enjoy recreation and play
- the care of unaccompanied children in detention
- children's ability to practice their religion and culture in detention.

Finally, the Inquiry considered the needs of child asylum seekers and refugees living in the community after being released from detention.

METHODOLOGY OF THE INQUIRY

The National Inquiry into Children in Immigration Detention was announced on 28 November 2001 and commenced early in 2002. It was conducted by federal Human Rights Commissioner, Dr Sev Ozdowski on behalf of the Human Rights and Equal Opportunity Commission.

The Inquiry was held in public wherever possible. It received a wide range of submissions and sought input from Commonwealth and State governments, through submissions and/or evidence at hearings.

A substantial number of professional groups, including lawyers, doctors, nurses, psychologists, social workers and education specialists made submissions or provided evidence. Many former ACM staff have also provided information to the Inquiry.

Numerous community groups and religious organisations, especially those who support detainees and refugees, have given the Inquiry detailed information.

The Inquiry also spoke with current and former child detainees and parents about their experiences of living in an immigration detention centre.

SUBMISSIONS

The Inquiry received 346 submissions, including 64 confidential submissions. Detailed information was provided by organisations representing detainees, human rights and legal bodies, members of the public, religious bodies, state government agencies and a range of non-government policy and service-providing organisations.

VISITS TO IMMIGRATION DETENTION CENTRES

Inquiry staff visited all immigration detention facilities in Australia between January 2002 and December 2002, including three visits to Woomera. During each visit, Inquiry staff conducted a tour of the facility, spoke with detention centre staff and interviewed all families and children who wished to talk about their experiences. The Inquiry conducted a total of 112 interviews with children and their parents, on the understanding that their identity would be protected.

FOCUS GROUPS

During 2002, the Inquiry held 29 focus groups with approximately 200 children, parents and other former detainees now living in Sydney, Melbourne, Perth, Adelaide and Brisbane on temporary protection visas. These focus groups were conducted on the understanding that the identity of the participants would be protected in order to allow them to talk freely about their experiences.

PUBLIC HEARINGS

Between May and August 2002, the Inquiry held public hearings in Melbourne, Perth, Adelaide, Sydney and Brisbane to allow members of the community, State government agencies, non-government organisations and former ACM staff, amongst others, to provide further information to the Inquiry. The Inquiry held 61 public sessions (105 witnesses) and 24 confidential sessions (50 witnesses). Nine of the witnesses in confidential hearings (seven sessions) later agreed to make their evidence public.

EVIDENCE FROM THE DEPARTMENT AND ACM

The Department provided a written submission in May 2002 and the Inquiry received a series of documents from the Department and ACM throughout 2002 in response to requests and legal 'Notices to Produce' issued by the Inquiry.

In December 2002, the Inquiry heard oral evidence from the Department and ACM on various issues, including:

- how unaccompanied children are cared for in detention
- how families with deteriorating mental health are assessed and helped in detention centres
- the provision of education in detention facilities
- the provision of services to families with disabilities
- how compliance with human rights standards is monitored in detention centres.

After these hearings, the Inquiry wrote a draft report containing initial factual findings and a preliminary view as to whether there were breaches of children's rights. In accordance with the principles of natural justice, a copy of the draft report was provided to the Department and ACM in May 2003, allowing them to respond to the Inquiry's findings and to provide further evidence and submissions. ACM requested the opportunity to make oral submissions and these were heard in September 2003.

A second draft was provided to both the Department and ACM for further comment in November 2003. After the Inquiry received their second round of responses, the final report was completed. The Department and ACM were given a final opportunity to inform the Inquiry about what actions they were taking in response to the final findings and recommendations in January 2004.

TERMS OF REFERENCE FOR THE INQUIRY

The terms of reference for the National Inquiry into Children in Immigration Detention were to inquire into the adequacy and appropriateness of Australia's treatment of child asylum seekers and other children who are, or have been, held in immigration detention, including:

- The provisions made by Australia to implement its international human rights obligations regarding child asylum seekers, including unaccompanied minors.
- The mandatory detention of child asylum seekers and other children arriving in Australia without visas, and alternatives to their detention.
- The adequacy and effectiveness of the policies, agreements, laws, rules and practices governing children in immigration detention or child asylum seekers and refugees residing in the community after a period of detention, with particular reference to:
  - the conditions under which children are detained;
  - health, including mental health, development and disability;
  - education;
  - culture;
  - guardianship issues; and
  - security practices in detention.
- The impact of detention on the well-being and healthy development of children, including their long-term development.
- The additional measures and safeguards which may be required in detention facilities to protect the human rights and best interests of all detained children.
- The additional measures and safeguards which may be required to protect the human rights and best interests of child asylum seekers and refugees residing in the community after a period of detention.

(Note: "Child" includes any person under the age of 18)

USEFUL LINKS & RESOURCES

- **HREOC's National Inquiry into Children in Immigration Detention website:** www.humanrights.gov.au/human_rights/children_detention
- **Background papers on the Inquiry can be found at:** www.humanrights.gov.au/human_rights/children_detention/background.html
- **The full text of the *Convention on the Rights of the Child* – can be accessed on the UNICEF website at:** www.unicef.org/crc/fulltext.htm
- **Submissions to the National Inquiry into Children in Immigration Detention:** www.humanrights.gov.au/human_rights/children_detention/submissions/
- **Transcripts of hearings held by the National Inquiry into Children in Immigration Detention**: www.humanrights.gov.au/human_rights/children_detention/dates.html
- **Psychological Well Being of Child and Adolescent Refugee and Asylum Seekers: Overview of Major Research Findings of the Past Ten Years:** www.humanrights.gov.au/human_rights/children_detention/psy_review.html
- **Department of Immigration and Multicultural and Indigenous Affairs website:** www.dimia.gov.au
- **Minister for Immigration and Multicultural and Indigenous Affairs website:** www.minister.immi.gov.au
- **Refugee Review Tribunal website:** www.rrt.gov.au
- **The Office of the United Nations High Commissioner for Refugees website:** www.unhcr.ch
- **Office of the High Commissioner for Human Rights website:** www.unhchr.ch
- **Amnesty Australia website:** www.amnesty.org.au
- **Refugee Council of Australia website:** www.refugeecouncil.org.au
- **Rural Australians for Refugees website:** www.ruralaustraliansforrefugees.org
- **Children out of Detention website:** www.chilout.org

HOW TO OBTAIN A COPY OF THE REPORT

The Report on the National Inquiry into Children in Immigration Detention is available in several formats

- The report, media kit and summary guide are available online at: www.humanrights.gov.au/human_rights/children_detention_report

Alternatively, contact the HREOC Publications Unit on Tel: 02 9284 9672 or via email: publications@humanrights.gov.au to obtain:

- Hard copy version of the Report (Cost $49.95 includes GST and postage in Australia)
- CD ROM version of the Report (free of charge)
- Summary Guide to the National Inquiry (free of charge)

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CONFIDENTIALITY AND PRIVACY

There are a number of directions to protect the privacy, security of employment and human rights of people assisting or otherwise involved in the subject of this Inquiry. In summary, the directions are:

- That the identity of asylum seekers[1] giving evidence, producing information or documents, or making submissions to this Inquiry (or proposing to do such things) is not to be disclosed;
- That the identity of all other persons giving evidence, producing information or documents, and making submissions to this Inquiry (or proposing to do such things) who request anonymity is not to be disclosed; and
- That evidence or information produced to the inquiry is not to be published in a way that identifies or could identify any individual.

The directions also prevent publication of material such as photographs that would disclose the identity of a person in the above categories. Please note that it is an offence under the Human Rights and Equal Opportunity Act to contravene these directions.

The Commission has made available as much material as possible in an authorised form that will avoid identification of people subject to these orders.

Information about these orders, including the reasons for them, can be found on the Commission's website at: www.humanrights.gov.au/human_rights/children_detention/privacy.html.

[1] "Asylum seekers" here refers to all persons who claim or have claimed to be a refugee (as defined by the Refugees Convention whether or not they are or were in fact a refugee and whether or not they have applied for a visa to enter and/or remain in Australia on the basis that they are a refugee.

MAJOR FINDINGS AND RECOMMENDATIONS

The Inquiry has found that Australian laws that require the mandatory, indeterminate and effectively unreviewable immigration detention of children, and the way these laws are administered by the Commonwealth, have resulted in numerous and repeated breaches of the *Convention on the Rights of the Child*.

The Inquiry made a range of specific findings in relation to:

- monitoring of conditions in detention centres
- Australia's detention laws and policy
- Australia's refugee status determination system as it applies to children
- safety and security
- mental health
- physical health
- children with disabilities
- education
- recreation and play
- unaccompanied children
- religion, culture and language
- temporary protection visas.

These specific findings, based on evidence received by the Inquiry, were assessed against Australia's human rights obligations under the *Convention on the Rights of the Child*. From this, the Inquiry reached its major findings and recommendations.

MAJOR FINDING 1

Australia's immigration detention laws, as administered by the Commonwealth, and applied to unauthorised arrival children, create a detention system that is fundamentally inconsistent with the *Convention on the Rights of the Child* (CRC).

In particular, Australia's mandatory detention system fails to ensure that:

(a) detention is a measure of last resort, for the shortest appropriate period of time and subject to effective independent review (CRC, article 37(b), (d))

(b) the best interests of the child are a primary consideration in all actions concerning children (CRC, article 3(1))

(c) children are treated with humanity and respect for their inherent dignity (CRC, article 37(c))

(d) children seeking asylum receive appropriate assistance (CRC, article 22(1)) to enjoy, 'to the maximum extent possible', their right to development (CRC, article 6(2)) and their right to live in 'an environment which fosters the health, self-respect and dignity' of children in order to ensure recovery from past torture and trauma (CRC, article 39).

MAJOR FINDING 2

Children in immigration detention for long periods of time are at high risk of serious mental harm. The Commonwealth's failure to implement the repeated recommendations by mental health professionals that certain children be removed from the detention environment with their parents amounted to cruel, inhumane and degrading treatment of those children in detention (CRC, article 37(a)).

MAJOR FINDING 3

At various times between 1999 and 2002, children in immigration detention were not in a position to fully enjoy the following rights:

(a) the right to be protected from all forms of physical or mental violence (CRC, article 19(1))

(b) the right to enjoy the highest attainable standard of physical and mental health (CRC, article 24(1))

(c) the right of children with disabilities to 'enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community' (CRC, article 23(1))

(d) the right to an appropriate education on the basis of equal opportunity (CRC, article 28(1))

(e) the right of unaccompanied children to receive special protection and assistance to ensure the enjoyment of all rights under the CRC (CRC, article 20(1)).

RECOMMENDATION 1

Children in immigration detention centres and residential housing projects, as at the date of the tabling of this report, should be released with their parents as soon as possible, but no later than four weeks after tabling.

The Minister and the Department can effect this recommendation within the current legislative framework by one of the following methods:

(a) transfer into the community (home-based detention)

(b) the exercise of Ministerial discretion to grant humanitarian visas pursuant to section 417 of the Migration Act

(c) the grant of bridging visas (appropriate reporting conditions may be imposed).

If one or more parents are assessed to be a high security risk, the Department should seek the urgent advice of the relevant child protection authorities regarding the best interests of the child and implement that advice.

RECOMMENDATION 2

Australia's immigration detention laws should be amended, as a matter of urgency, to comply with the *Convention on the Rights of the Child*.

In particular, the new laws should incorporate the following minimum features:

(a) There should be a presumption against the detention of children for immigration purposes.

(b) A court or independent tribunal should assess whether there is a need to detain children for immigration purposes within 72 hours of any initial detention (for example, for the purposes of health, identity or security checks).

(c) There should be prompt and periodic review by a court of the legality of continuing detention of children for immigration purposes.

(d) All courts and independent tribunals should be guided by the following principles:

  (i) detention of children must be a measure of last resort and for the shortest appropriate period of time

  (ii) the best interests of the child must be a primary consideration

  (iii) the preservation of family unity

  (iv) special protection and assistance for unaccompanied children

(e) Bridging visa regulations for unauthorised arrivals should be amended so as to provide a readily available mechanism for the release of children and their parents.

RECOMMENDATION 3

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

RECOMMENDATION 4

Minimum standards of treatment for children in immigration detention should be codified in legislation.

RECOMMENDATION 5

There should be a review of the impact on children of legislation that creates 'excised offshore places' and the 'Pacific Solution'.

INTERNATIONAL LAW AND DETENTION

As a sovereign country, Australia has a right to decide who is allowed to enter and stay in the country. However, with this right comes a set of legal responsibilities.

Sovereignty doesn't mean that nations can do whatever they like. Over the past 50 years, the nations of the world have worked together to develop a system of international human rights law based on agreed standards and principles.

By ratifying a treaty or convention, a country agrees to take on the rights and responsibilities of the treaty and uphold its principles in the policies and practices of the government.

The fact that Australia has ratified a treaty does not mean that it automatically becomes part of Australian law – it needs to be specifically written into domestic law before there are enforceable rights. However, this does not mean that ratifying a treaty has no significance for Australia. As the High Court has said in the *Teoh* case, 'ratification of a convention is a positive statement … that the executive government and its agencies will act in accordance with the Convention.'

Australia has, as a sovereign country, freely entered into a range of human rights treaties and, therefore, has an obligation to put the principles of these treaties into practice in how it carries out its immigration policies.

THE CONVENTION ON THE RIGHTS OF THE CHILD

The Inquiry has taken the rights set out in the *Convention on the Rights of the Child*, which Australia ratified in 1990, as the basis for its investigations. One of the key principles of the Convention is that the **best interests of the child** should be a primary consideration in all decisions that affect them.

The Convention also sets out specific requirements to protect the liberty of children including:

- detention of children must be a **measure of last resort**
- detention of children must be for the **shortest appropriate period of time**
- children in detention have the right to **challenge the legality of their detention** before a court or another independent body
- children should not be detained **unlawfully or arbitrarily**.

Other key rights in the Convention are that:

- children seeking asylum have a right to appropriate protection and assistance – because they are an especially vulnerable group of children
- children separated from their parents (unaccompanied children) have a right to special assistance
- children in detention should be treated with respect and humanity and they have the right to healthy development and to be able to recover from past trauma

- children seeking asylum, like all children, have rights to the highest attainable standards of physical and mental health; education; culture, language and religion; rest and play; protection from violence; and to remain with their parents.

The Inquiry also drew on other important human rights treaties, including the 1951 *Convention relating to the Status of Refugees* and its 1967 Protocol, which requires Australia to offer protection to people fleeing persecution because of their race, religion, nationality, membership of a particular social group or political opinion.

DETENTION POLICY AND CHILDREN

Australia's immigration detention laws and practices create a detention system that is fundamentally at odds with the *Convention on the Rights of the Child*.

While a short period of detention may be permitted for the purpose of conducting preliminary health, identity and security checks, Australia's detention system requires detention well beyond those permitted purposes.

The Convention requires detention of children to be **'a measure of last resort'**. However, Australia's immigration laws make the detention of unauthorised arrival children the first – and only – resort.

The Convention requires the detention of children to be for **'the shortest appropriate period of time'**. However, Australia's immigration laws and policies require children to stay in detention until they are granted a visa or removed from Australia – a process that can take weeks, months or years.

The Convention protects children against **arbitrary detention** and requires **prompt review** before an **independent tribunal** to determine whether the **individual circumstances** of a child justify their detention. However, Australian immigration laws require the detention of all unauthorised arrival children, regardless of their individual circumstances. These laws also expressly limit access to courts.

The end result is the automatic, indeterminate, arbitrary and effectively unreviewable detention of children. No other country in the world has a policy like this.

Immigration detention in a secure detention facility is not, by law, necessary. Since 1994 the Minister has had the power to declare any place in the community a place of 'detention', including a hotel, hospital, foster house or family home.

However, this power has rarely been used. As at the end of 2003, only two families had ever been transferred to 'home-based detention'. Furthermore, it was not until a hunger strike, lip-sewing and a suicide pact occurred in January 2002 that arrangements were made to transfer about 20 unaccompanied children to foster home 'detention' in Adelaide.

The Australian Government and the Department of Immigration have regularly stated that keeping children who arrive with their parents together as a family is in the best interests of a child; therefore, since parents are detained their children should remain in detention with them.

The Inquiry believes this argument is flawed for a number of reasons. It implies that the Government has no other option but to detain parents and their children. It also implies that the rights of children can be traded off against each other, whereby a child's right to 'family unity' is more important than his or her right not to be held in detention for an indeterminate period of time. In addition, it fails to take account of the destructive effects of detention itself on family unity.

There are other alternatives available to the Department and to policy makers – alternatives that would both allow a child to be with their parents and not be held in detention during the period that their visa application is being assessed (The Inquiry recommends that the laws be changed – see Inquiry Recommendation 2).

While alternative detention programs, such as the Woomera Residential Housing Project, offered improved day-to-day living conditions for children, they also raised their own problems.

First, significant restrictions on movement remain – children and parents are not free to make their own decisions about where they to go to school, where they play and so on. In addition, fathers in two-parent families are not allowed to take part in the program and, until late 2002, neither were boys aged 13 and over. This means that the housing projects can lead to the separation of families, which can further undermine a child's sense of safety and well-being.

DETENTION STATISTICS

A total of 976 children were in immigration detention in 1999-2000; 1,923 children in 2000-2001; 1,696 children in 2001-2002 and 703 children in 2002-2003. Most of these children arrived by boat.

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The total number of unauthorised arrival children who applied for refugee protection visas between 1 July 1999 and 30 June 2003 was 2,184. These figures do not include children transferred to and detained on Nauru and Manus Island (Papua New Guinea).

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Between 1 July 1999 and 30 June 2003, 2,184 children arrived in Australia **without a valid visa** and sought asylum (unauthorised arrivals) – all these children **were** held in immigration detention while their refugee status was being determined. More than 92% of these children were found to be refugees and were granted a temporary protection visa. For some nationalities the success rate was even higher (98% Iraqi; 95% Afghan).

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Between 1 July 1999 and 30 June 2003, 3,125 children arrived in Australia **with a valid visa** and then sought asylum (authorised arrivals) – these children **were not** held in immigration detention while their refugee status was being determined. Only 25% of these children were found to be refugees. The top three countries of origin for authorised arrivals were Fiji, Indonesia and Sri Lanka.

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The highest number of children in detention at any one time between 1 January 1999 and 1 January 2004 was 842 (on 1 September 2001). Of this number, 456 were at the Woomera detention centre.

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When the Inquiry was announced in late November 2001, there were over 700 children in immigration detention. By the time of the Inquiry's public hearing with the Department in December 2002, the number had reduced to 139. In December 2003, there were 111 children in immigration detention.

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Since 1999, children have been detained for increasingly longer periods of time. By the beginning of 2003, the average detention period for a child in immigration detention was one year, three months and 17 days. As at 26 December 2003, the average length of detention had increased to one year, eight months and 11 days.

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The longest a child has ever been in immigration detention is five years, five months and 20 days. This child and his mother were released from Port Hedland detention centre on 12 May 2000, after eventually being assessed as refugees.

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More boys than girls have been held in immigration detention. However, the percentage of girls has increased since 1999. Between 1 July 1999 and 30 June 2003, 37% of asylum seeker children in detention were girls. The majority of children in detention were under 12 years of age.

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Some infants (0-4 years) spent substantial portions of their lives in immigration detention. On 30 June 2000 there were 164 infants in detention. Five of them had spent more than 18 months in detention. On 30 June 2001 there were 144 infants in detention. Two of these children had spent over two and a half years in detention – more than half of their lives.

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**All statistics are sourced from 'A last resort' the Report of the National Inquiry into Children in Immigration Detention.*

MENTAL HEALTH

Under the *Convention on the Rights of the Child*, all children living in Australia – including children held in immigration detention – have a right to the 'highest attainable standard of health'. The Convention also states that children escaping conflict, torture or trauma have a right to special help to recover 'in an environment which fosters the health, self respect and dignity of the child.'

The Inquiry received a wide range of evidence which indicated that detention has a significantly detrimental impact on the mental health of some children. While children who were detained for short periods of time may not have been greatly affected, evidence from the primary records of mental health professionals who treated children in detention showed that the longer children were held in detention, the more their mental health deteriorated.

Whilst children in detention did receive some support and help from mental health professionals, many experts told the Inquiry that the detention environment made it virtually impossible to meet the mental health needs of children and their families. This was because the source of many of the problems was the detention environment itself.

The Inquiry heard numerous examples where State mental health and child protection agencies, as well as independent experts, repeatedly recommended that children be removed from detention to protect their mental health. By April 2002 most unaccompanied children were removed from detention centres following these recommendations – but the recommendations were not implemented for children in detention with their parents.

Mental health experts, many of whom had treated children in detention, told the Inquiry that child detainees had experienced, amongst other things, clinical depression, post traumatic stress disorder, and various anxiety disorders.

Children in detention exhibited symptoms including bed wetting, sleep walking and night terrors. At the severe end of the spectrum, some children became mute, refused to eat and drink, made suicide attempts and began to self-harm, such as by cutting themselves. Some children were not meeting their developmental milestones.

The Inquiry received evidence that the trauma children experienced before they arrived in Australia did not account for the extent of mental health problems they demonstrated in detention. The evidence was clear that immigration detention centres were not an environment where they could recover from past conflict and trauma.

Children, parents, child protection authorities and psychiatrists all agreed that children are deeply affected by witnessing violence in the detention centres, such as riots, fires, suicide attempts, incidents of self-harm and hunger strikes.

The Inquiry found that the Commonwealth failed to take all appropriate measures to protect and promote the mental health and development of children in detention over the period of the Inquiry and therefore breached the *Convention on the Rights of the Child*.

The failure to implement repeated recommendations by mental health professionals to release certain children with their parents amounted to cruel and inhumane treatment.

EDUCATION

All children in Australia have a right to education. Under the *Convention on the Rights of the Child*, Australian governments are required to provide, as a minimum, primary education that is 'compulsory and available free to all' and secondary education that is 'available and accessible to every child' on the basis of equal opportunity.

All children in Australia, regardless of their nationality, their immigration status, or how they arrived in the country, have the same right to education.

The Inquiry looked at whether children in immigration detention received a standard of education that was comparable to 'similar children' in the Australian community. To help make this assessment, the Inquiry looked at the education services available to refugee children and asylum-seeker children living in the community.

It is the responsibility of the Department to ensure that detainee children receive an adequate education. Since 1999, most detainee children were educated through internal detention centre programs.

For several years, some detainee children from some centres attended local schools outside their detention centre. Since late 2002 this opportunity was extended to most detainee children. However, as most children in detention over the period of the Inquiry attended internal detention centre schools, it was important to examine the quality of that education.

Despite the significant efforts of teachers, the Inquiry found that there were fundamental problems associated with providing education services in on-site schools throughout the period of the Inquiry. These included:

- insufficient infrastructure
- inadequate hours of tuition
- inadequate educational assessments and reporting of children's progress
- lack of an appropriate curriculum
- shortage of teachers.

Evidence to the Inquiry highlighted the significant shortage of suitably qualified teachers in detention centres, particularly in Woomera and Port Hedland, which at times had very large numbers of children.

For instance, there were 282 children at Woomera on 1 August 2001 and 456 children there on 1 September 2002. However, during these months no more than five teachers were employed – often the number was less. By contrast, there is one teacher for every 25 to 30 students in Australian primary schools.

This shortage of teachers also had an effect on the hours of tuition students received. In most Australian schools, students receive approximately six hours of teaching each day. However, detainee children attending on-site schools prior to the end of 2001 received considerably fewer hours of tuition. For example, ACM documents show that during 2001 teaching hours at Woomera varied between one and three each day, depending on detainee numbers.

Children in detention often carry with them experiences that make learning very difficult, such as the effects of past trauma. However, the detention environment itself makes learning even harder.

Of most particular concern, was the mental health of children, which deteriorated the longer they were in detention. Detainee children told the Inquiry that depression and anxiety made it very difficult for them to concentrate and learn.

In addition, children's attendance at on-site schools declined with the length of time they spent in detention and as they grew older because they felt depressed and because the classes didn't meet their needs.

The Inquiry found that the Commonwealth failed to take all appropriate measures to provide children in immigration detention with an adequate education over the period of the Inquiry, resulting in a breach of the *Convention on the Rights of the Child*. However, many problems were addressed when children began attending external schools in late 2002.

SAFETY AND SECURITY

Under the *Convention on the Rights of the Child*, children have a right to live in a safe environment.

Throughout the course of the Inquiry, a number of serious disturbances occurred in immigration detention centres, including riots, fires, hunger strikes, protests, self-harm and suicide attempts.

The Inquiry heard that the measures taken to address disturbances in the detention centres – such as the use of tear gas and water cannons – left children feeling frightened and unsafe. During these incidents, children were exposed to a level of risk to their physical safety and their mental health that children in the community are unlikely to face.

Between July and December 2001, the Department recorded 688 major incidents involving 1,149 detainees across all detention centres. Of these incidents, 321 were alleged, actual or attempted assaults (19 involved children), 174 involved self-harm (25 involved children) and about 30% involved 'contraband, damage to property, disturbances, escapes and protests'. Almost 75% of these incidents occurred in the Curtin, Port Hedland and Woomera centres.

From January to June 2002, there were 760 major incidents involving 3,030 detainees across all detention centres. There were 116 alleged, attempted or actual assaults (16 involved children), 248 self-harm incidents (25 involved children) and 52% involved contraband, damage to property, disturbances, escapes and protests. Almost 80% of all incidents occurred in the Curtin, Port Hedland and Woomera centres.

Maintaining safety and security in detention facilities is a very challenging task. It is clearly legitimate for staff to protect themselves at times when they are being threatened. However, evidence to the Inquiry suggests that sometimes the security measures used compromised the physical safety and mental health of children, especially tear gas and the use of riot gear.

The Department and ACM acknowledged that they had a special responsibility to protect children from harm whilst the children were held in immigration detention. However, evidence to the Inquiry suggests that procedures in place to address unrest in detention centres did not sufficiently take into account the need to provide children with special protection.

The Inquiry accepts that parents have primary responsibility for their children to prevent them from witnessing riots and other distressing events. The Inquiry also acknowledges that some parents did participate in the demonstrations and, therefore, may not have removed their children to a safer place.

However, the ability of parents to protect their children in such situations should be put into context. Within the detention environment, parents are forced to protect their children from situations of violence that they would only rarely encounter in the community. The frequency of major disturbances in detention centres through 2001 and 2002 also made it difficult to prevent exposure to violence.

After considering substantial evidence about the safety of children in detention centres between 1999 and 2002, the Inquiry found that the Commonwealth breached the *Convention on the Rights of the Child* by failing to take all appropriate measures to protect children in detention from physical and mental violence.

TEMPORARY PROTECTION VISAS

Following a successful application for asylum, children and their families (unless unaccompanied children) – are generally released from detention into the community on a three-year temporary protection visa (TPV).

Since 2001, the conditions attached to the TPV mean that children and their families:

- are not eligible for permanent residence in Australia, unless the Minister decides otherwise
- are unable to bring any family to join them in Australia for the period of their TPV, unless the Minister decides otherwise
- lose their visa if they travel outside Australia, as TPVs are single entry visas.

After three years the TPV expires. At this time the child is required to apply again to stay in Australia on the basis that they are still a refugee and that it would not be safe for them to return to their country of origin.

Evidence presented to the Inquiry highlighted two very significant barriers that children released from detention on TPVs face as they try to integrate into the Australian community.

The first is that the temporary status of their residence creates a deep uncertainty and anxiety about their future. This can exacerbate existing mental health problems from their time in detention and their past history of persecution. It also affects their capacity to fully participate in the educational opportunities offered in Australia.

The second concern is that the absence of the right to family reunion for the duration of the visa, combined with the effective ban on overseas travel, means that some children may be separated from their parents or family for a long, potentially indefinite, period of time. Again, this can undermine a child's mental health and well-being, especially for unaccompanied children who want to try to see their family.

Evidence to the Inquiry showed that despite uncertainty and restrictions on family reunion, unaccompanied refugee children released from detention were generally well-cared for by State agencies and that health, education and social services attached to temporary visas satisfied those requirements in the *Convention on the Rights of the Child*.

However, limited settlement services, such as initial housing assistance; stringent reporting requirements in order to receive the Special Benefit; limited employment assistance programs; and limited English language tuition for adults all place significant strain on families with children who are trying to integrate into the community.

The Inquiry found that Australia's laws breach the *Convention on the Rights of the Child* by failing to ensure that children released from immigration detention on TPVs can enjoy their right to mental health, development, recovery from past trauma and family unity.

SUMMARIES OF CASE EXAMPLES

SAFETY

In January 2002 when there were 281 children detained at Woomera, there was a major hunger strike and protest. Seven children were involved in lip-sewing. At one stage, 37 children were on hunger strike. (pp302-308)

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Children who were detained at both Curtin and Woomera told the Inquiry that they had been affected by tear gas. Nearly every family interviewed by the Inquiry at Woomera in June 2002 reported that children were affected by tear gas during the Easter 2002 riots. (p322-323)

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In late 2001, an 11 year old unaccompanied boy who had been detained at Woomera for 6 months was assaulted by ACM officers. While this may have been an isolated incident, it demonstrates that Woomera was not a safe environment for young unaccompanied children. (p339)

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In 2001, a six year old child stopped eating, drinking, talking and sleeping after seeing an adult detainee attempt suicide. He was hospitalised on at least eight occasions due to post-traumatic stress disorder during 2001 before being released on a bridging visa. (pp343-348)

MENTAL HEALTH

A 2003 psychiatric study of 20 children detained in a remote centre found that all were suffering from psychiatric illness (all but one child were suffering from major depression and half from post-traumatic stress disorder). These children experienced a tenfold increase in psychiatric illness over the period of detention. (pp391-392)

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In May 2002, a psychiatrist diagnosed a 13 year old boy and an 11 year old girl as both suffering from major depressive disorder. The detention environment was a major contributing factor. These children had been in detention for over a year. Two years later, these children remain in detention. (pp403-404)

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At Woomera, in the first half of 2002, there were 50 reports of self-harm regarding 22 children. The most frequent incidents occurred with children aged between 10 and 12 years. In no other environment in Australia would children this young self-harm so extensively. (pp409-411)

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There is a child still detained in Baxter who has been seriously mentally ill since May 2002. This boy has regularly self-harmed. His father is extremely psychiatrically unwell. There have been approximately 20 independent recommendations that he be released from detention with his family on mental health grounds. This boy is still in detention. This amounts to cruel and inhuman treatment. (p432-438)

The father of a family detained at Woomera for over three years told his psychiatrist that when he was arrested and tortured in Iran the military had threatened to bring his children in to watch. He said 'This is what is happening now in Australia.' This man's wife and two teenage daughters all suffered major depression while in detention. (pp438-442)

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Between April 2002 and July 2002, a 14 year old boy detained at Woomera attempted to hang himself four times, climbed into the razor wire on four occasions, slashed his arms twice and went on hunger strike twice. This boy's mother was hospitalised due to her own mental illness during this whole period. This boy remains in detention. (pp442-444)

DISABILITIES

A child with severe cerebral palsy was detained for two years in the remote centre of Curtin, and for one year at Baxter before being released. This mother had such difficulty caring for him in the harsh environment of Curtin that in March 2002, after 16 months of detention, she handed him over to ACM. Once she got the help she needed, she resumed care of her child. This child was wheeled around in a baby stroller for seven months, because a suitable wheelchair was not provided. (pp545, 549)

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A family of three children with an intellectual disability were detained at Port Hedland for nearly three years, and then at Villawood for several months before they were released. It took two years for these children's disability to be diagnosed. (pp534-537)

EDUCATION

In Woomera during 2001, when hundreds of children were detained there, children only received between one and three hours of education each day. There were not enough buildings and not enough staff to provide anything remotely resembling an appropriate curriculum to those children. (p610)

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Although most children were attending external schools by the beginning of 2003, some children never had this opportunity. In one family of adolescent children detained at Curtin and then at Baxter, the children were not allowed to attend external schools, first because their English was too poor and then because they were over 16. This would never happen to children in the Australian community. (pp641-642)

UNACCOMPANIED CHILDREN

In 2001, an eight year old unaccompanied boy was detained at Woomera for four months before he was released into the community on a bridging visa. This boy had six different foster families over the four months. It took the Department six weeks to arrange for the state child welfare agency to assess the child, and although they immediately recommended his release it took a further two months for him to be released from Woomera. (pp744-751)

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In January 2002, a significant number of unaccompanied children were involved in hunger strikes, lip sewing, and threatened suicide if they were not released from detention. All of these children had been detained for between 6-12 months. This dramatic action demonstrates that Woomera is no place for children. Five unaccompanied children were transferred to foster home detention on 24 January, four on 27 January, and five more on 8 February. The Department clearly did not make the best interests of these children a priority until the situation was critical. (pp751-756)

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In January 2002, a 14 year old unaccompanied child detained at Woomera threw himself against a wall, threatened to kill himself at least three times, went on a hunger strike and ingested shampoo. This child was transferred from the detention centre into foster care at the end of January 2002, but this dramatic action shows that detention centres such as Woomera are no place for children. (pp751-756)