

2010

Immigration
detention on
Christmas Island



**Australian
Human Rights
Commission**

everyone, everywhere, everyday

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Part A:

Introductory sections

1. Introduction

This report contains a summary of observations made by the Australian Human Rights Commission (the Commission) during its 2010 visit to the immigration detention facilities on Christmas Island.

Three Commission staff members visited Christmas Island from 28 May to 3 June 2010. The purpose of the visit was to monitor conditions in immigration detention against internationally accepted human rights standards. The activities undertaken during the visit are set out in Appendix 1. This report comments on conditions at the time of the Commission's visit. The Commission is aware that there have been developments between the time of its visit and the publication of this report.

The Commission acknowledges the assistance provided by the Department of Immigration and Citizenship (DIAC) in organising and facilitating the visit, and the positive cooperation received from DIAC officers and detention service provider staff members during the visit. The Commission also thanks local representatives on Christmas Island for their willingness to spend time meeting with Commission staff.

The Commission provided a copy of this report to DIAC in advance of its publication, in order to provide DIAC with an opportunity to prepare a response. DIAC's response is available on the Commission's website at www.humanrights.gov.au/human_rights/immigration/idc2010_christmas_island_response.html.

2. Background

For more than a decade, the Commission has raised significant concerns about Australia's immigration detention system. During this time, the Commission has investigated numerous complaints from individuals in detention and conducted two national inquiries into the mandatory detention system.¹ The Commission has concluded that this system breaches fundamental human rights.²

Because of its concerns, the Commission undertakes a range of monitoring activities.³ These include conducting inspections of Australia's immigration detention facilities, with the aim of ensuring that conditions meet internationally accepted human rights standards. The relevant standards are set out in Appendix 2.

This report follows the Commission's 2006, 2007 and 2008 annual reports on inspections of immigration detention facilities⁴ and its 2009 report, [Immigration detention and offshore processing on Christmas Island](#).⁵

The Commission's 2009 report found that Christmas Island is not an appropriate place in which to hold people in immigration detention for a range of reasons including the nature of the detention facilities, the limited infrastructure and lack of community-based accommodation options, and the restrictions on asylum seekers' access to essential services and support networks.⁶ The Commission also expressed concerns about the ongoing excision regime and the practice of assessing the claims of asylum seekers who arrive in excised offshore places through a non-statutory process.⁷

The key recommendations of the Commission's 2009 report included that people should not be held in immigration detention on Christmas Island; the provisions of the *Migration Act 1958* (Cth) (Migration Act) relating to excised offshore places should be repealed; and all unauthorised arrivals who make claims for asylum should have those claims assessed through the refugee status determination system that applies under the Migration Act.⁸

A range of other domestic and international organisations and experts have also raised significant concerns about the Australian Government's policy of holding asylum seekers in detention on Christmas Island. These include Amnesty International, the Refugee Council of Australia, local religious leaders, United Nations treaty bodies and the United Nations Special Rapporteur on the right to health.⁹

Since the Commission's 2009 visit to Christmas Island, there have been a range of significant developments – some positive and others negative. These have included an increase in the number of asylum seekers arriving by boat and an increase in the number of people in detention on Christmas Island; the transfer of some asylum seekers to mainland detention facilities; the re-opening of the Curtin Immigration Detention Centre and the Port Augusta Immigration Residential Housing; the establishment of new 'alternative places of detention' on the mainland; and the suspension of processing of claims by asylum seekers from Sri Lanka and Afghanistan.

The Commission's 2010 visit to Christmas Island focused predominantly on the conditions of detention for asylum seekers. However, this report also considers some of the key policy and processing developments that have impacted on those conditions over the past year. The report focuses on areas in which there have been notable changes since the Commission's 2009 Christmas Island visit and report.

3. Summary

Since the Commission visited Christmas Island in 2009, there has been a substantial increase in the number of people detained there. While there have been some improvements in the operation of the detention facilities, the increase in numbers has led to overcrowding and a significant deterioration in conditions for many people.

DIAC officers and staff members of detention service providers are clearly working under considerable pressures on Christmas Island, caused by a range of factors including the number of people in detention, infrastructure constraints and logistical difficulties resulting from the small size and remoteness of the island. The Commission acknowledges the efforts being made by staff to ensure that people in detention are treated appropriately despite the challenging circumstances.

During its 2010 visit, the Commission was pleased to observe and hear reports of some positive developments. These include the fact that the separation detention system is no longer used; positive reports from people in detention about most staff members; positive efforts to provide recreational activities in detention; an increase in religious support for people in detention; a new initiative of engaging some people in detention as teacher's aides at the local school; and increased DIAC efforts to engage with the local community.

However, the Commission's overarching concerns about the inappropriateness of holding asylum seekers in immigration detention on Christmas Island remain. The Commission's major concerns are summarised below and discussed in further detail throughout this report.

Overarching policy concerns

- Asylum seekers who arrive by boat in an excised offshore place continue to be subjected to mandatory detention on Christmas Island, despite the fact that the Migration Act does not require this. Further, the Migration Act purports to bar them from challenging the lawfulness of their detention in the Australian courts.¹⁰
- Asylum seekers who arrive in an excised offshore place continue to be barred from the refugee status determination system that applies under the Migration Act. Instead, their claims are assessed through a non-statutory process governed by policy guidelines.
- The decision to suspend processing of claims by asylum seekers from Sri Lanka and Afghanistan led to the prolonged detention of a significant number of people, including children.
- More people are being held in immigration detention on Christmas Island for longer periods of time. There continues to be no set time limit on the period a person may be detained.
- Community Detention is no longer available on Christmas Island, and is barely being used on the mainland.

Detention of unaccompanied minors and families with children

- Children continue to be subjected to mandatory detention on Christmas Island, in breach of Australia's obligations under the *Convention on the Rights of the Child* (CRC).
- Families with children and unaccompanied minors are detained in an immigration detention facility on Christmas Island (the Construction Camp), rather than being

placed in Community Detention. The Construction Camp is not an appropriate environment for children, and has become increasingly overcrowded.

- There continues to be a lack of clarity about responsibilities for child welfare and protection for children in immigration detention on Christmas Island.
- There remains a conflict of interest in the Minister for Immigration and Citizenship (the Minister) or DIAC officers acting as the legal guardian of unaccompanied minors detained on Christmas Island.

Conditions and services in detention

- The detention facilities on Christmas Island are not appropriate for asylum seekers. The Commission has ongoing concerns about the prison-like nature of the Christmas Island Immigration Detention Centre (IDC), the limited amenities at the Phosphate Hill facility, and the inappropriateness of the Construction Camp as a place for accommodating families with children and unaccompanied minors.
- The substantial increase in the number of people in detention has led to overcrowding in the detention facilities on Christmas Island. There has been a significant deterioration in living conditions for many people, particularly those accommodated in tents and dormitory bedrooms.
- The substantial increase in the number of people in detention has placed further strain on their access to facilities and services including communication facilities, recreational facilities, educational activities and opportunities for people to leave the detention environment.

Access to health and mental health care

- People in immigration detention on Christmas Island have limited access to medical specialists and dental care.
- There is no psychiatrist on Christmas Island. Mental health staff are being required to provide services to a high number of people in detention. There have been a number of self-harm incidents in recent months.
- There is a need for rigorous, independent monitoring of the delivery of health and mental health services for people in immigration detention.

While there have been some improvements since its last visit, the Commission remains of the view that Christmas Island is not an appropriate place in which to hold people in immigration detention. The Commission's long-held concerns about detaining asylum seekers in a place as small and remote as Christmas Island have been compounded this year by the overcrowding and deterioration in conditions. The Commission opposes the mandatory detention of asylum seekers. However, if people must be detained, they should be accommodated on the Australian mainland in metropolitan locations where they can access the services and support they need.

The Commission also remains of the view that the excision regime should be repealed. It establishes a two-tiered system under which asylum seekers are treated differently based on their place and mode of arrival. Asylum seekers arriving in excised offshore places are assessed through a non-statutory system that affords them fewer legal safeguards than asylum seekers arriving on the mainland. In the Commission's view, all asylum seekers who arrive in Australia should be permitted to apply for protection through the refugee status determination system that applies under the Migration Act.

Regardless of how or where they arrive in Australia, all people are entitled to protection of their fundamental human rights. These include the right to seek asylum, the right not to be subjected to arbitrary detention, and the right to be treated with humanity and respect if they are deprived of their liberty.¹¹ The Commission continues to encourage the Australian Government to ensure that the treatment of all asylum seekers arriving in Australia is in line with these and other human rights obligations.

4. Recommendations

Recommendation 1:

The Australian Government should stop using Christmas Island as a place in which to hold people in immigration detention. If people must be held in immigration detention facilities, they should be located in metropolitan areas.

Recommendation 2:

The Australian Government should repeal the provisions of the Migration Act relating to excised offshore places and abandon the policy of processing some asylum claims through a non-statutory refugee status assessment process. All unauthorised arrivals who make claims for asylum should have those claims assessed through the refugee status determination system that applies under the Migration Act.

Recommendation 3:

If the Australian Government intends to continue to use Christmas Island for immigration detention purposes, it should avoid the prolonged detention of asylum seekers by:

- Ensuring full implementation of the New Directions policy under which asylum seekers should only be held in closed detention facilities while their health, identity and security checks are conducted. After this, the presumption is that they will be permitted to reside in the community unless a specific risk justifies their ongoing detention in a facility.
- Ensuring that security clearances are conducted as quickly as possible.

Recommendation 4:

Section 494AA of the Migration Act, which bars certain legal proceedings in relation to offshore entry persons, should be repealed. The Migration Act should be amended to accord with international law by requiring that a decision to detain a person, or a decision to continue a person's detention, is subject to prompt review by a court.¹²

Recommendation 5:

The Australian Government should make full use of the Community Detention system for people detained on Christmas Island. All eligible detainees should be referred for a Residence Determination on the mainland. This should be an immediate priority for vulnerable groups including families with children, unaccompanied minors, survivors of torture or trauma, and people with health or mental health concerns.

Recommendation 6:

The Australian Government should implement the outstanding recommendations of the report of the National Inquiry into Children in Immigration Detention, *A last resort?*¹³ These include that Australia's immigration detention laws should be amended, as a matter of urgency, to comply with the *Convention on the Rights of the Child*. In particular, the new laws should incorporate the following minimum features:

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

Recommendation 7:

If the Australian Government intends to continue the practice of holding children in immigration detention on Christmas Island it should, as a matter of priority:

- clarify through formal Memoranda of Understanding the respective roles and responsibilities of state and federal authorities with regard to the welfare and protection of children in immigration detention on Christmas Island
- clearly communicate these roles and responsibilities to all relevant state and federal authorities
- finalise and implement clear policies and procedures regarding child welfare and protection concerns that may arise in respect of children in immigration detention on Christmas Island, and communicate these policies and procedures to all relevant staff.

Recommendation 8:

The Australian Government should, as a matter of priority, implement the recommendations made by the Commission in *A last resort?* that:

- Australia's laws should be amended so that the Minister for Immigration and Citizenship is no longer the legal guardian of unaccompanied children.
- An independent guardian should be appointed for unaccompanied children and they should receive appropriate support.

Recommendation 9:

If the Australian Government intends to continue to use the Christmas Island IDC, it should implement the recommendation of the Joint Standing Committee on Migration that all caged walkways, perspex barriers, and electrified fencing should be removed and replaced with more appropriate security infrastructure.¹⁴

Recommendation 10:

If the Australian Government intends to continue to use the Christmas Island IDC, it should take immediate measures to reduce overcrowding. These should include:

- ceasing the practice of accommodating people in tents, and removing the tents as soon as possible
- ceasing use of the surge areas that have been created by converting the visitors' and induction areas into large dormitories
- ceasing the practice of accommodating people in dormitory bedrooms in Education 3 Compound, and returning the compound to its original use as space for educational and recreational activities
- refraining from transforming additional areas into accommodation.

Recommendation 11:

If the Australian Government intends to continue to use the Phosphate Hill immigration detention facility, it should take immediate measures to reduce overcrowding in the facility. These should include:

- ceasing the practice of accommodating people in tents, and removing the tents as soon as possible
- ceasing the practice of accommodating any more than two people in the bedrooms in the demountables.

Recommendation 12:

If the Australian Government intends to continue to use the Construction Camp immigration detention facility, it should take immediate measures to reduce overcrowding in the facility.

Recommendation 13:

DIAC, Serco and other detention service providers should refer to people in immigration detention by their name. Their identification number should only be used as a secondary identifier where this is necessary for clarification purposes.

Recommendation 14:

DIAC and Serco should ensure that staff training and performance management include a strong focus on treating all people in immigration detention with humanity and with respect for their inherent dignity.

Recommendation 15:

An independent body should be charged with the function of monitoring the provision of health and mental health services in immigration detention. The Australian Government should ensure that adequate resources are allocated to that body to fulfil this function.

Recommendation 16:

If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should ensure that detainees are provided with access to appropriate health services. In particular, DIAC should ensure, as a matter of priority, that detainees on Christmas Island are provided with adequate access to dental care and specialist care.

Recommendation 17:

If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should ensure that detainees are provided with access to appropriate mental health services. In particular, DIAC should ensure, as a matter of priority, that detainees on Christmas Island are provided with adequate access to psychiatric care.

Recommendation 18:

If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should ensure that detainees are provided with adequate access to torture and trauma services.

Recommendation 19:

DIAC should ensure that its policy, *Identification and Support of People in Immigration Detention who are Survivors of Torture and Trauma* is implemented on Christmas Island. Under this policy, the continued detention of survivors of torture and trauma in an IDC is only to occur as a measure of absolute last resort where risk to the Australian community is considered unacceptable.

Recommendation 20:

If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should:

- ensure that all detainees are provided with adequate access to telephones and that they can make and receive telephone calls in privacy
- increase the number of internet terminals in each of the detention facilities.

Recommendation 21:

If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should ensure that all detainees are provided with adequate access to a range of recreational facilities and activities.

Recommendation 22:

If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should ensure that:

- all detainees have access to appropriate educational activities, including ESL classes
- the Phosphate Hill and Construction Camp immigration detention facilities have an adequate supply of reading materials in the principal languages spoken by detainees.

Recommendation 23:

If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should:

- amend the detention service provider contract applicable to the three detention facilities on Christmas Island to require that Serco provide regular external excursions for people in detention on the island
- ensure that the detention service provider is allocated sufficient resources to provide escorts for regular external excursions.

Recommendation 24:

If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should:

- ensure that all detainees are provided with access to regular religious services conducted by qualified religious representatives – in particular, further efforts are required to provide this for detainees who practice a religion other than Christianity
- ensure that detainees have access to religious services in the community.

Recommendation 25:

Legislation should be enacted to set out minimum standards for conditions and treatment of detainees in all of Australia's immigration detention facilities, including those located in excised offshore places. The minimum standards should be based on relevant international human rights standards, should be enforceable and should make provision for effective remedies.

Recommendation 26:

The Australian Government should ratify the *Optional Protocol to the Convention against Torture* and establish an independent and adequately resourced National Preventive Mechanism to conduct regular inspections of all places of detention. This should include all immigration detention facilities, including those located in excised offshore places.

5. Overview: immigration detention on Christmas Island

5.1 Who is detained on Christmas Island?

The current policy of the Australian Government is that all non-citizens who arrive by boat without a valid visa (irregular maritime arrivals) are taken to Christmas Island and placed in immigration detention.¹⁵ This includes people who arrive by boat in excised offshore places, and people who arrive by boat on the Australian mainland.¹⁶

The vast majority of these arrivals are asylum seekers. A small number are crew members.

At the time of the Commission's visit, the vast majority of people detained on Christmas Island were from Afghanistan or Sri Lanka. Other major nationalities included Iranian, Iraqi and Burmese. There were also a significant number of stateless people in detention.¹⁷

5.2 How many people are detained on Christmas Island?

The number of people in immigration detention on Christmas Island has increased significantly since the Commission's July 2009 visit. At that time, there were 733 people in immigration detention on the island.¹⁸

At the start of the Commission's 2010 visit, there were 2421 people in immigration detention on Christmas Island, including 250 minors.¹⁹ At the same time, there were 1045 irregular maritime arrivals in detention on the mainland, including 246 minors.²⁰

At the time of writing, there were 2409 people detained on Christmas Island, including 217 minors. There were also 1950 irregular maritime arrivals in detention on the mainland, including 439 minors.²¹

At the time of writing, the highest number detained on Christmas Island at any one time was 2652 people in late July 2010.²²

5.3 How long are people detained on Christmas Island?

The majority of the 2421 people detained on Christmas Island at the time of the Commission's visit had been there for less than three months.²³ However, 656 people had been detained for three months or more. Of those 656 people, 305 had been detained for six months or more; and of those 305 people, 121 had been detained for nine months or more.²⁴

The Commission is concerned that more people are being held in detention on Christmas Island for longer periods of time, as discussed in section 9 of this report.

5.4 Where are people detained?

There are three immigration detention facilities on Christmas Island:

- The Christmas Island IDC – a high security detention centre used for adult males. When the Commission visited, there were 1834 men detained in the IDC.²⁵
- The Construction Camp immigration detention facility – a low security detention facility used primarily for unaccompanied minors and families with children. When the Commission visited, there were 418 people detained in the Construction Camp – 73 men, 75 women, 94 accompanied children, 152 unaccompanied minors and 24 male crew members.²⁶
- The Phosphate Hill immigration detention facility – a secure detention facility used for adult males. When the Commission visited, there were 164 men detained in the facility.²⁷

At the time of the Commission's visit, the detention facilities were being operated by Serco Australia, the detention service provider contracted by the Australian Government.

Some immigration detainees on Christmas Island were formerly placed in Community Detention and accommodated in houses in the local community.²⁸ During the Commission's 2010 visit, there were only three people in Community Detention.²⁹ Since then, the use of Community Detention on Christmas Island has ceased due to a lack of available accommodation. The Commission is concerned about this development, as discussed in section 11 of this report.

Part B: Key policy and processing developments

Since the Commission's 2009 visit to Christmas Island, there has been a range of significant developments. This part of the report considers some of the key policy and processing developments that have impacted on conditions for people in detention on Christmas Island over the past year.

6. Increasing detainee numbers and transfers to mainland detention facilities

Over the past year there has been an increase in the number of asylum seekers arriving by boat and a substantial increase in the number of people being held in immigration detention on Christmas Island. There were 733 people in detention on Christmas Island when the Commission visited in July 2009. By the time of the Commission's 2010 visit this had increased to 2421 people.³⁰

The increase in arrivals has contributed to slower processing of asylum applications and longer periods of detention, as discussed in the following sections of this report. It has also placed increasing pressures on DIAC and Serco staff, as they have been required to meet the needs of an ever-increasing number of people in detention. A rise in the number of DIAC officers on Christmas Island and an enhanced Case Management system appear to have assisted in meeting these challenges. The Commission acknowledges that many staff are making significant efforts to ensure that people in detention are treated appropriately despite the difficult circumstances.

However, the detention facilities on Christmas Island were not designed to accommodate such a high number of people.³¹ The substantial increase in detainee numbers has led to overcrowding, a significant deterioration in living conditions, increased pressure on services such as health and mental health care, and restrictions on access to facilities such as telephones, washing machines, ablutions and recreational facilities. These issues are discussed further in Part D of this report.

The increasing pressure on the island's detention facilities eventually led to decisions by the Australian Government during the first half of 2010 to transfer some people to existing immigration detention facilities on the mainland, to re-open the Curtin IDC and the Port Augusta Immigration Residential Housing, and to establish a range of other 'alternative places of detention' on the mainland.³²

The Commission has long recommended that the Australian Government stop using Christmas Island as a place for holding people in immigration detention.³³ The overcrowding and the deteriorating conditions in the island's detention facilities add weight to that recommendation. The Commission therefore welcomes the transfer of some detainees from Christmas Island to the mainland. It is essential that these transfers continue in order to relieve the ongoing pressures on detainees, staff, facilities and services on Christmas Island. Transfers should be a matter of priority for all families with children, unaccompanied minors, survivors of torture or trauma, and people with health or mental health concerns.

However, the Commission regrets that the vast majority of people transferred to the mainland to date have been placed in immigration detention facilities, rather than being considered for a bridging visa or a Community Detention placement. The Commission has also expressed concern about the decision to detain people in remote locations such as Curtin, where their access to appropriate services and support networks is limited and the accessibility and transparency of their detention arrangements is reduced.³⁴ In the Commission's view, many of the factors that make Christmas Island an inappropriate place in which to detain people also make remote locations like Curtin inappropriate. If people must be held in immigration detention facilities, they should be located in metropolitan areas.

Recommendation 1:

The Australian Government should stop using Christmas Island as a place in which to hold people in immigration detention. If people must be held in immigration detention facilities, they should be located in metropolitan areas.

7. Excision and offshore processing

7.1 The excision regime and the non-statutory RSA process

Under Australia's excision regime, various islands are designated as 'excised offshore places', and a person who becomes an unlawful non-citizen (a non-citizen without a valid visa) by entering Australia at one of these places is referred to as an 'offshore entry person'.³⁵ An offshore entry person is barred from submitting a visa application unless the Minister determines that it is in the public interest to allow them to do so.³⁶ Refugee claims made by offshore entry persons are instead assessed through a non-statutory refugee status assessment process (the RSA process).

The Commission's 2009 report outlined the excision regime and the RSA process in further detail.³⁷ The Commission expressed concerns about excision and the policy of assessing the claims of asylum seekers who arrive in excised offshore places through a non-statutory process.³⁸

DIAC's response to the Commission's report highlighted improvements that had been made to the RSA process under the government's New Directions in Detention reforms.³⁹ These improvements included access for asylum seekers to publicly funded migration advice and assistance through the Immigration, Advice and Application Assistance Scheme (IAAAS), independent review of unfavourable RSA decisions, and an external scrutiny role for the Commonwealth Ombudsman.

The Commission has welcomed these improvements.⁴⁰ The Commission acknowledges that substantial reforms have been made in recent years which have improved the processing of refugee claims made by offshore entry persons. However, improvements in the operation of the process do not overcome the Commission's fundamental concerns about the system itself.

The Commission remains opposed to the excision regime because it establishes a two-tiered system under which asylum seekers are treated differently based on their place and mode of arrival. Asylum seekers arriving in excised offshore places are barred from the refugee status determination system that applies under the Migration Act, and instead are assessed through a non-statutory system that affords them fewer legal safeguards than asylum seekers arriving on the mainland. In the Commission's view, this differential treatment undermines Australia's obligations under the Refugee Convention and undermines asylum seekers' human rights.⁴¹

The key recommendations of the Commission's 2009 report included that the provisions of the Migration Act relating to excised offshore places be repealed, the policy of processing some asylum claims through a non-statutory process be abandoned, and all unauthorised arrivals who make claims for asylum have those claims assessed through the system that applies under the Migration Act.⁴² The Commission reiterates those recommendations.

The Commission is aware that several legal challenges relating to the RSA process are under consideration by the High Court of Australia. The Commission will monitor developments in this area.

Recommendation 2:

The Australian Government should repeal the provisions of the Migration Act relating to excised offshore places and abandon the policy of processing some asylum claims through a non-statutory refugee status assessment process. All unauthorised arrivals who make claims for asylum should have those claims assessed through the refugee status determination system that applies under the Migration Act.

7.2 RSA processing times

At the time of the Commission's 2009 visit to Christmas Island, it was taking an average of 66 days from the time an asylum seeker lodged their statement of claims under the RSA process until they were notified of their RSA outcome.⁴³ The Commission welcomed the fact that the majority of asylum seekers on Christmas Island were moving through the RSA process relatively quickly, but expressed concern that this was vulnerable to change because there are no binding timeframes under the process.⁴⁴

Since then, the increase in the number of asylum seekers arriving by boat has contributed to slower RSA processing. As of July 2010, on average it was taking 41 days from a person's arrival on Christmas Island until lodgement of their statement of claims, and a further 72 days from that

lodgement until their protection visa grant. This means that those asylum seekers receiving a successful RSA outcome were spending an average of 113 days (more than 16 weeks) in detention before their protection visa grant.⁴⁵

However, these average processing figures fail to convey the current reality that many asylum seekers are spending much longer periods in detention on Christmas Island awaiting the outcome of the RSA process or the conduct of security checks (as discussed in section 9 below).

Over the coming year, higher refusal rates are likely to lead to further increases in average RSA processing times, as more asylum seekers will go through independent merits review after receiving a negative primary decision. As of July 2010, it was taking an average of 75 days from the lodgement of a request for independent merits review until the review outcome.⁴⁶ This is in addition to the time taken from arrival on Christmas Island to receiving a negative primary decision.

The Commission acknowledges the pressures on DIAC decision-makers caused by the increased number of RSA claims lodged over the past year, and the efforts being made by DIAC officers to keep processing times as short as possible. The Commission's major concern with slower processing times is that they can lead to people being held in immigration detention for longer periods, and that the prolonged detention of asylum seekers can have serious detrimental impacts on their mental health – particularly when their detention is combined with the uncertainty of not knowing what the outcome of their refugee claim will be.

7.3 Independent merits review

In its 2009 report, the Commission welcomed the introduction of access to independent merits review for asylum seekers who receive a negative primary decision through the RSA process. However, the Commission expressed concerns that this did not constitute a sufficient legal safeguard for those asylum seekers, primarily due to the lack of transparent and enforceable procedures for decision-making.⁴⁷

Unlike an asylum seeker who arrives on the mainland, one who arrives in an excised offshore place does not have access to independent merits review by the Refugee Review Tribunal (RRT) or the Administrative Appeals Tribunal (AAT).⁴⁸ Instead they have access to an Independent Reviewer who will consider their refugee claim and make a non-binding recommendation to the Minister as to whether the Minister should exercise his or her discretion to permit the person to apply for a protection visa.⁴⁹

As of July 2010, there were 432 people going through independent merits review under the RSA process. This included 245 people waiting for a review hearing to be scheduled, 150 people with a hearing currently taking place or scheduled to take place within the next month, and 37 people whose hearings had been completed and who were awaiting the review outcome.⁵⁰

The higher number of RSA claims being lodged and increasing refusal rates at the primary stage have led to a need for the independent merits review system to be expanded. The Commission has been informed that, in order to meet increased demands, additional Independent Reviewers have been appointed and a new office has been established to provide administrative support. This is known as the Refugee Status Review Office. It will operate and be physically separate from DIAC, but the CEO will report to the DIAC Secretary on the operations of the Office.

The Commission supports the fact that additional reviewers have been appointed to assist in meeting increased demands. However, the Commission remains concerned about the limited transparency surrounding the independent merits review system. As discussed, the Commission would prefer to see the excision regime repealed and the non-statutory RSA process abandoned. However, if the Australian Government intends to retain the RSA process, the Commission recommends that steps be taken to increase transparency surrounding the independent merits review system.

This could include measures such as ensuring that recruitment and appointment processes for Independent Reviewers are fully transparent; making the RSA manual and the independent merits review guidelines publicly available; publishing de-identified independent merits review decisions; and regularly publishing statistics on the number of primary decisions affirmed and overturned by Independent Reviewers.

While DIAC might provide much of this information to the Commission and other oversight bodies on request, in the Commission's view it is important that it be accessible to the general public.

8. Suspension of processing

One of the most concerning developments over the past year occurred on 9 April 2010, when the Australian Government announced that it was suspending the processing of claims lodged by asylum seekers arriving on or after that date from Sri Lanka and Afghanistan, for three and six months respectively.⁵¹

The Commission expressed serious concerns about this decision when it was announced.⁵² In the Commission's view, the suspension policy undermined Australia's international human rights obligations, including obligations under the CRC, the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Convention on the Elimination of All Forms of Racial Discrimination*.

The Commission welcomed the lifting of the Sri Lankan suspension on 6 July 2010.⁵³ When it was lifted, there were 184 Sri Lankans who had arrived by boat subject to the suspension, including 19 accompanied children and two unaccompanied minors. These people were held in immigration detention in the Construction Camp facility on Christmas Island and in facilities in Leonora and Darwin.⁵⁴

The Commission encouraged the Australian Government to lift the remaining suspension on Afghan asylum seekers as a matter of urgency.⁵⁵ That suspension remained in place until it was lifted on 30 September 2010. At that time, there were 1210 Afghans who had arrived by boat subject to the suspension, including 25 accompanied children and 208 unaccompanied minors. These people were in various immigration detention facilities on Christmas Island and the mainland.⁵⁶

The Commission's greatest concern about the suspension policy was that it resulted in the prolonged detention of a significant number of people, including children. All Afghan and Sri Lankan asylum seekers who arrived by boat and who were subject to the suspension were detained for its duration. For Afghans who arrived in April 2010, this means they spent six months in detention before processing of their claims even began. Once the suspension was lifted, this would be followed by another three to six months or more in detention awaiting their primary RSA decision, and in some cases the outcome of independent merits review.

Many of those who were subject to the suspension are children, including unaccompanied minors. Under the CRC they should only be detained as a measure of last resort and for the shortest appropriate period of time.⁵⁷ The suspension policy was inconsistent with this obligation. In addition, the prolonged or indefinite detention of asylum seekers subject to the suspension may have led to breaches of Australia's obligations under the ICCPR not to subject anyone to arbitrary detention.⁵⁸

The Commission is particularly concerned that the prolonged detention of asylum seekers who were subject to the suspension may have significant impacts on their mental health, especially in the case of unaccompanied minors, families with children, and survivors of torture or trauma. The Commission's National Inquiry into Children in Immigration Detention found a clear link between uncertainty experienced by asylum seekers in detention and deterioration of their mental health.⁵⁹ It also found that children in detention for long periods of time are at high risk of serious mental harm.⁶⁰

When the Commission visited Christmas Island in 2010, there were almost 700 people in detention subject to the suspension. One group of Afghan men spoke about the psychological impacts of the suspension, saying that most of them could not sleep. They felt it was unfair that they could be detained for a long time, given they had committed no crime.⁶¹ A group of Afghan women at the Construction Camp raised concerns about the impact on their children of being detained throughout the suspension period.⁶²

The impacts of the suspension policy were also evident in terms of the increased number of people being held in the detention facilities on the island, contributing to overcrowding and a deterioration in conditions (as discussed in section 17 below).

The Commission has encouraged the Department of Immigration and Citizenship to move quickly to process the backlog of asylum claims caused by the suspension.⁶³

9. Length of detention

Under the government's New Directions policy, detention is to be used for the shortest practicable period.⁶⁴ The Commission welcomed this commitment, and encouraged the government to embed it in legislation. Last year, the Commission welcomed the introduction of the Migration Amendment

(Immigration Detention Reform) Bill 2009. While the Commission raised some concerns about the Bill and suggested amendments, it is disappointed that the Bill was not enacted as it would have gone some way towards implementing this aspect of the New Directions policy.⁶⁵ As the Migration Act stands, there is no time limit on the period a person may be detained.⁶⁶

The Commission is concerned that more people are being held in detention on Christmas Island for longer periods of time. When the Commission visited Christmas Island in July 2009, there were 114 people who had been detained for three months or more, 15 of whom had been detained for six months or more.⁶⁷ During its 2010 visit, this had increased to 656 people who had been detained for three months or more, 305 of whom had been detained for six months or more. Of those 305 people, 121 had been detained for nine months or more.⁶⁸

Importantly, while some people spend their whole period of detention on Christmas Island, others spend an initial period there before being transferred to a detention facility on the mainland. For these people, the time they are detained on Christmas Island does not reflect their total period in detention.

The causes of longer periods of detention include the increase in the number of asylum seekers arriving by boat; slower processing of asylum applications; increasing refusal rates at the primary stage leading to more asylum seekers going through independent merits review; and the fact that a significant number of Afghan and Sri Lankan asylum seekers were subject to the processing suspension.

A further factor having a significant impact on people's length of detention is delays in obtaining security clearances. Under the New Directions policy, an asylum seeker should only be held in a closed detention facility for as long as it takes to conduct their health, identity and security checks. After this, the presumption is that they will be permitted to reside in the community unless a specific risk justifies their ongoing detention in a facility.⁶⁹

Last year the Commission raised doubts as to whether detainees on Christmas Island were being released into the community once their checks had been completed, and expressed the view that the shortage of community-based accommodation on the island was likely to be a key factor in preventing this from happening.⁷⁰ This year, the use of Community Detention on Christmas Island has ceased, due to the lack of accommodation. This means that if any asylum seekers have their health, identity and security checks completed in advance of their RSA outcome, there is nowhere on Christmas Island outside of the detention facilities to move them to.

However, it appears that there are few people whose security clearances are completed in advance of their RSA outcome, undermining this aspect of the New Directions policy. Some asylum seekers are being detained for prolonged periods while they await their security clearances. Some of these people may have gone through the RSA process and been recognised as a refugee, but they will not be granted a protection visa until they receive their security clearance.

During its visit to Christmas Island, the Commission spoke with a significant number of Sri Lankan detainees who had gone through the RSA process and were awaiting security clearances. Some of them had been detained for almost one year. They expressed considerable frustrations about their situation, in particular the lack of information provided about progress with their individual cases, the reasons for delay with the security clearances, and the potential timeframes they would have to remain in detention.⁷¹ One group said they could not bear the waiting and the uncertainty – according to one man, “We should have died in Sri Lanka or in the ocean.”⁷²

The Commission acknowledges that DIAC is not responsible for the delays in the conduct of security clearances; these checks are carried out by the Australian Security Intelligence Organisation (ASIO). The increase in the number of asylum seekers arriving by boat has led to an increase in the number of security clearances to be conducted by ASIO, contributing to the delays.

The Commission also acknowledges that the time periods asylum seekers are currently spending in detention are not as long as the periods for which some people were detained in the past. However, there are currently significant numbers of people who have been detained for around one year, and the situation has the potential to deteriorate further.

The Commission emphasises the need for the Australian Government to take all appropriate steps to ensure that asylum seekers are not detained for prolonged periods. This should include taking all practicable steps to ensure that security clearances are conducted as quickly as possible. It should also include full implementation of the New Directions policy that asylum seekers will only be held in detention while their health, identity and security checks are conducted. In the Commission's

view, after this they should be granted bridging visas to reside in the community on the mainland while their claims are processed.⁷³

Recommendation 3:

If the Australian Government intends to continue to use Christmas Island for immigration detention purposes, it should avoid the prolonged detention of asylum seekers by:

- Ensuring full implementation of the New Directions policy under which asylum seekers should only be held in closed detention facilities while their health, identity and security checks are conducted. After this, the presumption is that they will be permitted to reside in the community unless a specific risk justifies their ongoing detention in a facility.
- Ensuring that security clearances are conducted as quickly as possible.

10. Potential for indefinite or arbitrary detention

The Commission has consistently called for the repeal of Australia’s mandatory detention system because it leads to breaches of Australia’s obligations to ensure that no one is arbitrarily detained.⁷⁴ The government’s policy of mandatory detention of all irregular maritime arrivals on Christmas Island is particularly concerning given that the Migration Act does not require detention in excised offshore places – legally, it is a matter of discretion.⁷⁵

In its 2009 report, the Commission recommended that, if the Australian Government intended to continue using Christmas Island for immigration detention purposes, it should abolish the policy of mandatorily detaining all irregular maritime arrivals.⁷⁶ The mandatory detention policy is based on a blanket approach, rather than an assessment of the need to detain in each person’s case. This is inconsistent with United Nations High Commissioner for Refugees (UNHCR) guidelines, under which there should be a presumption against the detention of asylum seekers – it should be the exception rather than the norm. Detention should only be resorted to if there is evidence to suggest that other alternatives will not be effective in the individual case.⁷⁷

The Commission welcomed the inclusion of a key value in the New Directions policy acknowledging that indefinite or otherwise arbitrary detention is not acceptable, and committing to regular review of the length and conditions of detention.⁷⁸ However, the Commission expressed concern in its 2009 report that insufficient reforms had been implemented to ensure that this value is realised in practice.⁷⁹ These concerns were reinforced during the Commission’s 2010 visit.

As discussed in section 8 above, the Commission is concerned that the prolonged or indefinite detention of asylum seekers who were subject to the suspension may have led to breaches of Australia’s obligations under the ICCPR not to subject anyone to arbitrary detention.⁸⁰ The mandatory detention of children for a prolonged or indefinite period of time under the suspension policy was also inconsistent with Australia’s obligations under the CRC to avoid the arbitrary detention of children, and to only detain them as a measure of last resort and for the shortest appropriate period of time.⁸¹

The Commission was also concerned during its recent visit about the situation of seven individuals who are facing an indefinite period in immigration detention as a result of receiving adverse security assessments from ASIO.⁸² At the time, three of these individuals had been detained on Christmas Island for five months. The other four were parents with two young children – the mother and children had been detained for five months, and the father for eleven months. The Commission urges the Australian Government to ensure that durable solutions are provided for these individuals, and they are removed from immigration detention as soon as possible.

In addition, the Commission has concerns about the review mechanisms designed to ensure that indefinite or otherwise arbitrary detention does not occur. The New Directions introduced two new mechanisms: a three-monthly review by a senior DIAC officer to certify that the further detention of the individual is justified; and a six-monthly review by the Commonwealth Ombudsman to consider the appropriateness of the person’s ongoing detention and their detention arrangements.⁸³ The Commission welcomed these reforms in its 2009 report. However, the Commission expressed concerns that these review processes would not be sufficient to ensure that arbitrary detention did not occur, in particular because the DIAC reviews are not conducted by an independent body, and the Ombudsman is not able to enforce his assessments.⁸⁴

In the intervening period, community representatives have raised concerns with the Commission about the lack of transparency surrounding these review processes. The Commission has also been informed by DIAC that there are currently significant delays in undertaking these review processes for people detained on Christmas Island. The Commission is concerned that this may lead to some people being held in detention on Christmas Island for more than six months before an independent body considers the appropriateness of their detention arrangements.

The Commission encourages the Australian Government to ensure that adequate resources are allocated to allow for the three and six month review processes to be conducted on time for each person detained on Christmas Island. The reviews should include consideration of any appropriate alternatives to the individual's ongoing detention in a facility on Christmas Island.

The Commission also encourages the Australian Government to increase transparency surrounding these detention reviews. This could be done by implementing the recommendations made by the Joint Standing Committee on Migration, including that DIAC should publish details of the three month review process and provide the review to the individual in detention; and that the Ombudsman's six month reports should be tabled in Parliament and the Minister required to respond.⁸⁵

Finally, the Commission reiterates its long-held view that the essential safeguard required to ensure that arbitrary detention does not occur is access to review by a court of any decision to detain, or to continue a person's detention. Currently, in breach of its international obligations, Australia does not provide this.⁸⁶ Further, the Migration Act purports to bar offshore entry persons from taking legal proceedings relating to the lawfulness of their detention.⁸⁷

In response to the Commission's 2009 report, DIAC stated that the matter of judicial review was being considered in the context of the government's response to the recommendations made by the Joint Standing Committee on Migration in its Inquiry into Immigration Detention in Australia.⁸⁸ This response has not yet been released.

Recommendation 4:

Section 494AA of the Migration Act, which bars certain legal proceedings in relation to offshore entry persons, should be repealed. The Migration Act should be amended to accord with international law by requiring that a decision to detain a person, or a decision to continue a person's detention, is subject to prompt review by a court.⁸⁹

11. Under-utilisation of the Community Detention system

When the Commission visited Christmas Island in July 2009, there were 44 people in Community Detention on the island. The Commission raised concerns that the shortage of community-based accommodation appeared to be preventing the release of some detainees from detention facilities into Community Detention. At the time, DIAC had capacity to place up to 60 people in Community Detention on the island, and steps were being taken to increase that capacity. However, given the small size of the community and the number of people in detention, the Commission raised doubts about the feasibility of securing an adequate level of community-based accommodation.⁹⁰

During its 2010 visit, there were only three people in Community Detention on Christmas Island.⁹¹ Shortly after the Commission's visit, the use of Community Detention ceased because of a lack of available accommodation. The Commission has significant concerns about this development. The Commission acknowledges that DIAC is working within considerable constraints in terms of the accommodation available on Christmas Island, and that there are significant needs for staff accommodation. However, in the Commission's view, the fact that there is not enough accommodation to allow for use of Community Detention on Christmas Island reinforces the conclusion that the island is not an appropriate place to detain people.

The Commission also has significant concerns that the Community Detention system is barely being used on the mainland. While the Commission has welcomed the transfer of some detainees from Christmas Island to the mainland, the Commission regrets that the vast majority of these people have been transferred to immigration detention facilities rather than placed in Community Detention. At the time of writing, there were 1950 irregular maritime arrivals in detention on the mainland, including 439 minors. Only seven of these people were in Community Detention.⁹²

The Community Detention system was established to ensure that people, particularly vulnerable groups, would not be held in immigration detention facilities for prolonged periods. Under the Residence Determination Guidelines, priority for Community Detention is to be given to children and accompanying family members; persons who may have experienced torture or trauma; persons with significant physical or mental health problems; cases which will take a considerable period to substantively resolve; and other cases with unique or exceptional characteristics. Priority cases are to be assessed and referred to the Minister ‘as soon as practicable’.⁹³ Other cases may be referred where DIAC considers it appropriate to do so.⁹⁴

The Commission is concerned that these Guidelines are not being implemented on Christmas Island or the mainland. Many of the people currently in immigration detention facilities would appear to fit into the groups that are intended to be prioritised for Community Detention. For example, this is the case for families with children and unaccompanied minors (as discussed in section 13 below), and survivors of torture or trauma (as discussed in section 19 below).

The Commission welcomes efforts by DIAC to ensure that some of these vulnerable groups are located in low security detention facilities or ‘alternative places of detention’, rather than high security immigration detention centres. However, it is important to note that being detained in an ‘alternative place of detention’ (also referred to as ‘alternative temporary detention in the community’), is not the same as being in Community Detention under a Residence Determination.

People in ‘alternative places of detention’ are usually in a designated detention facility, camp or motel-type accommodation. They remain under physical supervision and are not free to come and go. People in Community Detention, on the other hand, are permitted to live at a specified residence in the community – usually a house or apartment. They remain in immigration detention in a legal sense and they must meet certain conditions, which usually include reporting to DIAC on a regular basis, sleeping at their stipulated residence every night, and refraining from engaging in paid work or a formal course of study. However, they are not under physical supervision and they have a much greater degree of privacy and autonomy.

DIAC has informed the Commission that one of the reasons for the current under-utilisation of the Community Detention system is that most irregular maritime arrivals in immigration detention facilities do not yet have their security clearances. However, the Commission notes that, legally, a person in Community Detention remains in immigration detention.⁹⁵ The Community Detention system allows for the imposition of a range of conditions which can be used to mitigate particular risks that might be posed by an individual. This is specifically acknowledged in the Residence Determination Guidelines.⁹⁶

The Commission encourages the Australian Government to make full use of the Community Detention system for people detained on Christmas Island. While the lack of accommodation on the island has limited the availability of Community Detention there, those restrictions do not apply on the mainland. All eligible detainees should be referred for a Residence Determination on the mainland.

The Commission also encourages further consideration of the proposal included in the Migration Amendment (Immigration Detention Reform) Bill 2009, which would have enabled the Minister to delegate to senior DIAC officers the Minister’s power to issue Residence Determinations.⁹⁷ In the Commission’s view, allowing the Minister to delegate this power may assist by reducing the burden on the Minister to personally consider individual cases, and by speeding up decision-making so that people are not unduly held in immigration detention facilities while awaiting a decision on a Residence Determination.

Recommendation 5:

The Australian Government should make full use of the Community Detention system for people detained on Christmas Island. All eligible detainees should be referred for a Residence Determination on the mainland. This should be an immediate priority for vulnerable groups including families with children, unaccompanied minors, survivors of torture or trauma, and people with health or mental health concerns.

Part C: Children in detention on Christmas Island

In its 2009 report, the Commission expressed significant concerns about the detention of unaccompanied minors and families with children on Christmas Island. The Commission expressed the view that Christmas Island is not an appropriate place in which to hold people in immigration detention, especially children.⁹⁸

During the Commission's 2010 visit, there were 247 minors in detention on Christmas Island – 246 in the Construction Camp immigration detention facility and one in Community Detention.⁹⁹ Around half of these minors were 16 or 17 years old, but there were a significant number of younger children including 45 between the ages of zero and five years.¹⁰⁰

The Commission acknowledges the efforts being made by DIAC and Serco staff, in challenging circumstances, to mitigate the impacts of immigration detention on children. However, the Commission continues to have significant concerns about the detention of families with children and unaccompanied minors on Christmas Island. The Commission's key concerns include the following:

- Children continue to be subjected to mandatory detention on Christmas Island, despite the fact that this is not required by the Migration Act and is inconsistent with Australia's obligations under the CRC.
- Families with children and unaccompanied minors are detained in a closed immigration detention facility – the Construction Camp. Community Detention is no longer available on Christmas Island. Further, in the vast majority of cases where families with children or unaccompanied minors are transferred to the mainland, they are placed in detention facilities rather than Community Detention.
- The Construction Camp is not an appropriate environment for families with children or unaccompanied minors. There has been a substantial increase in the number of people detained in the Construction Camp, significantly reducing the level of amenity.
- There continues to be a lack of clarity surrounding responsibilities and procedures relating to child welfare and protection for children in immigration detention on Christmas Island.
- There continues to be a conflict of interest in the Minister or a DIAC officer acting as the legal guardian of unaccompanied minors detained on Christmas Island, while also being the detaining authority and the visa decision-maker.

These concerns are outlined further below.

12. Mandatory detention of children on Christmas Island

The Commission is concerned that families with children and unaccompanied minors continue to be subjected to mandatory detention on Christmas Island. The Commission has long opposed the mandatory detention of children because it leads to fundamental breaches of their human rights.

In 2004, the Commission released *A last resort?*, the report of the National Inquiry into Children in Immigration Detention. During the period of the Inquiry, large numbers of children were detained for lengthy periods in Australia's high security immigration detention centres.¹⁰¹

The Inquiry found that Australia's immigration detention system was fundamentally inconsistent with the CRC. In particular, the system failed to ensure that:

- detention of children is a measure of last resort, for the shortest appropriate period of time and subject to effective independent review
- the best interests of the child are a primary consideration in all actions concerning children
- children are treated with humanity and respect for their inherent dignity
- children seeking asylum receive appropriate assistance to enjoy, to the maximum extent possible, their right to development 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.¹⁰²

The Inquiry also found that children in immigration detention for long periods of time are at high risk of serious mental harm.¹⁰³

Since the release of *A last resort?*, the Commission has welcomed positive changes including that children are no longer detained in high security immigration detention centres, and the average length of detention for children has decreased. However, children are still subjected to mandatory detention.

In 2005 the Migration Act was amended to insert section 4AA, affirming ‘as a principle’ that a minor should only be detained as a measure of last resort.¹⁰⁴ The Commission welcomed this development. However, as discussed in the Commission’s 2009 report, section 4AA is not being implemented on Christmas Island.¹⁰⁵ The government’s policy is that all irregular maritime arrivals, including families with children and unaccompanied minors, are mandatorily detained on Christmas Island. This is despite the fact that the Migration Act does not require the mandatory detention of unauthorised arrivals in excised offshore places.¹⁰⁶

In its 2009 report, the Commission observed that this mandatory detention policy is inconsistent with Australia’s obligations under the CRC to only detain a child as a measure of last resort, and recommended that the policy be abolished.¹⁰⁷ In order to comply with its obligations under the CRC, the government should consider any less restrictive alternatives available to a child in deciding whether that child is detained. A child should only be detained in exceptional cases.¹⁰⁸

The Commission has also long been concerned that Australia’s immigration detention system breaches the CRC by failing to provide for child detainees to challenge their detention in a court or another independent authority.¹⁰⁹

The Commission continues to advocate for changes to the Migration Act to ensure that children are only detained if it truly is a measure of last resort; and that if they are detained, it is for the shortest appropriate period of time and subject to independent and judicial review mechanisms.¹¹⁰ In this regard, the Commission welcomed the introduction of the Migration Amendment (Immigration Detention Reform) Bill 2009. However, it expressed concerns that the Bill did not include sufficient measures to ensure those protections would be in place for children.¹¹¹

The Commission’s concerns have increased over the past year as the number of unaccompanied minors and families with children in detention has increased substantially – at the time of writing, there were 217 minors in detention on Christmas Island and 439 minors in detention on the mainland.¹¹²

The Commission urges the Australian Government to address this issue as a matter of the highest priority.

Recommendation 6:

The Australian Government should implement the outstanding recommendations of the report of the National Inquiry into Children in Immigration Detention, *A last resort?*¹¹³ These include that Australia’s immigration detention laws should be amended, as a matter of urgency, to comply with the *Convention on the Rights of the Child*. In particular, the new laws should incorporate the following minimum features:

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

13. Detention placement for children on Christmas Island

The Commission is concerned that unaccompanied minors and families with children are detained in a closed immigration detention facility on Christmas Island (the Construction Camp), rather than being placed in Community Detention.

13.1 Placement of children in the Construction Camp facility

As noted above, the Commission has welcomed positive changes since the release of *A last resort?* In particular, the Commission welcomed the inclusion in the government's New Directions policy of a key value stating that '[c]hildren, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre'.¹¹⁴

However, while children are no longer held in high security immigration detention centres, they are still detained in lower security detention facilities. On Christmas Island, they are detained in the Construction Camp immigration detention facility.

In its 2009 report, the Commission expressed the view that the Construction Camp is not an appropriate environment for children.¹¹⁵ While DIAC categorises the Construction Camp as 'alternative temporary detention in the community', the Commission reiterates its view that this is misleading.¹¹⁶ The Construction Camp is a low security facility – it is surrounded by a residential style fence and does not have alarms, CCTV surveillance or other intrusive security measures. The Commission welcomes this. However, it remains a detention facility from which detainees are not free to come and go.

In order to meet its obligations under the CRC, the government should consider any less restrictive alternatives before deciding to detain a child in a closed facility such as the Construction Camp. This should include Community Detention, as discussed below.

In response to the Commission's 2009 report, DIAC noted efforts that were underway to introduce reforms relating to the decision of where and how to detain a child if that child was to be taken into immigration detention. In particular, these included the Migration Amendment (Immigration Detention Reform) Bill 2009 and a draft Ministerial Direction on the detention of minors.¹¹⁷ The Commission welcomed these efforts and is disappointed that they have not progressed.

In particular, the Bill would have amended the Migration Act to require that if a minor is detained, the minor must not be detained in an immigration detention centre; and that if a minor is detained, the best interests of the child must be a primary consideration in deciding where that child is accommodated. While the Commission expressed concern that the Bill did not go further in embedding protections for children and recommended a range of amendments, the Commission is disappointed that even these modest reforms were not adopted.¹¹⁸

13.2 Under-utilisation of the Community Detention system

One of the most positive changes after the release of *A last resort?* was the introduction in 2005 of the Residence Determination power, under which the Minister can permit an immigration detainee to be placed in Community Detention.¹¹⁹

In its 2009 report, the Commission expressed concerns that some families with children and unaccompanied minors were detained in the Construction Camp facility on Christmas Island, rather than being placed in Community Detention. The Commission recommended that if the government intended to continue the practice of holding children in detention on Christmas Island, they should be placed with their family members in community-based accommodation.¹²⁰

DIAC's response to this recommendation stated that:

The priority is that minors and, where relevant their families, are promptly accommodated in the Christmas Island community under residential determinations once the appropriate checks, accommodation and supervision are in place.¹²¹

The Commission is concerned that Community Detention is no longer available on Christmas Island. During its 2010 visit, there were only three people in Community Detention; at the same time there were 418 people detained in the Construction Camp, including 94 accompanied children and 152 unaccompanied minors.¹²² Shortly after the Commission's visit, the use of Community Detention on Christmas Island ceased because of a lack of available accommodation. While the Commission acknowledges that DIAC is working within considerable constraints in terms of the accommodation

available on Christmas Island, the Commission has significant concerns about this development, as discussed in section 11 above.

Further, while the Commission has welcomed the transfer of some families with children and unaccompanied minors from Christmas Island to the mainland, the Commission regrets that the vast majority have been transferred to immigration detention facilities rather than being placed in Community Detention.¹²³

As noted in section 11, the Community Detention system was established in order to ensure that people, particularly vulnerable groups, would not be held in immigration detention facilities for prolonged periods. Under the Residence Determination Guidelines, priority is to be given to groups including children and their accompanying family members, and all minors are to be identified for a Residence Determination ‘as soon as they are detained’.¹²⁴ The Commission is concerned that these guidelines are not being implemented on Christmas Island or the mainland.

If children are to be detained, they should be placed in Community Detention with their family members or with a suitable carer if they are unaccompanied. While the lack of accommodation on Christmas Island has limited the availability of Community Detention there, those restrictions do not apply on the mainland.

The Commission urges the Australian Government to implement the recommendation in section 11 of this report to make full use of the Community Detention system for people detained on Christmas Island. All eligible detainees should be referred for a Residence Determination on the mainland. This should be an immediate priority for vulnerable groups including families with children and unaccompanied minors.

14. Conditions and services for children in the Construction Camp

“Adults can tolerate. Children don’t understand. It is hard for them.” (Afghan parent, Construction Camp immigration detention facility)



.....
Construction Camp
immigration detention
facility

As noted above, the Commission has previously stated that the Construction Camp immigration detention facility is not an appropriate environment for children. The Commission remains of this view after its 2010 visit.

The Commission acknowledges that DIAC is working within considerable infrastructure constraints, and that significant efforts are being made by staff to provide appropriate conditions for families and unaccompanied minors.

However, the Commission’s concerns about conditions in the Construction Camp have been exacerbated this year because of the significant increase in the number of people detained there. The Commission’s key concerns include the lack of open and grassy spaces inside the Construction

Camp, the lack of indoor recreation space, the overcrowding, and the impacts this is having on families with young children. These issues are discussed in further detail in section 17 below.

This section provides a brief overview of access to appropriate education, recreational activities and food for children detained in the Construction Camp.

14.1 Access to education

Under international human rights standards, all children have a right to education.¹²⁵ This right should be recognised for all children in immigration detention. Children of compulsory school age should be provided with access to education of a standard equivalent to that in Australian schools. Children older than the compulsory school age should also be provided with opportunities to continue their education. Wherever possible, the education of children in detention should take place outside the detention facility, in the general school system.¹²⁶

During its visit to Christmas Island, the Commission was pleased to observe that positive efforts are being made to provide many school-aged children with access to appropriate education. The Commission was informed that children detained in the Construction Camp who are aged 15 years or under attend the Christmas Island District High School on a daily basis. The Commission heard positive feedback from parents in detention about their children's attendance and participation in classes at the local school. The Commission also visited the school and was pleased to observe asylum seeker children fully engaged in learning activities. Staff from the local school spoke highly of the support provided by DIAC. The Commission is also pleased that under a new initiative, some young adults detained in the Construction Camp are able to volunteer at the school as teacher's aides.

Generally, 16 and 17 year olds (mostly unaccompanied minors) do not attend the local school. Instead, they attend classes in two demountable classrooms at Phosphate Hill. The Commission welcomes the efforts that have been made to establish these arrangements, but is concerned that not all older minors are provided with access to classes. At the time of the Commission's visit, there were 114 minors on a waiting list.¹²⁷ Since then, the Commission has been informed by DIAC that two classes will be held in the morning and two in the afternoon. Each class will have capacity for 18 students, meaning that 72 minors will have the opportunity to attend one three hour class each weekday. However, at times, this will still be insufficient to provide access to classes for all older minors – for example, when the Commission visited, there were 152 unaccompanied minors in detention.¹²⁸

The Commission urges DIAC to take appropriate steps to ensure that all minors are provided with access either to the local school, or to educational classes in the classrooms at Phosphate Hill. If this cannot be arranged due to capacity constraints on Christmas Island, minors should be transferred to a location on the mainland where they can be provided with access to education.

14.2 Recreational activities and toys

Recreational and educational opportunities are particularly important for children in immigration detention. The CRC protects the right of all children to education, to engage in play and recreational activities appropriate to their age, and to participate in cultural and artistic activities.¹²⁹ UNHCR guidelines state that if a child is detained, provision should be made for their recreation and play, which is essential to a child's mental development and will alleviate stress and trauma.¹³⁰

As discussed further in section 22 below, the Commission is concerned about the lack of appropriate recreational facilities inside the Construction Camp. The Commission welcomes the extension of the fence line to incorporate an existing basketball court into the facility, and the fact that detainees are permitted to visit the oval and playground next to the Construction Camp each weekday afternoon (under the supervision of Serco officers). However, the Commission remains concerned that there is no open grassy area inside the Construction Camp, and that there are very few indoor recreation spaces. The Commission heard that this is of particular concern when it rains, as there are very limited spaces for children to play.

Recreational activities for children detained in the Construction Camp are conducted by the Australian League of Immigration Volunteers (ALIV). ALIV is contracted by Serco, and staffed by volunteers. The Commission was pleased to observe some ALIV volunteers running activities with children in the Construction Camp, and heard positive feedback from some parents about the activities provided.



.....
Picture drawn by child detained in the Construction Camp immigration detention facility

The Commission was also pleased to hear about a new development under which young children were being provided with the opportunity to attend a kindergarten session three times a week. This was providing them with a valuable opportunity to leave the detention environment and to engage in creative play. The Commission is disappointed that this has since been discontinued.

The Commission had significant concerns about the lack of toys, games or other materials for children's independent play inside the Construction Camp. This was a particular concern given the high number of children detained there – at the time, there were 246 minors in the facility.¹³¹ This included 45 children aged five years or younger, 27 children aged between six and ten years, and 49 children aged between 11 and 15 years.¹³² Having materials available for children to play with is especially important for young children who are not old enough to attend school and who therefore spend the vast majority of their time confined within the Construction Camp.

During its visit the Commission was provided with a list of toys ordered by Serco in late June. The Commission encourages DIAC and Serco to continue to take appropriate steps to ensure that all children detained in the Construction Camp are provided with opportunities to engage in play and recreational activities appropriate to their age.

14.3 Food

Under international human rights standards, appropriate meals should be provided for babies and infants in immigration detention.¹³³

During its visit to Christmas Island, some concerns were raised with the Commission about the suitability of the food provided at the Construction Camp for small children. In particular, some parents raised concerns about access to food appropriate for children aged between one and five years.

During the visit, the Commission attended a 'Client Consultative Committee' meeting at the Construction Camp. The meeting was held in response to reports from female detainees that the food was unpalatable, that young children were failing to put on weight, and that there had been weight loss among some adult detainees. Some detainees raised concerns about the frequency with which they were served rice, and the lack of fresh produce such as tomato, cucumber, lettuce and eggs.

Serco kitchen staff indicated that they would make efforts to amend the menu in response to these concerns. However, they advised detainees that Christmas Island's remote location means that all food has to be ordered three months in advance and shipped to the island, which significantly limits the range and amount of fresh produce available.

15. Child welfare and protection responsibilities

Under international human rights standards, Australia is obliged to take 'all appropriate legislative, administrative, social and educational measures' to ensure that children are protected from all types of violence, abuse or neglect caused by a child's parent or any other person who is caring for the

child.¹³⁴ In the detention environment this means that DIAC and Serco must take positive steps to ensure that children are protected from physical or mental violence, abuse or neglect in detention, irrespective of its source.¹³⁵

For many years, the Commission has raised concerns about the lack of coordination between DIAC and state child welfare authorities regarding responsibilities for the welfare and protection of children in immigration detention.¹³⁶ In its 2009 report, the Commission noted that those concerns are further exacerbated on Christmas Island because of the lack of clarity regarding which laws apply and which state and federal bodies have responsibilities for children detained on the island.¹³⁷

The Commission recommended that, with regard to the welfare and protection of children in immigration detention on Christmas Island, the Australian Government should clarify the applicable laws and jurisdiction of relevant state and federal bodies; clarify through formal Memoranda of Understanding the respective roles and responsibilities of state and federal authorities; clearly communicate these roles and responsibilities to all relevant authorities; and ensure that there are clear policies and procedures in place regarding child welfare and protection concerns that may arise.¹³⁸

In response, DIAC noted the complexity of the legal framework in force on Christmas Island, and accepted the need to clarify the respective roles and responsibilities of DIAC, other Commonwealth agencies and state child welfare authorities.¹³⁹

DIAC has since provided the Commission with further written advice, which confirms that the operation of laws relating to the welfare and protection of children in immigration detention on Christmas Island is complex. DIAC has legal responsibilities for children in immigration detention on Christmas Island as the detaining authority under the Migration Act. At the same time, the Commonwealth Minister for Home Affairs retains powers with respect to child protection on Christmas Island under the *Children and Community Services Act 2004* (WA). Further, while the *Commissioner for Children and Young People Act 2006* (WA) applies to Christmas Island, the WA Commissioner for Children and Young People currently does not have jurisdiction over children on Christmas Island. The Commissioner's powers in this regard are vested in the Commonwealth Minister for Home Affairs.

DIAC policy requires that if staff have concerns or suspicions about the potential abuse or neglect of a child in immigration detention, they should be immediately referred to the relevant state child welfare agency.¹⁴⁰ In the case of children detained on Christmas Island, DIAC has stated that the relevant agency is the WA Department for Child Protection.¹⁴¹ However, the WA Department for Child Protection has no legal powers or responsibilities regarding children in detention on Christmas Island because those powers have not been delegated to the WA State Government by the Commonwealth Minister for Home Affairs.

The WA Department for Child Protection does provide some services to the Christmas Island Administration under a Service Delivery Arrangement between the Commonwealth and the WA State Government. However, DIAC does not have a formal arrangement with the WA Department for Child Protection in respect of children in immigration detention on the island.

The Commission understands that informal assistance has been provided by the WA Department for Child Protection on two occasions where concerns were raised about a child in detention on Christmas Island. The Commission welcomes this. However, the Commission remains seriously concerned about the lack of clarity surrounding legal responsibilities for children in detention on Christmas Island and the fact that formal arrangements are not in place to ensure that their welfare and protection needs are overseen by a child welfare agency.

The Commission also remains concerned that there are not clear policies and procedures in place for DIAC and Serco staff regarding concerns that may arise in respect of the welfare or protection of children in detention on Christmas Island.

During its visit, the Commission was provided with a draft Serco policy outlining procedures to ensure that Serco staff understand the rights, needs and entitlements of children in detention. This document sets out an approach to child protection issues.¹⁴² The Commission welcomes efforts that have gone into preparing the policy, but is concerned that it remains in draft form more than nine months after Serco took over operation of the detention facilities on Christmas Island.

DIAC has informed the Commission that a policy document regarding child protection and guardianship on Christmas Island is currently being developed. The Commission welcomes this, but is concerned that this has not been completed after more than 12 months of consistently detaining significant numbers of children on the island.

Recommendation 7:

If the Australian Government intends to continue the practice of holding children in immigration detention on Christmas Island it should, as a matter of priority:

- clarify through formal Memoranda of Understanding the respective roles and responsibilities of state and federal authorities with regard to the welfare and protection of children in immigration detention on Christmas Island
- clearly communicate these roles and responsibilities to all relevant state and federal authorities
- finalise and implement clear policies and procedures regarding child welfare and protection concerns that may arise in respect of children in immigration detention on Christmas Island, and communicate these policies and procedures to all relevant staff.

16. Unaccompanied minors in detention

16.1 Care and support for unaccompanied minors

Australia's obligations under the CRC to only detain children as a measure of last resort and for the shortest appropriate period of time apply to unaccompanied minors.¹⁴³ UNHCR guidelines also provide that unaccompanied minors should not be detained, particularly in isolated areas.¹⁴⁴ In addition, because of their particular vulnerability, the CRC requires that the government provide unaccompanied minors with special protection and assistance.¹⁴⁵

During the Commission's visit to Christmas Island there were 152 unaccompanied minors detained in the Construction Camp, the majority of whom were 16 or 17 years old.¹⁴⁶ This was a significant increase from the Commission's July 2009 visit, when there were 54 unaccompanied minors detained on the island – 18 in Community Detention and 36 in the Construction Camp.

The Commission is concerned about the high number of unaccompanied minors detained on Christmas Island, and that they are all in a closed detention facility rather than Community Detention. Unaccompanied minors in the Construction Camp do not have dedicated carers. They are supervised by Serco detention officers. Serco's draft policy regarding minors states that all minors will be allocated a Personal Officer whose role is to oversee a minor's Individual Management Plan.¹⁴⁷ It also states that there will be at least one staff member with child welfare qualifications onsite at each detention facility where minors are accommodated.¹⁴⁸ While the Commission welcomes these measures, it is concerned that the draft policy is yet to be finalised and fully implemented on Christmas Island.

One DIAC Case Manager has responsibility for unaccompanied minors detained in the Construction Camp. The Case Manager's role includes providing basic information on arrival about the processes the minors will go through while their asylum claims are assessed; facilitating access to services (such as medical appointments) if requested; and providing minors with updates on progress with their cases if requested.

As unaccompanied minors go through various interviews, an Independent Observer is generally present at the interviews as a support person. DIAC contracts the organisation Life Without Barriers (LWB) to provide Independent Observers on Christmas Island. Their role is to provide 'physical and moral support and care' to unaccompanied minors during interviews.¹⁴⁹ They can interject and recommend a break if they feel that the minor is distressed or uncomfortable.

The Commission welcomes the roles played by the DIAC Case Manager and the Independent Observers. However, the Commission is concerned that there remains insufficient support provided to unaccompanied minors in detention.

The Commission is concerned about the limited capacity of the Case Manager and the Independent Observers to meet the needs of such a high number of unaccompanied minors. At the time of the Commission's visit there was one Case Manager and there were two Independent Observers for 152 unaccompanied minors.¹⁵⁰

The Commission is also concerned that Independent Observers are not required to be present during an unaccompanied minor's RSA interview. The Commission understands that the minor's IAAAS agent is considered to be the independent person during that interview. However, in the

Commission's view, an Independent Observer should also be present, given the significance of the interview in determining the minor's refugee claim and the fact that the IAAAS agent's role is to concentrate on the particulars of the case rather than the minor's immediate welfare. Some unaccompanied minors told the Commission they felt scared or intimidated during their RSA interview.¹⁵¹

There was also confusion among some unaccompanied minors about the roles and responsibilities of the Independent Observers and the Case Manager. Some unaccompanied minors thought the Independent Observers were their legal guardians and did not understand why they had not seen them since the day they arrived. Others did not appear to understand the role of the Case Manager.¹⁵² Clearer information should be provided to ensure that unaccompanied minors understand these roles and know who is responsible for which aspects of their care.

While the Commission welcomes the role played by the Independent Observers, it is a limited role. They are there to observe interviews to ensure that the minor is treated appropriately. They are not there to advocate or care for unaccompanied minors in detention more generally and are not permitted to provide advice or information to minors about the processes they go through during assessment of their refugee claims. In the Commission's view, this is a gap that needs to be filled. The Commission has long advocated for unaccompanied minors to be provided with an independent guardian and support person, as discussed below.

16.2 Guardianship of unaccompanied minors

The CRC requires Australia to ensure 'alternative care' for unaccompanied minors.¹⁵³ Effective guardianship is an important element of the care that unaccompanied minors need. The CRC also requires that the best interests of the child be the 'basic concern' of the child's legal guardian.¹⁵⁴ This suggests that the best interests of an unaccompanied minor must not only be a primary consideration (as required by article 3 of the CRC), but the primary consideration for his or her legal guardian.

In Australia, the Minister for Immigration is the legal guardian of all unaccompanied minors seeking asylum.¹⁵⁵ The Minister can delegate those powers to DIAC officers.¹⁵⁶ The Commission has for many years raised concerns about these arrangements.¹⁵⁷ In the Commission's view, they create a fundamental conflict of interest. It is not possible for the Minister or a DIAC officer to ensure that the best interests of an unaccompanied minor are their primary consideration when they are simultaneously the child's guardian, the detaining authority and the visa decision-maker.

The Commission has repeatedly recommended that an independent guardian should be appointed for unaccompanied minors in immigration detention.¹⁵⁸ This would be in line with UNHCR Guidelines.¹⁵⁹

The Commission's 2009 report noted that the lack of an independent legal guardian is particularly concerning on Christmas Island given the number of unaccompanied minors in detention, the limited access they have to external scrutiny and advocacy bodies, and the shortage of accommodation options other than closed detention facilities. The Commission encouraged urgent action on this issue.¹⁶⁰

In response to the Commission's report, DIAC acknowledged the 'perceived conflict of interest' between the Minister's role as guardian and being the decision-maker under the Migration Act, and reported that policy work was being progressed to improve the regime governing guardianship.¹⁶¹ The Commission is aware that, since then, policy work regarding unaccompanied minors in the community has progressed. However, the Commission is disappointed that little progress has been made in terms of guardianship of unaccompanied minors in detention.

The Commission urges the Australian Government to address this issue as a matter of priority.

Recommendation 8:

The Australian Government should, as a matter of priority, implement the recommendations made by the Commission in *A last resort?* that:

- Australia's laws should be amended so that the Minister for Immigration and Citizenship is no longer the legal guardian of unaccompanied children.
- An independent guardian should be appointed for unaccompanied children and they should receive appropriate support.

Part D: Conditions and services in detention

At the time of the Commission's 2010 visit to Christmas Island, there were 2421 people in the immigration detention facilities on the island.¹⁶²

The Commission was pleased to observe that significant efforts were being made by DIAC and detention service provider staff to provide conditions, services and activities of an acceptable standard. The Commission also acknowledges that staff are working in very challenging circumstances on Christmas Island.

As in 2009, the Commission found during this visit that DIAC was making significant efforts to manage the immigration detention operations on Christmas Island in a positive way, particularly given the considerable constraints they are working within.

However, the Commission continues to be of the view that many of those constraints are imposed by the Australian Government's decision to detain people in a location as small and remote as Christmas Island. The immigration detention facilities on the island are not appropriate for detaining asylum seekers, and the remote location and small size of the local community mean that people in detention have limited access to appropriate services and support networks. The Commission maintains the view that those constraints make Christmas Island an inappropriate place in which to hold people in immigration detention.

During its visit, the Commission had some significant concerns about the conditions for people in immigration detention on Christmas Island. The Commission's key concerns include the following:

- Ongoing concerns about the infrastructure and environment in the detention facilities on the island - in particular the prison-like nature of the Christmas Island IDC, the limited amenities at the Phosphate Hill facility, and the inappropriateness of the Construction Camp as a place for accommodating families with children and unaccompanied minors.
- The substantial increase in the number of people being held in the detention facilities has led to overcrowding and a significant deterioration in living conditions for many people, particularly those accommodated in tents and dormitory rooms.
- The substantial increase in detainees has placed further strain on their access to facilities and services including communication facilities, health and mental health care, recreational facilities and educational activities.
- Most people in detention expressed positive views about their treatment by most DIAC and Serco staff. However, a small number were concerned about specific instances where they felt they had been treated in a degrading or racially discriminatory way; and many expressed concerns about being referred to by their identification number rather than their name.
- While some people in detention expressed positive views about aspects of their conditions, others expressed frustrations about a range of issues including limited access to facilities such as telephones, delays in accessing medical care, limited opportunities to leave the detention environment, and a lack of regular provision of information about progress with their asylum claims and security clearances.

The following sections outline the Commission's concerns in greater detail. Where appropriate, recommendations are made for improving conditions for people detained on Christmas Island. This should not be construed as an endorsement of holding people in detention on Christmas Island. Rather, it reflects the fact that if the Australian Government intends to continue this practice, conditions should comply with internationally accepted human rights standards.

17. Detention infrastructure and environment

Under international standards, authorities should seek to minimise differences between life in detention and life at liberty in the design and delivery of detention services and facilities.¹⁶³

The Commission has previously raised concerns that the immigration detention facilities on Christmas Island are not appropriate for asylum seekers, particularly families with children and people with a background of torture or trauma. The Commission acknowledges that DIAC is working within considerable infrastructure constraints on Christmas Island. However, in the Commission’s view, the fact that suitable infrastructure is not available on Christmas Island is one reason why people should not be detained on the island.

The Commission’s concerns about the detention infrastructure on Christmas Island have been exacerbated this year, as the substantial increase in the number of detainees has led to overcrowding and a significant deterioration in the conditions of detention for many people. The Commission’s key concerns about each detention facility are outlined below.

17.1 Christmas Island IDC

“Although you say it is a detention camp, it is like a jail. I have not committed a crime and still we are confined to a jail.” (Man in Lilac Compound, Christmas Island IDC)

The Christmas Island IDC is a high security, purpose-built facility that was completed in 2008. The IDC is located in a national park area at North-West Point, about 17 kilometres from the island’s small town area. The IDC is used to detain adult males. When the Commission visited, there were 1834 men in the IDC.¹⁶⁴



.....
Entrance, Christmas Island IDC



.....
External fence, Christmas Island IDC

(a) *Detention infrastructure*

“It is like a prison for me.” (Man in Gold Compound, Christmas Island IDC)

After its 2008 visit to Christmas Island, the Commission raised concerns about the prison-like nature of the Christmas Island IDC and recommended that it should not be used for accommodating asylum seekers.¹⁶⁵ After its 2009 visit, the Commission reiterated this view. The Commission expressed particular concerns about the excessive security measures including high wire fences, walkways enclosed in cage-like structures, CCTV surveillance, metal reinforced officer booths with perspex security screens, and metal grills on detainees’ bedroom windows.¹⁶⁶

The Commission recommended that, if the Australian Government intended to continue to use the Christmas Island IDC, it should take steps to modify the security measures to make it a more appropriate environment for asylum seekers. This should include implementation of the Joint Standing Committee on Migration’s recommendation that all caged walkways, perspex barriers and electrified fencing should be removed and replaced with more appropriate infrastructure.¹⁶⁷

In response, DIAC stated that it was ‘considering options for softening the appearance of the IDC, including removal of a number of internal fences and caged walkways and that this would occur ‘where it is possible to do so at an acceptable cost’.¹⁶⁸ During the Commission’s 2010 visit, there had been no apparent progress made in this regard. DIAC acknowledged that the IDC could be softened and made more appropriate. However, funding constraints and competing priorities appear to be preventing further action from being taken.

The Commission was pleased to note the following during its 2010 visit:

- The IDC is still being operated in a relatively open way – the accommodation compounds are opened during the day (with the exception of meal times), so that detainees can move around inside most parts of the centre.
- According to DIAC, the electrified fencing surrounding the IDC is not activated.
- The separation detention system is no longer being used, meaning that newly arrived detainees are no longer subjected to restrictions on their freedom of movement inside the centre or their access to communication. At the time of the Commission’s 2009 visit, these restrictions were causing some detainees significant distress.¹⁶⁹ The Commission understands that this change was a response to infrastructure constraints, rather than a policy decision. However, given that it does not appear to have had negative consequences, the Commission hopes that the system will not be reintroduced.

Despite these positive aspects, the Commission’s overarching concerns about the prison-like nature of the IDC remain. In the Commission’s view, it is neither necessary nor appropriate to hold asylum seekers in a high security detention centre on Christmas Island. Asylum seekers are detained under the Migration Act because they do not have a valid visa.¹⁷⁰ They are not detained because they are under police arrest or because they have been charged with or convicted of a criminal offence. The treatment of immigration detainees should therefore be as favourable as possible, and in no way less favourable than that of untried or convicted prisoners.¹⁷¹

The use of a maximum security environment to detain virtually all single adult males is also inconsistent with the government’s policy that people should be detained in the least restrictive form of detention appropriate to an individual’s circumstances.¹⁷² In addition, many of the security measures appear unnecessary given the extreme isolation of the IDC.

The Commission acknowledges that the IDC was not constructed by the current government, and that DIAC is working within considerable constraints in terms of the infrastructure and accommodation available on Christmas Island. However, those constraints are largely a result of the government’s decision to detain people in a location as small and remote as Christmas Island. The fact that suitable infrastructure is not available on the island contributes to the Commission’s view that it is not an appropriate place in which to detain asylum seekers. If the government intends to continue this practice, it should allocate sufficient resources to enable the IDC, particularly the security measures, to be modified to make it a more appropriate environment.

Recommendation 9:

If the Australian Government intends to continue to use the Christmas Island IDC, it should implement the recommendation of the Joint Standing Committee on Migration that all caged walkways, perspex barriers, and electrified fencing should be removed and replaced with more appropriate security infrastructure.¹⁷³

(b) Overcrowding

During its visit, the Commission's most significant new concerns about the Christmas Island IDC related to overcrowding. When the Commission visited in July 2009, there were 590 men detained in the IDC. By the start of the Commission's 2010 visit this had increased to 1834 men.¹⁷⁴ At the time of writing, the highest number detained in the IDC at one time was 2037 people, including 238 in tents.¹⁷⁵

The IDC was built with a standard operating capacity of 400 and a surge capacity of 800. Its capacity has been progressively increased over the past year by converting some of the recreation and education rooms to dormitory bedrooms, installing seven large tents in the Red Compound, creating additional surge capacity by converting a visitors' area and an induction area into large dormitories, and constructing two additional compounds.

The Commission was particularly concerned about overcrowding in the tents and the dormitories, as discussed below. The major impacts of overcrowding include that people detained in these areas have virtually no privacy, many of them have no secure place to store their personal belongings, and there is limited access to basic facilities such as showers, kettles, toasters and washing machines.

The Commission was most concerned about overcrowding and conditions in the tents that have been installed in the open area of the Red Compound. There are seven large tents – six for accommodation and one for meals. Each tent can sleep up to 40 people in bunk beds. When the Commission visited, there were 169 people in the tents.¹⁷⁶ Since then, the tents have housed 238 people at once.¹⁷⁷



.....
Tents in Red Compound,
Christmas Island IDC

The tents are crowded, and people have no privacy and nowhere to store their belongings other than in large plastic bags or under their beds. The surrounding area is mostly bare dirt and some people reported finding leeches and centipedes on their beds. Others said they had to eat meals on their beds because of lack of space in the dining tent. There is only one washing machine for all detainees to share.



.....
Inside a tent in Red
Compound, Christmas
Island IDC

The accommodation provided in the tents is inappropriate and unacceptable by Australian community standards. While it might be adequate as emergency accommodation for a night or two, some people may be accommodated there for weeks or even months. When the tents were installed in late 2009, DIAC informed the Commission that they were intended to be used as a short-term measure. In the Commission's view, the tents should be dismantled as soon as possible and people should be moved to more appropriate accommodation on Christmas Island or the mainland.



.....
Dormitory bedroom,
Education 3 Compound,
Christmas Island IDC

The Commission also had significant concerns about overcrowding and conditions in Education 3 Compound. This was formerly used for recreational and educational activities, but has been turned into an accommodation compound by placing bunk beds in all but two of the rooms. The Commission is disappointed about this development - with the high number of people in the IDC, it has added to the pressure on the recreational areas that remain.

When the Commission visited, there were 144 people accommodated in Education 3 Compound.¹⁷⁸ Each bedroom sleeps up to 24 people, in very cramped conditions. People have no privacy, and most have nowhere to store their belongings. There is no dining area in the compound - people are served their meals in takeaway containers.



.....
Zulu 2 dormitory,
Christmas Island IDC

Since the Commission's last visit, the induction and visitors' areas have been converted into large dormitories. These areas, referred to as Zulu 1 and Zulu 2, have a combined capacity of 142 people. In the Commission's view, this accommodation is inappropriate. The dormitories are extremely cramped. People have very little space, no privacy and nowhere to store their belongings. There is no dining room or recreation room, and no additional showers or toilets have been installed to help meet demand when the dormitories are in use. People accommodated in these dormitories would have access to such facilities in the main centre during the day – but they would be competing with high numbers of detainees in other compounds for access.

These areas were not in use at the time of the Commission's visit, but they have been used at other times. DIAC informed the Commission that generally people are only accommodated in these areas for a night or two. However, the Commission heard from some people who said they spent five nights there.



.....
Sheets hung over beds to create privacy,
Gold Compound, Christmas Island IDC

Finally, the Commission was concerned about crowded conditions in the surge areas in the original eight accommodation compounds – these consist of dormitory bedrooms that each sleep up to 18 people. In addition, in some accommodation compounds the recreation room has been converted into a dormitory bedroom. People sleeping in these dormitory bedrooms told the Commission about some of the challenges in sharing a room with 17 other people – including difficulties sleeping if others make noise and the fast spread of colds if one person gets sick.¹⁷⁹ As with the other dormitories, people in these rooms have very little space, and many of them hang a sheet over the bed in an attempt to create some privacy.

As noted above, the Commission acknowledges that DIAC is working within considerable infrastructure constraints on Christmas Island, and that significant efforts are being made by staff to provide appropriate conditions for people in detention. However, the Christmas Island IDC was not designed to accommodate such a high number of people. It is not appropriate for the Australian Government to continue to detain high numbers of people in the centre; nor to continually expand the capacity using measures such as tents and large dormitories.

If the Australian Government intends to continue using the Christmas Island IDC, it should take immediate measures to reduce the overcrowding. Current conditions are not consistent with international human rights standards which require accommodation in detention facilities to meet the requirements of health and human dignity, with appropriate regard paid to issues including climatic conditions, minimum floor space, lighting and ventilation.¹⁸⁰ Each person in detention should also be provided with a secure space for storing their personal belongings.¹⁸¹

Recommendation 10:

If the Australian Government intends to continue to use the Christmas Island IDC, it should take immediate measures to reduce overcrowding. These should include:

- ceasing the practice of accommodating people in tents, and removing the tents as soon as possible
- ceasing use of the surge areas that have been created by converting the visitors' and induction areas into large dormitories
- ceasing the practice of accommodating people in dormitory bedrooms in Education 3 Compound, and returning the compound to its original use as space for educational and recreational activities
- refraining from transforming additional areas into accommodation.

(c) *Public health impacts of overcrowding*

The increase in the number of people being detained in the IDC has had some obvious impacts in terms of access to essential facilities such as toilets and showers, and has created concerns about cleanliness and public health issues.

Under international human rights standards, immigration detention authorities should ensure that all parts of the detention facility are maintained and kept clean to a standard which meets the requirements of health and hygiene.¹⁸² In every detention facility, there should be adequate facilities available to enable each detainee to maintain general hygiene by bathing or showering daily. Each detainee should be provided with access to toiletries, ablution facilities and sanitary installations which are necessary for health and cleanliness, enable people to meet their physical needs in privacy, and are appropriate to the climate.¹⁸³

During its visit, the Commission had concerns about the number of toilet and shower facilities available for people in detention, and the cleanliness of those facilities.

The Commission was particularly concerned about the limited number of showers and toilets in the tent area in Red Compound, Education 3 Compound and the new Aqua Compound. For example, in Education 3 Compound there were ten showers being shared by 144 people. In the tent area in Red Compound there was one shower block and one toilet block being shared by 169 people. Some detainees reported that only four showers were working; others said that two were working.¹⁸⁴

The Commission was also concerned that many of the toilet and shower blocks were in a very unclean state. For example, in Aqua Compound the toilet block was wet and muddy, and detainees complained that there was no toilet paper or soap.¹⁸⁵ In the tent area in Red Compound, the shower

and toilet blocks were dirty and had wet floors. One detainee described the conditions as “very appalling”.¹⁸⁶ Some people in detention told the Commission they were concerned that the limited number of showers and the dirty state of the ablutions blocks were contributing to health concerns such as skin rashes and eye conditions.¹⁸⁷



.....
Ablutions blocks, Christmas Island IDC

There appear to be a range of factors contributing to the unclean state of the ablution blocks. The main factor appears to be the significant increase in the number of people being held in the IDC. While some ablution blocks have been added, these are not sufficient to meet the needs of so many people. In addition, water restrictions have been introduced in some parts of the IDC. In the eight original accommodation compounds, many of the bedrooms have a small bathroom area built into the room. The water to these areas has been turned off (except for one hour each day) in order to reduce water consumption. The result has been much higher use of the common ablution blocks. With such a high number of people using them, it appears that they are not being cleaned regularly enough to maintain an acceptable standard of cleanliness and hygiene.

A further issue is cultural factors. Some people in detention are not accustomed to using Western toilets and would prefer to use Eastern style toilets such as squat toilets, with hoses available for hygiene purposes. DIAC informed the Commission that they have investigated the possibility of installing squat toilets in the IDC, but the cost is prohibitive. DIAC also reported that they have organised some informational sessions for detainees about the use of Western style toilet facilities and general hygiene. The Commission encourages DIAC to expand these initiatives, to conduct them regularly to ensure that new arrivals are included, and to ensure that they are conducted in a culturally appropriate manner.

(d) New compounds: Lilac and Aqua

Since the Commission's 2009 visit to the IDC, two new compounds have been added outside the original perimeter fence. The Commission found that conditions in these compounds are harsher than in the original centre, and the compounds – particularly Aqua – have a much lower level of amenity.

At the time of the Commission's visit, Lilac Compound had been in use for approximately five months, and there were 206 people detained there.¹⁸⁸ The compound consists mostly of demountable buildings containing bedrooms and ablutions. Some concrete paths have been installed, and there are wooden decks between the demountable bedrooms. However, the surrounding area is bare dirt; there is no grass. There are two undercover cabana areas with a pool table, table tennis and a television (which can only be used for watching DVDs).

Detainees in this compound reported frustrations about being placed in an area that is separated from the main centre, and that has fewer facilities. Some detainees sleep in bedrooms shared by four or six people – they reported having nowhere to store their belongings other than cardboard boxes they had taken from the rubbish. Some of them had received refusals at the primary RSA stage, and they reported that the combination of the refusals and their detention conditions was leaving them in a “bad psychological state”.¹⁸⁹



.....
Aqua Compound,
Christmas Island IDC

Aqua Compound is the newest part of the IDC and has the harshest physical conditions because of the heat, the dirt (which turns to mud in the rain) and the lack of greenery and shade. In the words of one community representative who visits the centre, “We thought that Lilac was bad until they opened Aqua.”¹⁹⁰

The compound was opened approximately two weeks prior to the Commission’s visit. When the Commission visited, there were 341 people detained in Aqua Compound.¹⁹¹ At the time, the compound was still being constructed. There were demountable buildings containing bedrooms, ablutions and a dining area – but there were no walkways (meaning that people often have to walk through mud), no grass, and no dedicated recreational areas.

Detainees told the Commission they had very limited access to basic facilities in Aqua Compound – for example, there was one washing machine for all of them to share, and no landline telephones. They were also concerned that there was no drinking fountain. They were required to drink water out of the bathroom taps, which had a sign above them saying, ‘Do not drink this water’. Serco informed the Commission that the water was nevertheless safe to drink, and that the sign would be removed.



.....
Aqua Compound,
Christmas Island IDC



.....
Walkway from Aqua
and Lilac Compounds to
main centre, Christmas
Island IDC

People detained in Aqua and Lilac Compounds are physically isolated from the main centre. They are able to go into the centre to access facilities during the day via a long fenced walkway – but they do not have free access. The gates are unlocked by Serco officers at certain times of the day. Some detainees reported that it took a significant amount of time to move from Aqua or Lilac to the main centre. They claimed that this meant they were disadvantaged in terms of trying to access facilities that are in high demand such as telephones, the gymnasium, and internet terminals.

The Commission has significant concerns about the conditions and access to facilities for people in these two compounds, particularly Aqua. In the Commission's view, Aqua Compound was opened for use before it was in an acceptable state.

DIAC informed the Commission that there is a plan to develop the two compounds further so that eventually they will form a separate, self-sufficient centre including its own recreational facilities. According to DIAC, Aqua will be improved by the addition of activities rooms, grass and three cabana areas. The Commission hopes to see these improvements made as soon as possible.

In the mean time, people detained in Lilac and Aqua Compounds should be provided with unrestricted access to the main IDC on an equal basis with other detainees.

(e) *Management Support Unit*

The Management Support Unit (MSU) is a self-contained, high-security unit in the Red Compound at the IDC. In its 2008 and 2009 reports, the Commission raised concerns about the MSU.¹⁹² It looks and feels extremely harsh and punitive. The bedrooms are essentially small cells, with solid metal doors and grills on the windows. All furniture is hard and bolted to the floor. There are CCTV cameras in the bedrooms – including the toilet and bathroom areas – which cannot be turned off. There is no outdoor space where detainees have an open view of the sky, and no open space where they can freely walk or run.

During its 2009 visit the Commission welcomed the fact that the MSU had not been used, and expressed the view that it should not be.¹⁹³ In the Commission's view it is inappropriate for accommodating asylum seekers, particularly those who may have experienced torture or trauma.

The Commission is disturbed that, between its 2009 and 2010 visits, the MSU was used to accommodate detainees on three occasions, including six men detained there for 16 days; three men detained there for 10 days; and 11 men detained there for 17 days.¹⁹⁴ The Commission has been assured that in none of these instances were people confined to the bedrooms, and that efforts were made to take people out of the MSU for short walks. Nevertheless, the Commission has significant concerns about the placement of asylum seekers in such a punitive and restrictive facility.



.....
Management Support
Unit, Christmas Island
IDC

Some of the people detained in the MSU have raised concerns with the Commission about their placement there – in particular because of the isolation and the impacts on their mental wellbeing. Some have raised concerns about their conditions in the MSU, including the cramped nature of the bedrooms and their lack of access to recreational facilities. Particular concerns have been raised about the lack of privacy, given the constant CCTV surveillance. In the words of one man, there were “cameras everywhere, even the toilet”.

Under international human rights standards, people deprived of their liberty should be treated with humanity and respect for their dignity.¹⁹⁵ They should not be subjected to any form of cruel,

inhuman or degrading treatment or punishment.¹⁹⁶ Further, they should be provided with access to ablution facilities that enable them to carry out their bathing and other physical needs in privacy.¹⁹⁷ The use of CCTV cameras in bedrooms and bathrooms in the MSU does not provide people with this privacy. In addition, it is arguably degrading and fails to show adequate respect for their dignity. DIAC has informed the Commission that there are plans to upgrade the CCTV system at the IDC. The Commission encourages DIAC to ensure that the cameras in the MSU are removed or adjusted in order to provide people with adequate privacy. In particular, cameras should not be placed in nor should they monitor toilet or bathroom areas.

Human rights standards require that use of facilities such as the MSU should take into account the person's physical and mental health.¹⁹⁸ The DIAC policy on the use of the MSU requires that if it is necessary for a person to remain in the MSU for longer than 48 hours, a review of the placement, including a health review, must be initiated and completed within 24 hours.¹⁹⁹ The Commission welcomes this. However, in the Commission's view the policy should require that, prior to a decision being made to place a person in the MSU, consideration is given to an assessment conducted by the health services provider of the potential impacts of that placement on the person's health and mental health.

Moving a detainee from the general population to a high-security unit such as the MSU can, in certain circumstances, lead to breaches of Australia's obligation under the ICCPR not to subject anyone to arbitrary detention.²⁰⁰ This obligation may be breached if a detainee is moved from one part of the detention centre to another where the move involves a further and serious deprivation of their liberty.²⁰¹

The Commission acknowledges that DIAC is operating within infrastructure constraints in the IDC, and that the IDC was not built by the current government. However, the Commission reiterates its view that the MSU is inappropriate for accommodating asylum seekers, particularly those who may have experienced torture or trauma.

Detention facilities should be constructed so that if there is a legitimate need to separate one or more persons for a short period of time, that can be done in an appropriate and non-punitive environment, taking into account the person's individual needs including their health and mental health.

17.2 Phosphate Hill immigration detention facility

Phosphate Hill is made up of two areas – the Phosphate Hill immigration detention facility (also referred to as Bravo Compound), and an open area containing demountable buildings currently used as offices and staff accommodation.

The Phosphate Hill immigration detention facility was opened in 2001. It is located across the road from the Construction Camp facility, about 5 kilometres from the island's town area. The facility is used to detain adult males.

DIAC categorises the Phosphate Hill immigration detention facility as an 'alternative place of detention'. In the detention statistics that DIAC publishes, people in the facility are counted as being in 'alternative temporary detention in the community'.²⁰² In the Commission's view, this is misleading and should be corrected. The Phosphate Hill immigration detention facility is a secure compound surrounded by high wire fences, from which people in detention are not free to come and go.

(a) Detention infrastructure

In its 2008 report, the Commission raised concerns about the infrastructure at the Phosphate Hill immigration detention facility. At the time, there were no detainees in the facility, but the Commission was concerned about the low standard of accommodation, the lack of telephones and internet, and the lack of recreational facilities. The Commission did, however, note that the Phosphate Hill facility is preferable to the Christmas Island IDC in the sense that the security measures are much less intrusive, and the central location on the island makes it more accessible.²⁰³

When the Commission visited in 2009, the facility was again empty. However, in the second half of 2009 DIAC recommenced use of the facility as a place to detain adult males. At the time of the Commission's 2010 visit, there were 164 men detained there.²⁰⁴ The Commission was pleased to observe that some improvements have been made, in particular the addition of four landline telephones and eight internet terminals.

However, since 2009 there have also been some negative changes. In particular, three large tents have been installed in the middle of the compound. This has significantly reduced the amount of open green space in the facility, which is now minimal. While the tents are in slightly better condition than those at the Christmas Island IDC, they are still crowded and provide inappropriate accommodation, as discussed below.



.....
Accommodation tent
and row of bedrooms,
Phosphate Hill
immigration detention
facility

The Commission also remains concerned about the low standard of accommodation in the original parts of the facility. The bedrooms, located in rows of demountables, are very small. There is generally no furniture in them other than beds. Each room has a small window with bars on it which appear to be totally unnecessary.

The facility does not have a useable kitchen, so meals are transported in take-away containers from the Construction Camp. People in detention are required to line up to collect their meals, one by one, from the Serco office. When the number of people is high, this can take some time. There is no shelter around the office, and some people reported having to stand and wait in the rain. There is also no dining room, so people generally eat their meals in one of two undercover cabana areas. These areas are adequate when the weather is fine, but they are not rain-proof.

The Phosphate Hill immigration detention facility still has very little in the way of recreational facilities. Inside the compound there is no gym, library, classroom or other indoor recreation space. There is one demountable containing an internet room and a prayer room. The only other spaces for recreational use are the two cabana areas. While there are some recreational facilities in the open area outside the compound, detainees only have limited access to them. These issues are discussed further in section 22 below.

The Phosphate Hill facility currently has the lowest level of amenity of the three detention facilities on Christmas Island. The Commission acknowledges that DIAC is working within considerable constraints in terms of the infrastructure available. However, the fact that suitable infrastructure is not available on Christmas Island contributes to the Commission's view that it is not an appropriate place in which to detain people.

If the Australian Government intends to continue to use the Phosphate Hill immigration detention facility, it should upgrade it to ensure that people in detention have access to appropriate accommodation, dining areas and recreational facilities.

(b) *Overcrowding*

The regular capacity of the Phosphate Hill facility is 48 people. This has been increased to a surge capacity of 168 people by adding three large tents. When the Commission visited, there were 164 men detained in the facility.²⁰⁵ Higher numbers have been detained there since. For example, in late July 2010 there were 187 men in the facility – 19 more than its surge capacity.²⁰⁶

During its visit to the Phosphate Hill facility, the Commission was concerned about overcrowding in both the tents and the bedrooms.



.....
Inside a tent, Phosphate Hill immigration detention facility

The three tents each sleep up to 40 people in bunk beds. When the Commission visited, there were 107 people in the tents.²⁰⁷ They have since been used to accommodate 118 people at once.²⁰⁸ Like the tents at the Christmas Island IDC, the tents at the Phosphate Hill facility are crowded. People have no privacy, and nowhere to store their belongings other than on or under their beds.

Some people in detention told the Commission they found it hard to sleep in the tents due to the high number of people and the noise. Others reported that the climate was difficult to cope with. The heat and humidity on Christmas Island can be extreme at times, and they claimed that the air conditioners did not always work. Some reported that the humidity was making their mattresses damp.

Conditions in the tents at Phosphate Hill are slightly better than the tents at the Christmas Island IDC – largely due to the fact that they are cleaner. However, the accommodation is inappropriate and unacceptable by Australian community standards.

The Commission was also concerned about overcrowding in the bedrooms in the demountables. These rooms are the smallest of any of the bedrooms in the detention facilities on Christmas Island. Some are being used to sleep three people. DIAC informed the Commission that people only sleep three to a room if they request to do so. However, some detainees told the Commission they had no choice.



.....
Bedroom, Phosphate Hill immigration detention facility



.....
Shower block, Phosphate Hill immigration
detention facility

The high number of people being detained in the facility is also placing strain on ablution blocks. The number of toilets and showers was not increased when the capacity of the compound was expanded from 48 to 168 people. Detainees told the Commission that there were approximately 18 toilets and 18 showers for all of them to share, and that this was not enough. Others were concerned that there were only two washing machines for everyone to share.

The Commission acknowledges that DIAC is working within considerable infrastructure constraints, and that efforts are being made by staff to provide appropriate conditions in challenging circumstances. However, the Phosphate Hill facility was not designed to accommodate the high number of people being detained there. If the Australian Government intends to continue using the facility, it should take immediate measures to reduce the overcrowding. Current conditions are not consistent with international human rights standards.²⁰⁹

Recommendation 11:

If the Australian Government intends to continue to use the Phosphate Hill immigration detention facility, it should take immediate measures to reduce overcrowding in the facility. These should include:

- ceasing the practice of accommodating people in tents, and removing the tents as soon as possible
- ceasing the practice of accommodating any more than two people in the bedrooms in the demountables.

17.3 Construction Camp immigration detention facility

The Construction Camp immigration detention facility is a low security facility, which was formerly a camp used to accommodate construction workers. It is located across the road from the Phosphate Hill facility, approximately 5 kilometres from the island's town area. It is primarily used to detain unaccompanied minors and families with children.

When the Commission visited, there were 418 people detained in the Construction Camp – 73 men, 75 women, 94 accompanied children, 152 unaccompanied minors and 24 male crew members.²¹⁰

(a) *Detention infrastructure*

As discussed in section 13 above, it is misleading for the Construction Camp to be categorised as ‘alternative temporary detention in the community’.²¹¹ While it is a low security facility, it remains an immigration detention facility from which people in detention are not free to come and go.

After its 2008 visit to Christmas Island, the Commission raised significant concerns about the nature of the facilities at the Construction Camp.²¹² In its 2009 report, the Commission welcomed some improvements, but expressed ongoing concerns about the claustrophobic nature of the facility, the lack of grass and open space, and the lack of recreation areas. The Commission expressed the view that the Construction Camp is not an appropriate environment for unaccompanied minors or families with children.²¹³

During its 2010 visit, the Commission was pleased to observe some positive changes at the Construction Camp. In particular, the fence line has been extended to incorporate an existing basketball court into the facility. The Commission is also pleased that the separation detention system is no longer used for new arrivals.

Despite these improvements, the Commission’s concerns about the Construction Camp have been further exacerbated this year because of the substantial increase in the number of people detained there.

The Commission continues to have significant concerns about the lack of open space in the Construction Camp, the fact that there is no open grassy area inside the facility, and the lack of indoor recreation space. These issues are discussed further in section 22 below.

During its visit, the Commission was concerned that people detained in the Construction Camp were being subjected to further restrictions on their space and movement inside the facility. The dining room and another large room nearby are used for initial processing for all new arrivals on Christmas Island. This means the rooms cannot be used for recreational activities, and people have to take their meals back to their bedrooms when the dining room is in use for new arrivals.



.....
Construction Camp immigration detention facility

The Commission was also concerned about restrictions on Indonesian crew members detained in the Construction Camp. DIAC informed the Commission that the aim was to keep crew members separate from asylum seekers, in order to avoid tensions that might arise. Because the Construction

Camp does not have separate internal compounds, this was being done by restricting crew members to their accommodation block. They were only permitted to use the oval next to the Construction Camp between 6am and 7am on weekdays, under supervision of Serco officers. They also told the Commission they had very restricted access to the telephones in the facility – although this was disputed by DIAC and Serco.

Again, the Commission acknowledges that DIAC is working within considerable infrastructure constraints on Christmas Island. However, the fact that suitable infrastructure is not available on the island contributes to the Commission’s view that it is not an appropriate place in which to detain people. In particular, the Commission reiterates its view that the Construction Camp immigration detention facility is not an appropriate environment for unaccompanied minors or families with children.

(b) Overcrowding

During its visit, the Commission was particularly concerned about the high number of people being detained in the Construction Camp facility, which has led to overcrowding and pressure on facilities. When the Commission visited in 2009, there were 99 people in the Construction Camp.²¹⁴ During the 2010 visit, this had increased by more than four times, to 418 people.²¹⁵

At the time of the Commission’s visit, the highest number of people detained in the Construction Camp at any one time was 429 people in April 2010.²¹⁶ This is well above the agreed capacity of the facility, which according to DIAC is 310 people.

The substantial increase in the number of people detained in the Construction Camp has placed additional pressure on facilities. Some detainees told the Commission they had difficulty accessing basic facilities such as washing machines and kettles and supplies such as shampoo. There is also increased pressure on telephones, internet terminals and recreational and educational facilities, as discussed in sections 21 and 22 below.

The increase in the number of people detained in the facility has required the conversion of some rooms, including interview rooms in Block A and a recreation room, into dormitory bedrooms that are each shared by up to 14 people. These rooms are very cramped. People have no space or privacy, and nowhere secure to store their belongings. In addition, neither Block A nor the converted recreation room has dedicated bathroom facilities. When the Commission visited, up to 90 people were being required to share one shower.²¹⁷ This is unacceptable.



.....
Dormitory bedroom, Construction Camp immigration detention facility

The limited amount of space in the Construction Camp makes it a difficult environment in which to mix people of various ages, ethnicities, religions, cultures and genders. During its visit, the Commission had some concerns about the groups co-located in the facility. The overcrowding has meant that families with young children are often detained in close proximity to other detainees, which may include unaccompanied minors (usually 16 or 17 year old boys) or adults. Some parents expressed concerns about the difficulties of trying to maintain a ‘normal’ routine for their young children in this environment. In particular, some parents reported that their children were disturbed at night by noise from other people in detention.

The limited amount of space and mixing of various groups can also be a particular concern for some women from particular cultural or religious groups. Some young women detained in the Construction Camp told the Commission they did not feel very safe, partly due to the presence of a significant number of unaccompanied 16 and 17 year old males. A few women also complained about a lack of privacy and security in their bedrooms, which can be unlocked from the outside.²¹⁸

The Commission acknowledges that DIAC is working within considerable infrastructure constraints, and that significant efforts are being made by staff to provide appropriate conditions. However, the Construction Camp facility was not designed to accommodate the high number of people being detained there. If the Australian Government intends to continue using the facility, it should take immediate measures to reduce the overcrowding. Current conditions for some people are not consistent with international human rights standards.²¹⁹

As discussed in section 6 above, the Commission welcomes efforts to transfer some families and unaccompanied minors from the Construction Camp to the mainland. It is essential that these transfers continue in order to relieve the ongoing pressures on detainees and staff in the Construction Camp. This should be a matter of priority for all families with children and unaccompanied minors. As recommended in section 11, these groups should be referred for Residence Determinations on the mainland.

Recommendation 12:

If the Australian Government intends to continue to use the Construction Camp immigration detention facility, it should take immediate measures to reduce overcrowding in the facility.

18. Staff treatment

Under international human rights standards, all people deprived of their liberty are to be treated with humanity and with respect for the inherent dignity of the human person.²²⁰ The manner in which people in immigration detention are treated by DIAC, Serco and other service provider staff can have significant impacts on their experience in detention and on their physical and mental wellbeing.

The Commission acknowledges that there has been a significant cultural change in the operation of immigration detention facilities over the past few years, and that there is now an increased expectation that all staff who come into contact with people in immigration detention should treat them with respect. The Commission welcomed the inclusion in the government’s New Directions policy of key values stating that people in detention will be treated fairly and reasonably within the law, and that conditions of detention will ensure the inherent dignity of the human person.²²¹ The Commission has urged the government to embed these values in legislation.²²²

The Commission also welcomes that DIAC’s contract with Serco states that Serco staff must treat people in detention ‘equitably and fairly, with dignity and respect’.²²³

During its visit to Christmas Island, the Commission was generally pleased to observe positive interactions between staff and people in detention. In addition, most detainees the Commission spoke to expressed positive views about their treatment by DIAC and Serco staff. However, there were some significant exceptions.

The Commission was concerned to hear from many detainees that Serco staff refer to them by their identification number rather than their name. The Commission witnessed this on several occasions. Some detainees said they understood the reasons for this and were not concerned. However, others were very disturbed by the practice. For example, one man said, “It makes us feel like prisoners”.²²⁴ Another said, “We feel like a herd of sheep”.²²⁵ The Commission is concerned about this practice

because it is dehumanising and fails to accord respect to people in detention. In the Commission's view, people in detention should always be referred to by their name. Their identification number should only be used as a secondary identifier where this is necessary for clarification purposes.

The Commission was also concerned to hear from a small number of people in detention about specific instances where they felt they had been treated in a degrading or racially discriminatory way. For example, Sri Lankan men detained in the Christmas Island IDC reported that a particular Serco officer had made racist comments towards them.²²⁶ In addition, a number of people detained in the Christmas Island IDC and the Construction Camp said that particular Serco officers made comments suggesting that they should go back to their own country and that they had not been invited to Australia.²²⁷

A small number of people detained in the Christmas Island IDC also raised concerns about overly prison-like treatment by particular officers. For example, one man said, "They make us feel not like refugees, but like someone who has committed a grave crime."²²⁸ While these reports were the exception rather than the rule, they are concerning.

The Commission has been informed that Serco staff training covers issues relating to working with culturally diverse clients. The Commission urges DIAC and Serco to ensure that staff training and performance management include a strong focus on treating all people in immigration detention with humanity and with respect for their inherent dignity.

Recommendation 13:

DIAC, Serco and other detention service providers should refer to people in immigration detention by their name. Their identification number should only be used as a secondary identifier where this is necessary for clarification purposes.

Recommendation 14:

DIAC and Serco should ensure that staff training and performance management include a strong focus on treating all people in immigration detention with humanity and with respect for their inherent dignity.

19. Access to health and mental health care

Under international human rights standards, all people have a right to the highest attainable standard of physical and mental health.²²⁹ Each person in detention is entitled to medical care and treatment provided in a manner which is culturally appropriate, and of a standard which is commensurate with that provided in the general community. This should include preventive and remedial medical care and treatment including dental, ophthalmological and mental health care whenever necessary. Each immigration detainee should also be entitled to obtain a second medical examination or opinion.²³⁰

Since 2008 the Commission has expressed concerns regarding the availability of health and mental health care for people detained on Christmas Island.²³¹ The Commission acknowledges that there have been positive developments during that time, in particular the development of new mental health policies and associated training for detention service providers and DIAC staff.²³²

However, the Commission remains concerned about some aspects of the provision of health and mental health care on Christmas Island. Many of the Commission's concerns relate to difficulties in providing adequate care for a large detainee population in such a small and remote community. The Commission's key concerns include the very limited access to specialist care, psychiatric care and dental care; the ratio of mental health professionals to people in detention; and the extent to which torture and trauma policies are being implemented. These issues are discussed further below.

The Commission also shares the view expressed by previous inquiries that there is a need for more comprehensive monitoring of health and mental health services in immigration detention.²³³ The 2005 Palmer Report recommended the establishment of an independent Immigration Detention Health Review Board.²³⁴ In her review of the implementation of the Palmer Report, Elizabeth Proust observed that "[w]hile DIAC regards the arrangements via the [Detention Health Advisory Group (DeHAG)] to meet this recommendation, DeHAG itself believes that an independent body is still

needed'.²³⁵ This was also noted by the Joint Standing Committee on Migration in its inquiry into immigration detention in Australia.²³⁶

The Commission is of the view that there is a need for rigorous, independent and ongoing monitoring of the delivery of health and mental health services in immigration detention facilities both on Christmas Island and the mainland. This need was highlighted during the Commission's visit to Christmas Island by the significant number of cases in which people in detention raised concerns about their access to health services.

Recommendation 15:

An independent body should be charged with the function of monitoring the provision of health and mental health services in immigration detention. The Australian Government should ensure that adequate resources are allocated to that body to fulfil this function.

19.1 Health care

(a) *Health care for immigration detainees on Christmas Island*

Health care services for people in detention on Christmas Island are primarily provided by IHMS, a private company contracted by DIAC. The health staffing on Christmas Island has increased over the past year. The IHMS team includes a Health Centre Manager, a Medical Director, four doctors, three nurse team leaders, 15 general nurses, ten mental health nurses, two psychologists, two paramedics and five administrative staff. IHMS provide services at the Christmas Island IDC, the Construction Camp facility and the Phosphate Hill facility.

The local hospital is run by the Indian Ocean Territories Health Service (IOTHS). IOTHS provide services including ante-natal care, chest X-rays, pathology tests and basic in-patient services.

At the Christmas Island IDC there is a well equipped medical clinic. People in detention are required to fill out a form to request an appointment.

At the Construction Camp facility there is a basic clinic staffed by a nurse 24 hours a day. Shortly before the Commission's visit, IHMS commenced a trial allowing detainees to walk into the clinic seven days a week to request an appointment.

At the time of the Commission's visit, detainees in the Phosphate Hill facility were attending medical appointments at the clinic in the Construction Camp. IHMS informed the Commission that there were plans to establish a clinic room at the Phosphate Hill facility.

(b) *Concerns regarding the provision of health care on Christmas Island*

During its visit, the Commission was pleased to note some improvements in the provision of health care to people in immigration detention on Christmas Island. These included the presence of a paramedic at the Christmas Island IDC overnight, and detainees' increased access to the clinic at the Construction Camp facility.

However, the Commission continues to hold many of the concerns expressed in its 2009 report, including:

- the limited access to dental care on Christmas Island
- the lack of medical specialists (such as optometrists, physiotherapists, radiologists or others) on Christmas Island
- the length of time some people in detention have to wait to see a nurse or doctor
- the length of time it could take for an ambulance to arrive at one of the detention facilities if needed in an emergency.²³⁷

There is very limited access to dental care for people detained on Christmas Island. Some reported that they had experienced dental pain but had not been able to see a dentist.²³⁸ The health service provider's contract states that the offsite provision of dental services by referral must be arranged.²³⁹ The local dentist had been making an emergency dental appointment available each day if it had not been taken by the local community, but this stopped shortly before the Commission's visit. A dental van was delivered to Christmas Island in April, however DIAC has informed the Commission that it will not be operational before the end of 2010.

Some people in detention raised concerns with the Commission about the length of time they had to wait to see a nurse or doctor. The health service provider's contract states that no person in detention should be required to wait more than three business days for a consultation with a general practitioner.²⁴⁰ IHMS reported that people in detention do not have to wait longer than 48 hours for an appointment. However, the Commission heard from many detainees who said they had to wait between four and five days.²⁴¹

There is also very limited access to specialist care for people detained on Christmas Island. Detainees are sometimes seen by visiting specialists, but specialists generally only visit the island once every three to six months. DIAC informed the Commission that if urgent specialist care is required, detainees are transferred to the mainland. IHMS told the Commission that their recommendations for detainees to see specialists are followed. However, the Commission spoke with a number of detainees, some with significant visible injuries, who felt that their requests to see medical specialists had not been appropriately responded to. These included, for example, a man with an amputated leg, several men who claimed to have bullets or shrapnel lodged in their bodies, and several people with visibly disfigured limbs.

The Commission acknowledges that there may be differing opinions about when access to specialist care is required and in what time frame. However, the remoteness of Christmas Island means that people in detention who feel that they have not been provided with appropriate or prompt access to specialist care are not able to initiate that access independently, even if they are able to pay for it themselves.

If the Australian Government intends to continue to detain people on Christmas Island, those people should be provided with adequate access to health services. Further, as discussed in section 11 above, the Residence Determination Guidelines state that priority for Community Detention placements will be given to groups including persons with significant physical or mental health problems. These priority cases are to be assessed and referred to the Minister 'as soon as practicable'.²⁴² The Australian Government should make full use of the Community Detention system for people in detention on Christmas Island. All eligible detainees should be referred for a Residence Determination on the mainland. This should be an immediate priority for vulnerable groups including people with health concerns.

Recommendation 16:

If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should ensure that detainees are provided with access to appropriate health services. In particular, DIAC should ensure, as a matter of priority, that detainees on Christmas Island are provided with adequate access to dental care and specialist care.

19.2 Mental health care

(a) *Mental health care for immigration detainees on Christmas Island*

Under international human rights standards, all people have a right to the highest attainable standard of mental health.²⁴³ Every immigration detention facility should have at least one medical officer available with some knowledge of psychiatry.²⁴⁴

Mental health services for detainees on Christmas Island are primarily provided by IHMS, which has two psychologists and ten mental health nurses on staff.

Under DIAC's policy on mental health screening for people in immigration detention, IHMS does initial screening within 72 hours of a person's arrival, and a mental health assessment within a week. People in detention can request an appointment at any time, and DIAC, Serco or IHMS staff can flag concerns that a person may be in need of mental health care or treatment.²⁴⁵

People in immigration detention who are considered to be at risk of self-harm or suicide are managed through the Psychological Support Program (PSP), which was introduced on Christmas Island in March 2010.²⁴⁶ Under the PSP, detainees who are identified to be at risk of self-harm or suicide are managed according to one of three levels of risk, with observation by IHMS, DIAC or Serco staff.

(b) Concerns regarding the provision of mental health care on Christmas Island

The Commission welcomes the introduction of the DIAC policies noted above, and acknowledges the efforts being made by IHMS staff to provide mental health care for people in detention on Christmas Island. However, the Commission remains concerned about the extent to which appropriate mental health services can be provided to such a high detainee population in a community as small and remote as Christmas Island. This is a particular concern given that many people are spending longer periods in detention.

It is well established that holding people in immigration detention, particularly for prolonged periods, can have devastating impacts on their mental health.²⁴⁷ During its visit, the Commission heard from some people in detention that the time they had spent in detention was having detrimental psychological impacts. For example, detainees told the Commission the following:

“It has been 112 days since we came. There are people who have been waiting for 11 months. We can tolerate the conditions. The problem is with our mental ability to cope with detention and the period of time it is taking to make decisions.”²⁴⁸

“We will not be productive members of society when we get out of here because of the mental damage being done.”²⁴⁹

“We have stayed too long and we feel so bad.”²⁵⁰

The Commission spoke to a significant number of people in detention regarding their perceptions of the mental health services on Christmas Island. Some detainees said that appointments were readily available and that the mental health care was helpful.²⁵¹ Others felt that the sessions were of little utility, as the main cause of their distress was the fact that they were in detention for an uncertain period of time without knowing what would happen to them at the end of that period.

The Commission has noted in past reports the difficulties associated with treating people who are in detention for prolonged and uncertain periods.²⁵² Often, detention itself causes or exacerbates mental health concerns. Because mental health staff do not control the length of a person’s detention, they cannot effectively address this cause of distress for detainees. The Commission has consistently called for the repeal of the mandatory detention system, in part because of the effects it can have on the mental health and wellbeing of people detained.²⁵³

It is critical to ensure that if people must be held in detention, they are in a location that provides easy access to appropriate mental health services and support networks. The Commission continues to hold significant concerns about the limited capacity of the services on Christmas Island to meet the mental health needs of people in detention. The Commission’s key concerns include the following:

- There are significant demands on the mental health professionals on Christmas Island, given the high number of people in detention.
- There is no local psychiatrist on Christmas Island and no psychiatrist on the IHMS team. DIAC informed the Commission that if a detainee requires psychiatric care they can be referred to a psychiatrist on the mainland, but it is not clear in what proportion of cases this has occurred. In comparison, on the mainland the health services contract requires that IDCs have a mental health clinic with psychiatric services available, including onsite consultations.²⁵⁴
- There have been a number of self-harm incidents on Christmas Island in recent months. The Commission was informed that between 1 January and 18 June 2010, there were eight recorded instances of actual self-harm and two recorded instances of attempted self-harm.²⁵⁵ The Commission is concerned that the increasing length of detention and the increasing refusal rate may lead to increases in the rate of self-harm.

Recommendation 17:

If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should ensure that detainees are provided with access to appropriate mental health services. In particular, DIAC should ensure, as a matter of priority, that detainees on Christmas Island are provided with adequate access to psychiatric care.

19.3 Torture and trauma services

(a) Torture and trauma services for immigration detainees on Christmas Island

Under international human rights standards, survivors of torture and trauma should have access, without delay, to assessment and treatment by a qualified professional with expertise in the assessment and treatment of torture and trauma. Where an appropriately qualified professional is not on the staff in a detention facility, referral should be made to an external specialist agency.²⁵⁶

On Christmas Island, IHMS refers people in detention to IOTHS for torture and trauma counselling if a concern is identified. IOTHS has four dedicated counsellors. Individual torture and trauma counselling is usually done at the local hospital, while some group sessions are conducted within the immigration detention facilities.

The management of people in immigration detention who have experienced torture or trauma is governed by the DIAC policy, *Identification and Support of People in Immigration Detention Who are Survivors of Torture and Trauma* (Torture and Trauma Policy).²⁵⁷ The policy sets out measures to identify and provide services to survivors of torture and trauma in immigration detention.

(b) Concerns regarding torture and trauma services on Christmas Island

The Commission welcomes efforts by DIAC to prepare a policy aimed at identifying and providing appropriate services to survivors of torture and trauma in immigration detention. The Commission also acknowledges the efforts being made by IOTHS and IHMS staff to identify and respond to the needs of survivors of torture and trauma on Christmas Island.

However, the Commission continues to have significant concerns about the capacity of the services on the island to meet the needs of the high number of detainees.

The Commission is concerned that there are only four torture and trauma counsellors for a large detainee population of which a significant number are likely to have experienced some degree of torture or trauma. The Commission also heard from IOTHS that one of the major challenges they face in providing torture and trauma counselling is a shortage of dedicated facilities, as they often do not have enough rooms in which to work.

The Commission is also concerned about the extent to which people who have experienced torture or trauma can be appropriately cared for in a detention environment. One detainee told the Commission, “We cannot be staying in this situation for a long time. It is difficult to tolerate trauma. Trauma is being repeated here.”²⁵⁸

Under DIAC’s Torture and Trauma Policy, the aim is to ensure that people who have experienced torture or trauma:

are encouraged and supported, wherever possible following consideration of health, character and security risks, to reside legally in the community while their immigration status is being resolved or, where this is not possible, in the least restrictive form of detention to minimise the potential for immigration detention to exacerbate any vulnerabilities associated with their previous experience of torture and trauma.²⁵⁹

Under the policy, the continued detention of survivors of torture and trauma in an IDC is only to occur ‘as a measure of absolute last resort where risk to the Australian community is considered unacceptable’.²⁶⁰ Under the Residence Determination Guidelines, persons who may have experienced torture or trauma are to be prioritised for consideration of a Community Detention placement.²⁶¹

During its visit, the Commission was concerned about the extent to which these policies were being implemented on Christmas Island. The Commission heard from health services staff that some individuals identified as high priority torture and trauma cases have remained in detention on Christmas Island. There were more than 2400 detainees on the island at the time, many of whom are likely to have experienced some degree of torture or trauma. However, there were only three people in Community Detention on the island, and only seven people in Community Detention on the mainland.²⁶²

IOTHS reported that while their recommendations are always considered by DIAC, the combination of the lack of community-based accommodation on Christmas Island, and a reluctance to move people to Community Detention prior to the completion of their security clearances was limiting the availability of Community Detention for survivors of torture and trauma.

If the Australian Government intends to continue to detain people on Christmas Island, those people should be provided with adequate access to torture and trauma services, and DIAC should ensure the full implementation of its Torture and Trauma Policy. Further, as recommended in section 11 above, the Australian Government should make full use of the Community Detention system. All eligible detainees should be referred for a Residence Determination on the mainland. This should be an immediate priority for vulnerable groups including survivors of torture or trauma.

Recommendation 18:

If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should ensure that detainees are provided with adequate access to torture and trauma services.

Recommendation 19:

DIAC should ensure that its policy, *Identification and Support of People in Immigration Detention who are Survivors of Torture and Trauma* is implemented on Christmas Island. Under this policy, the continued detention of survivors of torture and trauma in an IDC is only to occur as a measure of absolute last resort where risk to the Australian community is considered unacceptable.

20. Provision of information to people in detention

Under international human rights standards, people in immigration detention should be provided with information, within a reasonable time of being detained and in a language they understand, about their right to seek asylum; the reasons for their detention; the services provided in detention; their right to independent legal assistance; the refugee assessment process; and their right to the services of an interpreter when needed.²⁶³

20.1 Induction information about accessing services in detention

The Commission's 2009 report recommended that written induction materials should be provided to all people on their arrival in immigration detention, setting out information about accessing services while in detention and contact details for key bodies.²⁶⁴

The Serco contract requires that an induction booklet be provided to people in detention.²⁶⁵ The Commission has been provided with copies of Serco induction materials for people in immigration detention. Serco has informed the Commission that these materials are translated into the main languages spoken by the detainee population, and that they are provided to people shortly after their arrival in detention on Christmas Island.

The Commission welcomes these efforts. The Commission would like to see some additional information included in the induction materials including telephone numbers for the Translating and Interpreting Service (TIS) and the local police; information about how to request an external excursion; information about accessing religious services; and contact details for Legal Aid, the United Nations High Commissioner for Refugees, key refugee and asylum seeker information and advice groups, and IAAAS providers.

20.2 Information about the refugee status assessment process

In its 2009 report the Commission recommended that all people should be provided with clear information on their arrival in immigration detention about their right to seek asylum; their right to access independent legal advice and assistance; the scope of the IAAAS assistance that will be provided to them; and the non-statutory RSA process.²⁶⁶

In response, DIAC stated that people who arrive on Christmas Island are provided with the opportunity to raise any claims that may prevent their return, including any protection claims; are provided with reasonable facilities to access legal advice during their initial processing; and are advised of the scope of the IAAAS assistance to which they are entitled.²⁶⁷

The Commission welcomes the fact that people are advised of the assistance they will be provided under the IAAAS. The Commission also welcomes efforts by DIAC over the past year to develop

basic information sheets for irregular maritime arrivals, which provide an outline of the refugee status assessment process.

However, the Commission remains concerned that people taken into immigration detention on Christmas Island are not provided with explicit information on their arrival about their right to seek asylum or their right to access independent legal advice and assistance.

During its 2010 visit to Christmas Island, the Commission heard concerns from some people in detention that they had not been provided with adequate details about the RSA process. DIAC informed the Commission that they would attempt to address this concern by holding follow-up information sessions with people after providing basic information on their initial arrival.

The Commission also heard concerns from some people in detention about a lack of regular provision of information about progress with their cases.²⁶⁸ In particular, as discussed in section 9 above, the Commission spoke with a significant number of Sri Lankan detainees who had gone through the RSA process and were awaiting security clearances. Some of them had been detained for almost one year. They expressed considerable frustrations about the lack of information provided about progress with their cases and the reasons for delay with their security clearances.²⁶⁹

The Commission welcomes the role played by DIAC Case Managers in ensuring that immigration cases progress towards an outcome as soon as possible, and in providing information to people in detention. However, the Commission encourages DIAC to take further steps to ensure that people in immigration detention on Christmas Island are able to request and receive regular updates about progress with their RSA claims and their security clearances.

21. Access to communication

For people deprived of their liberty, the capacity to communicate with the outside world is critical to allow regular contact with family members, friends and support networks, and to ensure effective contact with legal advisers and migration agents.

Under international human rights standards, people in detention should be able to enjoy regular contact with family, friends and community members, facilitated through visits, correspondence and access to telephones. They should also be provided with facilities to communicate and consult in private with legal representatives.²⁷⁰

In its 2008 and 2009 reports, the Commission raised concerns about the ability of people in detention on Christmas Island to maintain regular contact with the outside world. The remote location and the small size of the community mean that detainees have very limited face-to-face access to legal or community support groups, and the limited communications infrastructure makes it difficult for people in detention to maintain regular contact with legal representatives, family members and support networks on the mainland or overseas.²⁷¹ These issues remain of concern after the Commission's 2010 visit.

21.1 Access to communication facilities

In its 2009 report, the Commission raised concerns about detainees' limited access to telephones, internet and mail. In particular, the Commission recommended that DIAC should ensure that people in detention are provided with adequate access to telephones and that they are able to make and receive telephone calls in privacy.²⁷² In response, DIAC recognised that access to telephones had been a 'longstanding technical difficulty', but stated that this issue had been resolved.²⁷³

However, the Commission still has significant concerns about access to telephones for people detained on Christmas Island. During its 2010 visit, the Commission heard complaints from people in every detention facility about limited access to telephones. This has become even more of a concern with the substantial increase in the number of people detained in each facility.

In the Christmas Island IDC, there are two or three landline phones in each original accommodation compound to be shared by around 120 people per compound. In Education 3 Compound there are two phones for around 140 people, and in the tents in Red Compound there are four phones for around 170 people. The phones are in outdoor areas with little privacy, and in many compounds there is a 10 minute limit. When the Commission visited Aqua Compound, there were no landline phones in the compound, which was accommodating 341 people. While DIAC informed the Commission that there were four Serco mobiles that detainees could request to use until landlines were installed, detainees said they had to line up in other compounds to make phone calls.

At the Construction Camp facility there are only three landline phones for detainees to share. At the time of the Commission's visit there were 418 people detained in the facility. The phones are located in an outdoor area with no privacy, and there is a 10 minute limit. Detainees told the Commission that the limited number of telephones was a significant concern; that they had to wait in line for an hour or two; and that it led to tensions between people detained in the facility.

At the Phosphate Hill facility there are four landline phones for detainees to share. At the time of the Commission's visit there were 164 men detained in the facility. Again, the telephones are located in outdoor areas with no privacy.

DIAC informed the Commission that people in detention are able to request to use a private telephone for making calls to IAAAS agents or lawyers. A small number of people reported that they were aware of this and had done so, but many did not appear to be aware and raised significant concerns about limited phone access.

The Commission is concerned that people in detention on Christmas Island are not permitted to have mobile telephones. This would assist in easing the pressure on landline telephones, and would greatly enhance detainees' ability to maintain regular contact with family members, legal representatives and migration agents.

The Commission also remains concerned about detainees' limited access to the internet in the detention facilities on Christmas Island. Again, this concern has been exacerbated because of the substantial increase in the number of people detained. Internet access can be a valuable way for people in detention to maintain contact with the outside world, and is all the more important when there are so few telephones available.

At the time of the Commission's visit, there were 23 internet terminals for the use of 1834 detainees at the Christmas Island IDC; eight terminals for 164 detainees at Phosphate Hill; and 12 internet terminals for 418 detainees at the Construction Camp. Internet access is generally much slower than on the mainland. Many detainees expressed frustrations about the limited number of internet terminals, having to wait in long queues to use a terminal, then not being able to use it effectively within the time allotted because of the slow internet speed.²⁷⁴

Recommendation 20:

If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should:

- ensure that all detainees are provided with adequate access to telephones and that they can make and receive telephone calls in privacy
- increase the number of internet terminals in each of the detention facilities.

21.2 Access to interpreters

Under international human rights standards, all written and oral communications concerning a person in immigration detention and the refugee assessment process should be conveyed in a language and in terms which the person can understand. People who do not understand English, or whose English is not adequate, should be provided with an interpreter when information concerning them is being obtained or conveyed.²⁷⁵

As noted in the Commission's 2009 report, DIAC has a group of interpreters on Christmas Island, each of whom stays for a few weeks or months at a time. The Commission welcomes this; it is a positive contrast to many mainland detention facilities which rely on telephone interpreters.

At the time of the Commission's 2010 visit there were 62 interpreters working on Christmas Island. Interpreters are in very heavy demand for a range of activities including entry interviews, RSA interviews, security related interviews, health and mental health appointments and everyday communications between people in detention and staff.

During its visit, the Commission heard several complaints from people in detention that interpreters were not always available when requested. For example, one person told the Commission, "There are problems with interpreters. There are not enough interpreters for interviews and medical appointments. Sometimes interviews or appointments are cancelled because there is no interpreter and rescheduling can take a week or more."²⁷⁶

However, the main issue raised by detainees was concern expressed by some people from Afghanistan about not being provided with a Hazaragi speaking interpreter, and being required to use a Dari speaking interpreter instead. Some Afghans were concerned that Dari interpreters did not always fully understand what they said, and did not always accurately interpret for them in interviews.²⁷⁷

This concern was also raised during the Commission's 2009 visit to Christmas Island. At the time, DIAC informed the Commission that the problem was a result of the fact that the National Accreditation Authority for Translators and Interpreters (NAATI) did not offer accreditation for Hazaragi interpreters, and that steps had been taken in order to rectify this. In its 2009 report, the Commission encouraged DIAC to address the matter as soon as possible.²⁷⁸

The Commission is pleased that since then, NAATI has begun accreditation of Hazaragi interpreters. However, the Commission understands that currently there is a limited number of accredited Hazaragi interpreters. The Commission urges DIAC to work with NAATI to ensure that a sufficient number of Hazaragi interpreters is available to people in immigration detention, including those on Christmas Island.

22. Recreation and education

International human rights standards require that people in immigration detention should have access to materials and facilities for exercise, recreation, cultural expression and intellectual and educational pursuits to utilise their time in detention in a constructive manner, and for the benefit of their physical and mental health.²⁷⁹ In addition, each immigration detention facility should have a library stocked with recreational materials in the principal languages spoken by people in detention.²⁸⁰

In its 2008 and 2009 reports, the Commission raised concerns about the limited recreational facilities at Phosphate Hill and the Construction Camp, about detainees' limited access to reading materials and educational activities and about the limited opportunities for people to leave the detention environment on recreational excursions.²⁸¹

Since then, Serco has taken over operation of the detention facilities on Christmas Island. Under its contract, Serco is required to:

develop, manage and deliver structured and unstructured Programs and Activities designed to provide educational and recreational opportunities, and provide meaningful activities that will enhance the mental health and well-being of individuals in Immigration Detention.²⁸²

During its 2010 visit, the Commission was pleased to observe that DIAC and Serco staff are making positive efforts to provide recreational and educational activities for people in detention on Christmas Island. The Commission welcomes a number of positive developments, including a weekly women's group at the local community centre, a plan for some detainees to participate in a furniture restoration program organised by the community centre, and efforts to allow some detainees to participate in community sporting events.

Despite these efforts, the Commission remains concerned that not all people in detention are provided with adequate access to recreational facilities and activities, and educational opportunities. The significant increase in the number of people detained on Christmas Island has increased the strain in this regard.

The Commission's key concerns include the following:

- the lack of appropriate recreational facilities, particularly in the Construction Camp and Phosphate Hill immigration detention facilities
- the impact of overcrowding on detainees' access to recreational and educational opportunities in all detention facilities
- the limited access to reading materials for people detained in the Construction Camp and Phosphate Hill
- the very limited opportunities to leave the detention environment, particularly for people detained in the Christmas Island IDC and the Phosphate Hill facility.

These concerns are discussed below.

22.1 Recreational facilities and activities

(a) *Christmas Island IDC*

The Commission's 2009 report observed that there are good recreational and educational facilities at the Christmas Island IDC including a gym, a library room, classrooms, and an art room. There is also a significant amount of open grassy space that can be used for sports such as cricket and soccer.

The Commission observed extensive use of these facilities during its 2010 visit. As noted last year, it is clear that these facilities are extremely beneficial in terms of providing people in detention with positive ways to pass their time.

However, while the recreational facilities at the IDC may be appropriate for when the centre is operating at its normal capacity of 400 people, they are not sufficient to meet the needs of a much higher number of detainees. When the Commission visited, there were 1834 men in the IDC and the facilities were under serious strain.

In addition, some areas previously used for recreation or education have now been converted into accommodation. The whole of Education 3 Compound is now being used for accommodation, and some recreation rooms within the original accommodation compounds have been converted into dormitory bedrooms.

As discussed in section 17 above, the Commission is particularly concerned about the lack of recreational facilities in the new Aqua Compound, and the restricted access that people in Aqua and Lilac Compounds have to the recreational facilities in the main centre.

Recreational activities are provided by five Serco officers and four ALIV volunteers in the IDC. According to ALIV's weekly timetable, art, sewing and cooking activities are offered each day. Each night different activities are offered, for example bingo and movie nights.

The Commission welcomes these efforts. However, some people in detention told the Commission that access to recreational activities was limited due to the high number of people in the centre.²⁸³

(b) *Phosphate Hill immigration detention facility*

In its 2008 report, the Commission raised concerns about the lack of recreational facilities at the Phosphate Hill immigration detention facility. This concern has been exacerbated by the substantial increase in the number of people being detained there.

Inside the compound, there is no gym or other indoor recreation space. There is one demountable containing an internet room and a prayer room. The only other spaces for recreational use are the two cabana areas, which each contain tables and chairs, a television and some very basic kitchen facilities. Detainees reported that when it rains, the rain comes into the cabana areas making it difficult to use the areas for recreational purposes.

There is a small gym room in a demountable building in the open area at Phosphate Hill. However, detainees do not have free access to the gym, as it is outside the compound they are confined to. They can sign up to use the gym during designated sessions, but only a small number of people can use it each session and it is shared with people detained in the Construction Camp. Detainees raised concerns about their limited access to the gym.

There are some organised recreational activities offered inside the Phosphate Hill facility including yoga, games, music, bingo and movie nights. However, these appear to be fewer than the activities offered to people in detention in the Construction Camp or the Christmas Island IDC.

(c) *Construction Camp immigration detention facility*

The Commission's 2009 report expressed significant concerns about the lack of adequate recreational facilities in the Construction Camp.²⁸⁴ As noted in sections 14 and 17 above, those concerns remain, and have been exacerbated by the substantial increase in the number of people detained in the Construction Camp.

The Commission continues to have significant concerns about the lack of open space inside the Construction Camp. As noted above, the Commission welcomes the extension of the fence line to include the basketball court, as it provides a much needed area for sports and recreation inside the facility. However, when the Commission visited, the court was locked and detainees were only being provided with access to it for two hours each afternoon or evening.²⁸⁵

The Commission also welcomes the fact that detainees are permitted to visit the oval and playground next to the Construction Camp each weekday afternoon, under the supervision of Serco officers. However, the Commission remains concerned that there is no open grassy area inside the Construction Camp facility that detainees have unrestricted access to, particularly given the high number of children detained there.

The Commission is also concerned about the lack of indoor recreation space in the Construction Camp, which means that there are very limited opportunities for recreation during wet weather. There is one undercover area that can be used for recreational activities, but it has a concrete floor so it is not particularly comfortable or appropriate for babies or toddlers. There is also one classroom, but it is generally only opened for scheduled activities. There are two other rooms that could be used for recreational activities – the dining room and another large room nearby. However, these rooms are often being used for initial processing for new arrivals. Some detainees told the Commission that when it is raining, there is nowhere to go except inside their bedrooms.²⁸⁶

There is a small gym room inside the Construction Camp that is currently used as a women’s only gym. While this is positive for female detainees, some male detainees complained about only being provided with limited access to the gym room across the road, outside the Phosphate Hill facility.

There are some organised recreational activities provided for people detained in the Construction Camp including bingo, arts and crafts, games nights and yoga. Activities specifically for children are discussed in section 14 above. The Commission welcomes these efforts.

The Commission also welcomes efforts to offer some activities specifically for women, in particular a weekly women’s group at the local community centre. However, the Commission also heard some concerns from women in the Construction Camp about the need for further women’s activities, for example the opportunity for women to be taken to the oval at a separate time to male detainees (who greatly outnumber the women).

Recommendation 21:

If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should ensure that all detainees are provided with adequate access to a range of recreational facilities and activities.

22.2 Educational activities

Under international human rights standards, opportunities for English language instruction and further education, including technical and vocational education should be provided for people in immigration detention where possible.²⁸⁷

The provision of education for children in immigration detention on Christmas Island is discussed in section 14 above.

The Commission’s 2009 report raised concerns about the inadequacy of the educational opportunities provided for adults detained on Christmas Island, and the limited availability of reading materials in the detention facilities.²⁸⁸

In response, DIAC noted that a number of ESL classes were being held each day. DIAC acknowledged that more reading materials in relevant languages were required for the detention facilities, and noted that the provision of reading materials was a requirement under Serco’s contract.²⁸⁹

During its 2010 visit, the Commission was pleased to observe that there has been a significant improvement in the number and range of materials in the library room at the Christmas Island IDC. However, there remains a lack of access to appropriate reading materials for people detained in the other facilities. At Phosphate Hill, there is no library inside the facility. There is a small library room in a demountable building outside the compound, but people in detention do not have free access to it. At the Construction Camp there are a few shelves of donated books in the internet room. While this is an improvement since the Commission’s last visit, it is not adequate to meet the needs of the high number of people detained in the Construction Camp.

The Commission also continues to have concerns about detainees’ limited access to educational activities. Serco records provided to the Commission indicate that English classes are offered in all detention facilities on a daily basis. The Commission welcomes these efforts. However, the

substantial increase in the number of people being held in each facility has limited access to these classes for some people. In particular, many detainees at the Christmas Island IDC said that classes were overcrowded, or that there was not enough space and they had been told they would have to wait for several weeks.²⁹⁰

Recommendation 22:

If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should ensure that:

- all detainees have access to appropriate educational activities, including ESL classes
- the Phosphate Hill and Construction Camp immigration detention facilities have an adequate supply of reading materials in the principal languages spoken by detainees.

22.3 Opportunities to leave the detention environment

The Commission's most significant concerns about recreational activities for people in immigration detention on Christmas Island relate to opportunities to leave the detention environment. This is critical for the physical and mental wellbeing of people in detention, particularly those detained for prolonged periods.

In its 2009 report the Commission raised concerns about detainees' limited access to excursions. The Commission recommended that minimum standards for the conduct of regular external excursions should be included in the contract with the detention service provider; that compliance should be monitored and remedial action taken when the standards are not complied with; and that sufficient resources should be allocated to ensure that the detention service provider is able to provide escorts for the conduct of regular excursions.²⁹¹

In response, DIAC noted that the detention service provider contract includes a monitoring regime with penalty clauses for breaches.²⁹² The contract governing the three detention facilities on Christmas Island requires that Serco must include supervised external excursions in the range of programs and activities offered to people in immigration detention.²⁹³ However, it does not specify the number, frequency or type of excursions that must be offered.

During its 2010 visit to Christmas Island, the Commission was pleased to observe that some positive efforts were being made by DIAC and Serco staff to provide people in detention with access to excursions. In particular, the Commission welcomes efforts to provide women at the Construction Camp with the opportunity to attend a weekly women's group at the local community centre, and opportunities for a small number of detainees to participate in a weekly community sporting activity.

However, because of the high number of people detained on the island, the limited number of excursions provided is nowhere near enough to ensure that all detainees – or even a significant proportion of them – are able to participate. The vast majority of people interviewed by the Commission reported that they had never been taken on an organised excursion.

The Commission is particularly concerned that people detained in the Christmas Island IDC and the Phosphate Hill facility are being provided with very limited opportunities to leave the detention environment. For example, the Commission was provided with records which indicate that over a one month period, 41 people were taken from the IDC to visit a local park.²⁹⁴ In the four weeks prior to the Commission's visit, people detained in the Phosphate Hill facility were not taken on any organised excursions, although up to 40 people were able to visit the oval next to the facility on average twice per week.²⁹⁵

At the Construction Camp facility, the Commission welcomes that people are provided with the opportunity to visit the adjacent oval for a few hours each weekday afternoon (under the supervision of Serco officers). There are also some organised excursions from the Construction Camp, including visits to the local recreation centre and the outdoor cinema. The Commission welcomes efforts by Serco to organise these excursions. However, only a few people are able to participate.

Recommendation 23:

If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should:

- amend the detention service provider contract applicable to the three detention facilities on Christmas Island to require that Serco provide regular external excursions for people in detention on the island
- ensure that the detention service provider is allocated sufficient resources to provide escorts for regular external excursions.

23. Religion

Under international human rights standards, all people have a right to practise their religion, either individually or in community with others. Qualified religious representatives should be allowed to hold regular services and to pay pastoral visits to people in immigration detention, subject only to reasonable conditions and restrictions specified by law.²⁹⁶

In 2008 and 2009, the Commission raised concerns about the level of religious support available to people detained on Christmas Island.²⁹⁷ During its 2009 visit, the Commission was concerned that there were no services being conducted on a regular basis inside the detention facilities, and only a handful of people were being taken to services outside detention. The Commission recommended that DIAC ensure that all people in detention are provided with access to regular religious services conducted by qualified religious representatives.²⁹⁸

In response, DIAC stated that the detention service provider is contracted to ensure suitable religious services are available at the detention facilities, and that these are conducted by qualified individuals. DIAC also stated that excursions to religious services in the community are facilitated where possible, but this is dependent on available transport and escort services.²⁹⁹

During its 2010 visit to Christmas Island, the Commission was pleased to observe that efforts have been made to provide people in detention with greater access to religious representatives, religious services and general pastoral support. However, further efforts are needed to meet the religious needs of the high number of people detained on the island.

Some local religious groups on Christmas Island are making significant efforts to provide as much support to people in detention as they can. However, as noted in past reports, the small size and limited resources of the Christmas Island community mean that local groups are not able to meet the religious needs of such a high number of detainees.³⁰⁰

Local efforts have been bolstered over the past year by increased efforts from DIAC and Serco to facilitate visits by religious representatives from the mainland. For example, some support has been provided to the Australian Catholic Bishops Conference, Jesuit Refugee Service and the Sisters of Mercy to allow them to maintain a pastoral presence on the island by sending one or two volunteers for a few weeks or months at a time. This has increased detainees' access to general pastoral support, as well as access to organised religious services for Catholic detainees.

The Commission welcomes this initiative and encourages DIAC and Serco to extend it to other religions as well. Given the substantial increase in the number of people detained on Christmas Island, further efforts are required to ensure that all people in detention – particularly those who practice a religion other than Christianity – are provided with adequate access to religious support. In particular, Hindu and Muslim detainees told the Commission they would appreciate more religious visits, support and services.³⁰¹

In addition, the Commission remains concerned that many people in detention are not provided with the opportunity to attend religious services outside the detention environment. This may be particularly beneficial for those who have been in detention for a prolonged period.

23.1 Christmas Island IDC

At the Christmas Island IDC, there are two rooms in Education 2 Compound that can be used for religious services, and occasionally large services are held in the open court area in the gym. Some accommodation compounds have a small room that can be used by detainees for prayer.



.....
 Room used for religious services, Christmas Island IDC

There is a Catholic mass in the IDC each Sunday for people who wish to attend. However, there do not appear to be regular organised services for detainees of other religions. Some Hindu detainees told the Commission there are no Hindu visitors.³⁰² For Muslim detainees, Serco informed the Commission that the local Imam visits each Friday. However, some Muslim detainees told the Commission there are no organised prayer services for them.³⁰³ They also said they had made several requests for watering cans to allow them to wash before and after prayers. DIAC informed the Commission they would consider introducing watering cans or buckets to address this request.

The Commission remains concerned that very few people detained in the Christmas Island IDC are provided with access to religious services outside the detention environment. For a time, some Muslim detainees were taken to prayer services at the island’s mosque, but these visits are no longer conducted. Serco informed the Commission that visits are conducted to the Christian Fellowship service and occasional visits are conducted to the island’s temple. However, it is unclear how regular these visits are. One detainee told the Commission he was taken out to a weekly Church service.³⁰⁴ Others said they do not get the opportunity to attend services outside the IDC.³⁰⁵ Records provided by Serco indicate that over a month long period during April and May 2010, no detainees from the IDC were taken to a religious service in the community.³⁰⁶

23.2 Phosphate Hill immigration detention facility

Inside the Phosphate Hill immigration detention facility, there is a small prayer room mostly used by Muslim detainees, but no other indoor space in which to conduct organised religious services.



.....
 Prayer room, Phosphate Hill immigration detention facility

There is a Catholic mass once each week for detainees who wish to attend, held in one of the classrooms located outside the fence line of the facility. However, there do not appear to be any regular services organised for people of other religions inside the facility.

The Commission is concerned that not all detainees in the Phosphate Hill facility are provided with regular access to religious services outside the detention environment. While Catholic detainees are able to attend a weekly mass in a classroom next to the facility, they are not able to attend the Catholic mass at the local Church, despite the Church being happy to have them.³⁰⁷ Records provided by Serco indicate that over a month long period during April and May 2010, the only religious visits conducted from Phosphate Hill were for nine detainees taken to the mosque.³⁰⁸

23.3 Construction Camp immigration detention facility

At the Construction Camp immigration detention facility, some accommodation blocks have a small room that detainees can use for prayers. In other blocks, detainees pray in their own bedrooms.

Some detainees receive pastoral care visits from a Catholic priest and nun. However, Muslim and Hindu detainees said they received no visits from representatives of their religion.³⁰⁹

The Commission is pleased that efforts are being made to take detainees from the Construction Camp to religious services in the community. Hindu detainees told the Commission they were taken to the temple on the weekend, and Catholic detainees told the Commission they were taken to a weekly Church service.³¹⁰ Some Burmese detainees said they were taken to prayers at the mosque, although some other Muslim detainees said they were not provided with this opportunity.³¹¹

Recommendation 24:

If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should:

- ensure that all detainees are provided with access to regular religious services conducted by qualified religious representatives – in particular, further efforts are required to provide this for detainees who practice a religion other than Christianity
- ensure that detainees have access to religious services in the community.

Part E:

Monitoring conditions of detention on Christmas Island

24. Minimum standards

The Commission has repeatedly raised concerns about the lack of transparent and enforceable standards for conditions in immigration detention, and has called numerous times for minimum standards to be codified in legislation.³¹² These should be based on relevant international human rights standards, in order to ensure that people in detention are treated in line with Australia's human rights obligations.

In its 2009 report, the Commission noted that this concern is heightened on Christmas Island, as the remote location makes it more difficult for external bodies to monitor detention conditions there.³¹³

In response to the Commission's report, DIAC highlighted measures taken to ensure minimum standards for the treatment of people in immigration detention including Detention Instructions for departmental staff and service providers; standards contained in contracts with the detention and health service providers and monitoring of these by DIAC's contract management area; and development by the Royal Australian College of General Practitioners of *Standards for Health Services in Australian IDCs* (RACGP Standards).³¹⁴

The Commission welcomes these initiatives. However, other than the RACGP Standards, these standards are not freely available to the public, there is very little public reporting about whether the standards are being complied with and the standards are not legally enforceable.

DIAC's response to the Commission's 2009 report also noted that reform processes were underway to support the implementation of the key values set out in the government's New Directions policy – including value 6 which states that people in detention will be treated fairly and reasonably within the law, and value 7 which states that conditions of detention will ensure the inherent dignity of the human person.³¹⁵ In this regard, DIAC highlighted the Migration Amendment (Immigration Detention Reform) Bill 2009. The Commission welcomed the introduction of the Bill in 2009, but expressed disappointment at the time that the Bill did not incorporate key values 6 and 7 about treatment and conditions in detention.³¹⁶ Despite this limitation, the Commission is disappointed that the Bill was not passed.

In the Commission's view, the most appropriate way to ensure that standards for detention conditions are adequately and consistently implemented is to embed minimum standards in legislation. This would be in line with UNHCR guidelines which require conditions of detention for asylum seekers to be prescribed by law.³¹⁷

In the mean time, the Commission supports the recommendation made by the Joint Standing Committee on Migration in 2009 that DIAC should make the contract standards available on its website and report on detention service providers' compliance with the standards in its annual report.³¹⁸

Recommendation 25:

Legislation should be enacted to set out minimum standards for conditions and treatment of detainees in all of Australia's immigration detention facilities, including those located in excised offshore places. The minimum standards should be based on relevant international human rights standards, should be enforceable and should make provision for effective remedies.

25. Independent monitoring

Regular independent monitoring of immigration detention facilities is essential in order to increase accountability and transparency, and to monitor conditions in order to ensure that they meet internationally accepted human rights standards.

The Commission acknowledges positive efforts by DIAC to facilitate the Commission's visit to Christmas Island, as well as visits by other monitoring bodies and non-government organisations. The Commission also welcomes the increased transparency of DIAC's operations over the past few years.

However, the Commission remains concerned that there is minimal information available to the general public about the operation of Australia's immigration detention facilities and the people detained in them. There is very little information about the Christmas Island detention facilities on the DIAC website, and the information that is there is out of date.³¹⁹ During 2010, an increasing number of places of immigration detention have been established on the mainland. However there is limited public information about those facilities, who is detained in them or for how long.

A number of bodies play a role in monitoring the immigration detention facilities on Christmas Island.³²⁰ Those bodies have each visited Christmas Island during 2010. However, the remote location makes this exercise logistically difficult, time consuming and expensive. It is difficult for monitoring bodies to visit the detention facilities regularly.

The Commission remains of the view that there is a need for a more comprehensive monitoring mechanism for Australia's immigration detention facilities, particularly those in remote locations such as Christmas Island. Currently, there is no monitoring body with all of the key features necessary to be fully effective: independence from DIAC; adequate funding to fulfil the role; the capacity to maintain an ongoing or regular presence on Christmas Island; a specific statutory power to enter immigration detention facilities; comprehensive public reporting for transparency; and the capacity to require a public response from government.

A more comprehensive monitoring mechanism to ensure that conditions in immigration detention meet human rights standards could be achieved through the ratification of the *Optional Protocol to the Convention against Torture* (OPCAT). In its response to the Commission's 2009 report, DIAC reported that the Australian Government was working towards ratification of OPCAT in 2010. The Commission urges the government to work towards this goal as a matter of priority.

Further, as discussed in section 19 above, the Commission is of the view that there is a need for rigorous, independent and ongoing monitoring of the delivery of health and mental health services in immigration detention facilities on Christmas Island and the mainland. An independent body should be charged with this function and the Australian Government should ensure that adequate resources are allocated to that body to fulfil the function.

Recommendation 26:

The Australian Government should ratify the *Optional Protocol to the Convention against Torture* and establish an independent and adequately resourced National Preventive Mechanism to conduct regular inspections of all places of detention. This should include all immigration detention facilities, including those located in excised offshore places.

Appendix 1: Conduct of visit

The Commission conducted a visit to Australia's immigration detention facilities on Christmas Island from 28 May to 3 June 2010. The visit was conducted by three Commission staff members.

The Commission's visit to Christmas Island was arranged with DIAC in advance.

During its visit the Commission undertook the following activities:

- entry and exit meetings with DIAC and Serco management
- meetings with DIAC Case Managers
- meetings with Serco staff
- meetings with staff members of health and mental health service providers
- inspections of the Christmas Island IDC, the Construction Camp immigration detention facility and the Phosphate Hill immigration detention facility
- individual and group meetings with people detained at the Christmas Island IDC, the Construction Camp immigration detention facility and the Phosphate Hill immigration detention facility
- participation in a 'Client Consultative Committee' meeting at the Construction Camp immigration detention facility
- a meeting with Life Without Barriers Independent Observers
- meetings with representatives of the Attorney-General's Department and the Christmas Island Shire Council
- meetings with representatives of the Christmas Island District High School, local religious groups and other local community representatives.

Positive developments and key concerns arising from the visit were discussed with DIAC and Serco management in exit meetings on Christmas Island on 3 June 2010. The Commission subsequently raised key concerns in discussions with a range of senior DIAC officers following the visit.

Appendix 2: Relevant human rights standards

Human rights for all people in immigration detention

Conditions in immigration detention should comply with Australia’s international human rights obligations. These are contained in a range of treaties the Australian Government has voluntarily become a party to, including:

- the *International Covenant on Civil and Political Rights*³²¹
- the *International Covenant on Economic, Social and Cultural Rights*³²²
- the *Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*³²³
- the *Convention Relating to the Status of Refugees and Protocol Relating to the Status of Refugees*³²⁴
- the *Convention on the Rights of the Child*.³²⁵

These treaties protect a wide range of fundamental rights and freedoms. Those most relevant to people in immigration detention include the following:

Everyone has the right to liberty and security of the person. No one should be subjected to arbitrary arrest or detention. ³²⁶
Anyone deprived of his or her liberty has the right to challenge the lawfulness of his or her detention before a court. ³²⁷
Anyone detained should have access to independent legal advice and assistance. ³²⁸
All persons deprived of their liberty should be treated with humanity and respect for the inherent dignity of the human person. ³²⁹
No one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment. ³³⁰
The detention of a child should be used only as a measure of last resort and for the shortest appropriate period of time. ³³¹
Everyone is entitled to respect for their human rights without discrimination. ³³²
The principle of <i>non-refoulement</i> prohibits Australia from returning a refugee to a country where his or her life or freedom would be threatened. ³³³

In addition, there are a range of international guidelines relating specifically to the treatment of persons in detention. These include:

- the *Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment*³³⁴
- the *Standard Minimum Rules for the Treatment of Prisoners*³³⁵
- the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*³³⁶

- UNHCR guidelines, including the *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers* and the *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*.³³⁷

In 2000, the Commission drew upon relevant human rights treaties and international guidelines as a basis for developing the *Immigration Detention Guidelines*.³³⁸ These Guidelines are intended to act as a minimum benchmark against which conditions in Australia’s immigration detention facilities can be measured.

Human rights for children in immigration detention

The international human rights that apply to adults (set out above) also apply to children. In addition, all children are entitled to enjoy the human rights set out in the *Convention on the Rights of the Child*, which Australia is a party to. Human rights of particular importance for asylum-seeking children and children in immigration detention include the following:

The best interests of the child should be a primary consideration in all actions concerning children. ³³⁹
The detention of a child should be used only as a measure of last resort and for the shortest appropriate period of time. Children must not be deprived of their liberty unlawfully or arbitrarily. ³⁴⁰
No child should be subjected to torture or cruel, inhuman or degrading treatment or punishment. Children in detention have the right to be treated with humanity and respect for their inherent dignity, and in a manner which takes into account the needs of persons of their age. ³⁴¹
Detained children must be able to challenge the legality of their detention before a court or other competent, independent and impartial authority. ³⁴²
Asylum-seeking and refugee children are entitled to appropriate protection and assistance. ³⁴³
Children are not to be separated from their parents against their will, except when competent authorities subject to judicial review determine that separation is necessary for the best interests of the child. ³⁴⁴
Children lacking the support of their parents are entitled to special protection and assistance from the government. The government must arrange alternative care for such children. ³⁴⁵
Children have the right to enjoy, to the maximum extent possible, development and recovery from past trauma. ³⁴⁶
Children have a right to non-discrimination. ³⁴⁷

Endnotes

- 1 The Commission's reports of complaints about alleged human rights breaches in immigration detention are available at www.humanrights.gov.au/legal/humanrightsreports/index.html. The Commission's national inquiry reports are *A last resort? National inquiry into Children in Immigration Detention* (2004) (A last resort), at www.humanrights.gov.au/human_rights/children_detention_report/index.html (viewed 2 August 2010), and *Those who've come across the seas: Detention of unauthorised arrivals* (1998) (Those who've come across the seas), at www.humanrights.gov.au/human_rights/immigration/seas.html (viewed 2 August 2010).
- 2 See, for example A last resort, note 1; Those who've come across the seas, note 1.
- 3 The Commission's activities have included two national inquiries; inspections of immigration detention facilities; developing minimum standards for the protection of human rights in immigration detention; submissions to parliamentary inquiries; investigating complaints from individuals in detention; examining proposed legislation and commenting on government policies; and raising public awareness. Further details are available at www.humanrights.gov.au/human_rights/immigration/detention_rights.html#9.
- 4 The Commission's 2006, 2007 and 2008 immigration detention inspection reports are available at www.humanrights.gov.au/human_rights/immigration/detention_rights.html#9_4.
- 5 Australian Human Rights Commission, *2009 Immigration detention and offshore processing on Christmas Island* (2009) (2009 Christmas Island report). At www.humanrights.gov.au/human_rights/immigration/idc2009_xmas_island.html (viewed 2 August 2010).
- 6 See 2009 Christmas Island report, note 5, sections 2, 9-13.
- 7 See 2009 Christmas Island report, note 5, sections 2, 6-8.
- 8 See 2009 Christmas Island report, note 5, section 3.
- 9 See, for example Amnesty International, *Australia: Submission to the United Nations Universal Periodic Review: Tenth Session of the UPR Working Group of the Human Rights Council* (2010), at <http://amnesty.name/en/library/info/ASA12/001/2010/en> (viewed 2 August 2010); Refugee Council of Australia, *Submission to the United Nations Human Rights Council Towards the Universal Periodic Review of Australia* (2010), at www.refugeecouncil.org.au/resources/submissions.html (viewed 6 August 2010); Refugee Council of Australia, *Australia's Refugee and Humanitarian Program 2010/2011: Community Views on Current Challenges and Future Directions* (2010), pp 52-53, at www.refugeecouncil.org.au/resources/consultations.html (viewed 2 August 2010); Uniting Church in Australia National Assembly & Anglican Church, Diocese of Perth, 'Church leaders voice concerns for wellbeing of asylum seekers on Christmas Island' (Media Release, 2 March 2010), at www.unitingjustice.org.au/component/content/article/8-refugeesandasyllum/212-mrchristmasisland020310.html (viewed 2 August 2010); United Nations Human Rights Committee, *Concluding observations of the Human Rights Committee: Australia*, UN Doc. CCPR/C/AUS/CO/5 (2009), para 23, at www2.ohchr.org/english/bodies/hrc/docs/co/CCPR-C-AUS-CO-5.doc (viewed 2 August 2010); United Nations Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Australia*, UN Doc. E/C.12/AUS/CO/4 (2009), para 25, at www2.ohchr.org/english/bodies/cescr/docs/AdvanceVersions/E-C12-AUS-CO-4.doc (viewed 2 August 2010); A Grover, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Mission to Australia*, UN Doc A/HRC/14/30/Add.4 (2010), pp 21-24, at www.unhcr.org/refworld/docid/49faf7652.html (viewed 2 August 2010).
- 10 Section 494AA(1)(c) of the *Migration Act 1958* (Cth) states that: 'The following proceedings against the Commonwealth may not be instituted or continued in any court: (c) proceedings relating to the lawfulness of the detention of an offshore entry person during the ineligibility period, being a detention based on the status of the person as an unlawful non-citizen'. Note, however, that section 494AA(3) states that nothing in section 494AA is intended to affect the jurisdiction of the High Court under section 75 of the Australian Constitution.
- 11 See *Universal Declaration of Human Rights* (1948) (UDHR), arts 9, 14, at www.un.org/en/documents/udhr/ (viewed 5 August 2010); *International Covenant on Civil and Political Rights* (1966) (ICCPR), arts 9, 10, at www2.ohchr.org/english/law/ccpr.htm (viewed 5 August 2010); *Convention on the Rights of the Child* (1989) (CRC), art 37, at www2.ohchr.org/english/law/crc.htm (viewed 5 August 2010).
- 12 To comply with article 9(4) of the ICCPR, the court must have the power to order the person's release if their detention is not lawful. The lawfulness of their detention is not limited to domestic legality - it includes whether the detention is compatible with the requirements of article 9(1) of the ICCPR. See, for example, United Nations Human Rights Committee, *A v Australia*, Communication No. 560/1993, UN Doc CCPR/C/59/D/560/1993 (1997), para 9.5. At www.unhchr.ch/tbs/doc.nsf/o/30c417539ddd944380256713005e80d3?Opendocument (viewed 16 September 2010).
- 13 See A last resort, note 1, chapter 17.
- 14 See Joint Standing Committee on Migration, *Immigration detention in Australia: Facilities, services and transparency* (2009), p 57. At www.aph.gov.au/house/committee/MIG/detention/report3/fullreport.pdf (viewed 15 September 2010).
- 15 See, for example Minister for Immigration and Citizenship, 'Rudd Government committed to Christmas Island detention' (Media Release, 18 August 2009), at www.minister.immi.gov.au/media/media-releases/2009/ce09074.htm (viewed 2 August 2010); Department of Immigration and Citizenship, *Processing Irregular Maritime Arrivals, Fact Sheet 75*, at www.immi.gov.au/media/fact-sheets/75processing-irregular-maritime-arrivals.htm (viewed 2 August 2010).
- 16 In 2001, the Migration Act was amended to designate a number of islands as 'excised offshore places'. See *Migration Act 1958* (Cth), s 5(1). The amendments were made pursuant to the *Migration Amendment (Excision from the Migration Zone) Act 2001* (Cth). Further islands were excised by the *Migration Amendment Regulations 2005* (No. 6) (Cth), reg 5.15C.

- 17 DIAC provided the Commission with figures current as of 27 May 2010. These figures list the nationality of the 2421 people in immigration detention on Christmas Island as follows: 1322 from Afghanistan, 640 from Sri Lanka, 166 stateless, 103 from Iran, 85 from Iraq, 33 Burmese, 24 from Indonesia, 10 not yet known, 8 from Vietnam, 7 from Kuwait, 7 from Somalia, 6 Beduin, 4 from Myanmar, 3 Kurdish, 1 from Bangladesh, 1 from Pakistan and 1 from Yemen.
- 18 See 2009 Christmas Island report, note 5, section 5.3.
- 19 Figures provided by DIAC, current as of 27 May 2010. The number of detainees on Christmas Island fluctuated during the Commission's visit. On the final day of the visit (3 June 2010), there were 2435 people in immigration detention on the island.
- 20 Figures provided by DIAC, current as of 27 May 2010.
- 21 Figures provided by DIAC, current as of 5 August 2010.
- 22 As of 10 August 2010, the highest number of people detained on Christmas Island at any one time was 2652 people on 22 July 2010. Figures provided by DIAC.
- 23 Of the 2421 people detained on Christmas Island, 1765 had been detained for less than three months. This figure is taken from statistics provided by DIAC, current as of 27 May 2010.
- 24 These figures are taken from statistics provided by DIAC, current as of 27 May 2010.
- 25 When the Commission visited the Christmas Island IDC on 28 May 2010, there were 1834 men detained there. This had increased to 1877 men by the final day of the Commission's visit to Christmas Island (3 June 2010). Figures provided by DIAC.
- 26 Figures provided by DIAC, current as of 28 May 2010. The number of people detained in the Construction Camp had decreased to 391 by the final day of the Commission's visit to Christmas Island (3 June 2010).
- 27 Figures provided by DIAC, current as of 28 May 2010.
- 28 Under section 197AB of the *Migration Act 1958* (Cth), the Minister for Immigration has the power to issue a Residence Determination permitting an immigration detainee to live at a specified location in the community. This is known as Community Detention.
- 29 As of 27 May 2010, there were three people in Community Detention on Christmas Island including one adult male, one adult female and one three year old boy. Figures provided by DIAC.
- 30 Figures provided by DIAC, current as of 27 May 2010. The number of detainees on Christmas Island fluctuated during the Commission's visit. On the final day of the visit (3 June 2010), there were 2435 people in immigration detention on the island.
- 31 The Christmas Island IDC was constructed with a regular capacity of 400 and a surge capacity of 800. Its capacity has since been progressively increased. When the Commission visited, there were 1834 men detained in the IDC. The capacity of the Construction Camp facility is 310 people, according to DIAC. During the Commission's visit, there were 418 people detained in the Camp. The regular capacity of the Phosphate Hill facility is 48 people. It has been increased to a surge capacity of 168 by adding three large tents. When the Commission visited, there were 164 men detained in the facility. Figures provided by DIAC, current as of 28 May 2010.
- 32 These 'alternative places of detention' include a detention facility established in Leonora, Western Australia and several hotels and lodges used on a temporary basis in Perth, Brisbane and Darwin. People detained in these 'alternative places of detention' remain under supervision in immigration detention. They are not free to come and go.
- 33 See, for example 2009 Christmas Island report, note 5, recommendation 3; Australian Human Rights Commission, *2008 Immigration detention report: Summary of observations following visits to Australia's immigration detention facilities* (2008 Immigration detention report), section 13, at www.humanrights.gov.au/human_rights/immigration/idc2008.pdf (viewed 15 September 2010).
- 34 See, for example Australian Human Rights Commission, 'World Refugee Day should remind us of our responsibilities to people seeking asylum' (Media Release, 20 June 2010). At www.humanrights.gov.au/about/media/media_releases/2010/60_10.html (viewed 2 August 2010).
- 35 *Migration Act 1958* (Cth), s 5(1). See further note 16.
- 36 *Migration Act 1958* (Cth), s 46A.
- 37 See 2009 Christmas Island report, note 5, sections 6-8.
- 38 See 2009 Christmas Island report, note 5, sections 2, 6-8.
- 39 Department of Immigration and Citizenship, *Response to the Australian Human Rights Commission's 2009 Immigration Detention and Offshore Processing on Christmas Island Report* (2009) (DIAC 2009 response), pp 4-5. At www.humanrights.gov.au/human_rights/immigration/idc2009_xmas_island_response.html (viewed 3 August 2010).
- 40 See, for example 2009 Christmas Island report, note 5, sections 8.2, 12.4.
- 41 See further 2009 Christmas Island report, note 5, sections 2, 8.
- 42 See 2009 Christmas Island report, note 5, sections 3, 8.
- 43 Figures provided by DIAC, current as of 7 July 2009.
- 44 See 2009 Christmas Island report, note 5, section 8.2.
- 45 Figures provided by DIAC, current as of 14 July 2010.
- 46 Figures provided by DIAC, current as of 14 July 2010.
- 47 See further 2009 Christmas Island report, note 5, section 8.
- 48 An asylum seeker who arrives on the mainland or in another non-excised part of Australia has access to the refugee status determination system under the Migration Act. As a general rule, they have access to independent merits review by either the Refugee Review Tribunal (RRT) or, in some circumstances, the Administrative Appeals Tribunal (AAT), if they are refused a protection visa. See *Migration Act 1958* (Cth), ss 411(1)(c), 500(1)(b), 500(1)(c), 501(1). Asylum seekers who arrive in excised offshore places are barred from accessing these mechanisms, by virtue of the bar in section 46A(1) of the Migration Act which prevents these asylum seekers from lodging a 'valid application' for a visa, including a protection visa.

- 49 The Minister's discretionary power is provided in section 46A(2) of the *Migration Act 1958* (Cth).
- 50 Figures provided by DIAC, current as of 14 July 2010.
- 51 See C Evans, Minister for Immigration and Citizenship, 'Changes to Australia's Immigration Processing System' (Joint Media Release with Stephen Smith, Minister for Foreign Affairs and Brendan O'Connor, Minister for Home Affairs, 9 April 2010). At www.minister.immi.gov.au/media/media-releases/2010/ce10029.htm (viewed 2 August 2010).
- 52 See Australian Human Rights Commission, 'Suspension of processing asylum seekers raises serious concerns' (Media Release, 9 April 2010). At www.humanrights.gov.au/about/media/media_releases/2010/29_10.html (viewed 2 August 2010).
- 53 See Australian Human Rights Commission, 'More detail needed on new asylum seeker policy' (Media Release, 6 July 2010). At www.humanrights.gov.au/about/media/media_releases/2010/71_10.html (viewed 2 August 2010).
- 54 Information provided by DIAC on 10 August 2010.
- 55 See Australian Human Rights Commission, 'More detail needed on new asylum seeker policy', note 53.
- 56 Information provided by DIAC on 7 October 2010.
- 57 CRC, note 11, art 37.
- 58 ICCPR, note 11, art 9.
- 59 See A last resort, note 1, chapter 9.
- 60 See A last resort, note 1, chapter 9 and Executive Summary, Part A, Major Finding 2.
- 61 Interview with approximately 40-50 Afghan men, Christmas Island IDC, 1 June 2010.
- 62 Interview with Afghan women and their children, Construction Camp, 30 May 2010.
- 63 See Australian Human Rights Commission, 'Lifting the suspension of processing of Afghan asylum claims a positive step' (Media Release, 30 September 2010). At www.humanrights.gov.au/about/media_releases/2010/94_10.html (viewed 7 October 2010).
- 64 See C Evans, *New Directions in Detention – Restoring Integrity to Australia's Immigration System* (Speech delivered at the Centre for International and Public Law Seminar, Australian National University, Canberra, 29 July 2008) (New Directions). At www.minister.immi.gov.au/media/speeches/2008/ce080729.htm (viewed 10 August 2010).
- 65 See further Australian Human Rights Commission, *Submission to the Senate Standing Committee on Legal and Constitutional Affairs on the Migration Amendment (Immigration Detention Reform) Bill 2009* (2009). At www.humanrights.gov.au/legal/submissions/2009/20090731_migration.html (viewed 2 August 2010).
- 66 Under section 196(1) of the *Migration Act 1958* (Cth), an unlawful non-citizen detained under section 189 of the Act must be kept in immigration detention until he or she is granted a visa or removed or deported from Australia.
- 67 Figures based on statistics provided by DIAC, current as of 15 July 2009.
- 68 Figures based on statistics provided by DIAC, current as of 27 May 2010.
- 69 See New Directions, note 64.
- 70 See 2009 Christmas Island report, note 5, section 9.3.
- 71 Interviews with two groups of Sri Lankan men, Christmas Island IDC, 1 June 2010. One group consisted of approximately 20 people; the other consisted of approximately 50 people.
- 72 Interview at Christmas Island IDC, 1 June 2010.
- 73 Offshore entry persons are prevented from lodging a 'valid application' for a visa, including a bridging visa, by section 46A(1) of the *Migration Act*. However, the Minister could exercise his or her discretion under section 46A(2) of the Act to permit an individual to apply for a bridging visa. Alternatively, the Minister could exercise his or her discretion under section 195A of the Act to grant an individual a bridging visa.
- 74 See, for example Those who've come across the seas, note 1; A last resort, note 1; Human Rights and Equal Opportunity Commission, *Submission to the Joint Standing Committee on Migration Inquiry into Immigration Detention in Australia* (2008), at www.humanrights.gov.au/legal/submissions/2008/20080829_immigration_detention.html (viewed 10 August 2010).
- 75 See *Migration Act 1958* (Cth), ss 189(3), 189(4).
- 76 See 2009 Christmas Island report, note 5, section 9.1.
- 77 United Nations High Commissioner for Refugees, *Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers* (1999), guideline 3. At www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3c2b3f844 (viewed 9 August 2010).
- 78 See New Directions, note 64.
- 79 See 2009 Christmas Island report, note 5, section 9.2.
- 80 ICCPR, note 11, art 9.
- 81 CRC, note 11, art 37(b).
- 82 Four of these individuals are members of a family, consisting of parents with two young children. In this case, the parents received adverse security assessments from ASIO.
- 83 See New Directions, note 64; DIAC 2009 response, note 39, p 6.
- 84 See 2009 Christmas Island report, note 5, section 9.2.
- 85 See Joint Standing Committee on Migration, *First report of the inquiry into immigration detention: Immigration detention in Australia, A new beginning* (2008), recommendations 10, 11. At www.aph.gov.au/house/committee/mig/detention/report.htm (viewed 9 August 2010).
- 86 Under article 9(4) of the ICCPR, any person arrested or otherwise detained is to be brought before a court without delay: 'Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.' The lawfulness of the person's detention is not limited to domestic legality – it includes whether the detention is compatible with the requirements of article 9(1) of the ICCPR. See, for example *A v Australia*, note 12.

- 87 See note 10.
- 88 See DIAC 2009 response, note 39, p 6; Joint Standing Committee on Migration, note 85, recommendation 14.
- 89 See note 12.
- 90 See 2009 Christmas Island report, note 5, sections 9.3, 9.4, 13.1.
- 91 As of 27 May 2010, there were three people in Community Detention on Christmas Island including one adult male, one adult female and one three year old boy. Figures provided by DIAC.
- 92 Figures provided by DIAC, current as of 5 August 2010.
- 93 Minister for Immigration and Citizenship, *Minister's Residence Determination Power Under S. 197AB and S. 197AD of the Migration Act 1958: Guidelines* (2009) (Residence Determination Guidelines), paras 4.14, 4.15.
- 94 Residence Determination Guidelines, above, para 5.2.1.
- 95 See *Migration Act 1958* (Cth), ss 5, 197AC.
- 96 See Residence Determination Guidelines, note 93, paras 5.12, 5.13.
- 97 See further Australian Human Rights Commission, *Submission to the Senate Standing Committee on Legal and Constitutional Affairs on the Migration Amendment (Immigration Detention Reform) Bill 2009*, note 65, section 14.
- 98 See 2009 Christmas Island report, note 5, section 11.
- 99 Figures provided by DIAC, current as of 28 May 2010.
- 100 Figures provided by DIAC, current as of 27 May 2010.
- 101 See A last resort, note 1, chapter 3.
- 102 See A last resort, note 1, Executive Summary, Part A, Major Finding 1.
- 103 See A last resort, note 1, chapter 9 and Executive Summary, Part A, Major Finding 2.
- 104 *Migration Act 1958* (Cth), s 4AA.
- 105 See 2009 Christmas Island report, note 5, section 11.2.
- 106 See *Migration Act 1958* (Cth), ss 189(3), 189(4).
- 107 See 2009 Christmas Island report, note 5, section 11.2.
- 108 See further A last resort, note 1, section 4.3.2; UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum* (1997), guidelines 7.6, 7.7, at www.unhcr.org/3d4f91cf4.html (viewed 10 August 2010); UNHCR, *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*, note 77, guideline 6.
- 109 See further A last resort, note 1, chapters 6, 17; 2009 Christmas Island report, note 5, section 11.5.
- 110 See, for example Australian Human Rights Commission, *Submission to the Senate Standing Committee on Legal and Constitutional Affairs on the Migration Amendment (Immigration Detention Reform) Bill 2009*, note 65, section 7; 2009 Christmas Island report, note 5, section 11.
- 111 See Australian Human Rights Commission, *Submission to the Senate Standing Committee on Legal and Constitutional Affairs on the Migration Amendment (Immigration Detention Reform) Bill 2009*, note 65.
- 112 Figures provided by DIAC, current as of 5 August 2010.
- 113 See A last resort, note 1, chapter 17.
- 114 See New Directions, note 64.
- 115 See 2009 Christmas Island report, note 5, section 11.3.
- 116 In DIAC's published statistics, people detained at the Construction Camp are counted as being in 'Alternative Temporary Detention in the Community' on Christmas Island. See, for example Department of Immigration and Citizenship, *Immigration detention statistics summary* (30 July 2010). At www.immi.gov.au/managing-australias-borders/detention/facilities/statistics/ (viewed 16 September 2010).
- 117 See DIAC 2009 response, note 39, pp 10-11.
- 118 See further Australian Human Rights Commission, *Submission to the Senate Standing Committee on Legal and Constitutional Affairs on the Migration Amendment (Immigration Detention Reform) Bill 2009*, note 65.
- 119 See *Migration Act 1958* (Cth), s 197AB.
- 120 See 2009 Christmas Island report, note 5, section 11.
- 121 See DIAC 2009 response, note 39, p 10.
- 122 Figures provided by DIAC, current as of 28 May 2010.
- 123 At the time of writing, there were 1950 irregular maritime arrivals in detention on the mainland, including 439 minors. Only seven of these people were in Community Detention. Figures provided by DIAC, current as of 5 August 2010.
- 124 Residence Determination Guidelines, note 93, paras 4.1.4, 6.1.2.
- 125 See CRC, note 11, art 28.
- 126 See Human Rights and Equal Opportunity Commission, *Immigration Detention Guidelines* (2000), section 6. At www.humanrights.gov.au/human_rights/immigration/idc_guidelines2000.html (viewed 10 August 2010).
- 127 Information provided by DIAC, current as of 28 May 2010.
- 128 Figures provided by DIAC, current as of 28 May 2010.
- 129 CRC, note 11, arts 28, 31. See further A last resort, note 1, chapters 12, 13, 15.
- 130 UNHCR, *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*, note 77, guideline 6.
- 131 Figures provided by DIAC, current as of 28 May 2010.
- 132 Figures provided by DIAC, current as of 27 May 2010.
- 133 See Immigration Detention Guidelines, note 126, section 8.2. See also CRC, note 11, arts 6(2), 24, 27; *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (1990), rules 37, 49, at www2.ohchr.org/english/law/res45_113.htm (viewed 10 August 2010).
- 134 See CRC, note 11, art 19(1).

- 135 See further A last resort, note 1, chapter 8.
- 136 See, for example A last resort, note 1, chapter 5.
- 137 See 2009 Christmas Island report, note 5, section 11.6.
- 138 As above.
- 139 See DIAC 2009 response, note 39, p 12.
- 140 Department of Immigration, Procedures Advice Manual 3 (PAM 3), Detention Services Manual, Chapter 2, Client placement, Minors in detention, para 18.3 (November 2009).
- 141 See DIAC 2009 response, note 39, p 12.
- 142 Serco, *Immigration Detention Centres - Other Places of Detention (APOD): People in Detention Under 18 Years, Draft Procedure* (Serco draft policy on children) (13 April 2010), section 14.
- 143 CRC, note 11, art 37(b).
- 144 UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, note 108, guidelines 7.6, 7.7. See also UNHCR, *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*, note 77, guideline 6.
- 145 CRC, note 11, art 20.
- 146 Figures provided by DIAC, current as of 28 May 2010.
- 147 Serco draft policy on children, note 142, section 3.1.
- 148 Serco draft policy on children, note 142, section 5.3.
- 149 DIAC, *The role of Independent Person* (document provided by DIAC, 29 June 2010).
- 150 Current as of 28 May 2010.
- 151 Interview with group of unaccompanied minors, Construction Camp, 30 May 2010.
- 152 Interview with group of unaccompanied minors, Construction Camp, 30 May 2010.
- 153 CRC, note 11, art 20.
- 154 CRC, note 11, art 18(1).
- 155 See *Immigration (Guardianship of Children) Act 1946* (Cth), s 6.
- 156 See *Immigration (Guardianship of Children) Act 1946* (Cth), s 5.
- 157 See, for example A last resort, note 1, chapter 14; 2008 Immigration detention report, note 33, section 14.5; 2009 Christmas Island report, note 5, section 11.8.
- 158 See for example A last resort, note 1, chapters 14, 17; 2009 Christmas Island report, note 5, section 11.8.
- 159 UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, note 108, guideline 5.7.
- 160 See 2009 Christmas Island report, note 5, section 11.8.
- 161 See DIAC 2009 response, note 39, p 13.
- 162 Figures provided by DIAC, current as of 27 May 2010. The number of detainees fluctuated during the Commission's visit. On the final day of the Commission's visit (3 June 2010), there were 2435 people in immigration detention on Christmas Island.
- 163 See Immigration Detention Guidelines, note 126, section 1.4(a).
- 164 When the Commission visited the Christmas Island IDC on 28 May 2010, there were 1834 men detained there. This had increased to 1877 men by the final day of the Commission's visit to Christmas Island (3 June 2010). Figures provided by DIAC.
- 165 See 2008 Immigration detention report, note 33, section 13.5.
- 166 See 2009 Christmas Island report, note 5, section 12.1.
- 167 See note 14.
- 168 See DIAC 2009 response, note 39, p 14.
- 169 See 2009 Christmas Island report, note 5, sections 12.2, 12.3.
- 170 *Migration Act 1958* (Cth), ss 13, 14, 189.
- 171 See Immigration Detention Guidelines, note 126, section 1.1.
- 172 See New Directions, note 64.
- 173 See note 14.
- 174 See note 164.
- 175 On 22 July 2010, there were 2037 people detained in the Christmas Island IDC. Figures provided by DIAC, August 2010.
- 176 Figures provided by DIAC, current as of 28 May 2010.
- 177 On 22 July 2010, there were 238 people in the tents at the Christmas Island IDC. Figures provided by DIAC, August 2010.
- 178 Figures provided by DIAC, current as of 28 May 2010.
- 179 Interview with group of male detainees, Gold Compound, Christmas Island IDC, 1 June 2010.
- 180 See Immigration Detention Guidelines, note 126, section 9.1.
- 181 See Immigration Detention Guidelines, note 126, section 11.2.
- 182 See Immigration Detention Guidelines, note 126, section 9.3.
- 183 See Immigration Detention Guidelines, note 126, section 9.7.
- 184 Interviews with male detainees, tents in Red Compound, Christmas Island IDC, 29 May 2010.
- 185 Interview with group of male detainees, Aqua Compound, Christmas Island IDC, 29 May 2010.
- 186 Interview with male detainee, tents in Red Compound, Christmas Island IDC, 29 May 2010.
- 187 For example, interview with group of male detainees, tents in Red Compound, Christmas Island IDC, 29 May 2010.

- 188 Figures provided by DIAC, current as of 28 May 2010.
- 189 Interview with group of male detainees, Lilac Compound, Christmas Island IDC, 29 May 2010.
- 190 Interview with community representative on Christmas Island, 31 May 2010.
- 191 Figures provided by DIAC, current as of 28 May 2010.
- 192 See 2008 Immigration detention report, note 33, section 13.5; 2009 Christmas Island report, note 5, section 12.1.
- 193 2009 Christmas Island report, note 5, section 12.1.
- 194 Information provided by DIAC, current as of 29 June 2010.
- 195 See, for example ICCPR, note 11, art 10; Immigration Detention Guidelines, note 126, section 1.3; *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (1988) (Body of Principles), principle 1, at www2.ohchr.org/english/law/bodyprinciples.htm (viewed 10 August 2010).
- 196 See, for example ICCPR, note 11, art 7; *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984) (CAT), art 2(1), at www2.ohchr.org/english/law/cat.htm (viewed 10 August 2010); Immigration Detention Guidelines, note 126, section 17.1; Body of Principles, note 195, principle 6.
- 197 See Immigration Detention Guidelines, note 126, section 9.7.
- 198 See Immigration Detention Guidelines, note 126, section 17.7. See also *International Covenant on Economic, Social and Cultural Rights* (1966) (ICESCR), art 12. At www2.ohchr.org/english/law/cescr.htm (viewed 10 August 2010).
- 199 DIAC, *Use of Red Compound, North West Point IDC* (document provided by DIAC, current as of 29 June 2010).
- 200 ICCPR, note 11, art 9.
- 201 See, for example Human Rights and Equal Opportunity Commission, *Report of an inquiry into complaints by five asylum seekers concerning their detention in the separation and management block at the Port Hedland Immigration Reception and Processing Centre, HREOC Report No. 24 (2002)*. At www.humanrights.gov.au/legal/humanrightsreports/hrc_24.html (viewed 11 August 2010).
- 202 See, for example Department of Immigration and Citizenship, *Immigration detention statistics summary* (30 July 2010). At www.immi.gov.au/managing-australias-borders/detention/facilities/statistics/ (viewed 16 September 2010).
- 203 See 2008 Immigration detention report, note 33, section 13.5.
- 204 Figures provided by DIAC, current as of 28 May 2010.
- 205 Figures provided by DIAC, current as of 28 May 2010.
- 206 On 22 July 2010, there were 187 people detained in the Phosphate Hill immigration detention facility, including 118 in tents. Figures provided by DIAC.
- 207 Figures provided by DIAC, current as of 28 May 2010.
- 208 On 22 July 2010, there were 187 detainees in the Phosphate Hill immigration detention facility, including 118 in tents. Figures provided by DIAC.
- 209 See Immigration Detention Guidelines, note 126, sections 9.1, 11.2.
- 210 Figures provided by DIAC, current as of 28 May 2010. The number of people detained in the Construction Camp had decreased to 391 by the final day of the Commission's visit to Christmas Island (3 June 2010).
- 211 See note 116.
- 212 See 2008 Immigration detention report, note 33, section 13.5.
- 213 See 2009 Christmas Island report, note 5, sections 11.3, 12.1.
- 214 When the Commission visited the Construction Camp in July 2009, there were 99 people detained there - 25 men, 21 women, 17 accompanied children and 36 unaccompanied children.
- 215 See note 210.
- 216 On 19 April 2010 there were 429 people detained in the Construction Camp facility. Information provided by DIAC, 3 June 2010.
- 217 76 people in Block A, and 14 people in the converted recreation room.
- 218 Interview with group of young women, Construction Camp, 1 June 2010.
- 219 See Immigration Detention Guidelines, note 126, sections 9.1, 9.7, 11.2.
- 220 See note 195.
- 221 See New Directions, note 64, key immigration values 6 and 7.
- 222 See, for example 2008 Immigration detention report, note 33, section 2.
- 223 Contract between Commonwealth of Australia represented by Department of Immigration and Citizenship and Serco Australia Pty Limited, *Detention Services Contract - Immigration Detention Centres* (Serco IDC Contract), Schedule 2 Statement of Work, Section 2.2.1, clause 1.1.
- 224 Interview with Afghan man, Construction Camp, 30 May 2010.
- 225 Interview with Iranian man, Christmas Island IDC, 29 May 2010.
- 226 Interview with Sri Lankan men, Christmas Island IDC, 29 May 2010.
- 227 For example, interview with large group of Afghan men, Christmas Island IDC, 29 May 2010.
- 228 Interview with Sri Lankan men, Christmas Island IDC, 29 May 2010.
- 229 See ICESCR, note 198, art 12; CRC, note 11, art 24.
- 230 See Immigration Detention Guidelines, note 126, section 13.
- 231 See 2008 Immigration detention report, note 33, section 13; 2009 Christmas Island report, note 5, section 12.5.
- 232 These include DIAC, *Identification and Support of People in Immigration Detention who are Survivors of Torture and Trauma* (April 2009); DIAC, *Psychological Support Program for the Prevention of Self Harm in Immigration Detention* (April 2009); DIAC, *Mental Health Screening for People in Immigration Detention* (April 2009).
- 233 See, for example MJ Palmer, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau* (2005) (Palmer report), recommendations 6.11, 6.12, 6.13, at www.immi.gov.au/media/publications/pdf/palmer-report.pdf (viewed 10 August 2010); A Grover, note 9, para 90.

- 234 Palmer report, above, recommendation 6.11.
- 235 E Proust, *Evaluation of the Palmer and Comrie Reform Agenda – including related Ombudsman Reports* (2008). At www.immi.gov.au/about/departments/perf-progress/evaluation-report/ (viewed 10 August 2010).
- 236 Joint Standing Committee on Migration, note 14, p 91.
- 237 See 2009 Christmas Island report, note 5, section 12.5.
- 238 For example, interview with group of male detainees, Christmas Island IDC, 29 May 2010.
- 239 Australian Government, Department of Immigration and Citizenship, *Health Services Contract*, Schedule 2 Statement of Work, clause 24.1(g)(i).
- 240 Australian Government, Department of Immigration and Citizenship, *Health Services Contract*, Schedule 2 Statement of Work, clause 17.1(d).
- 241 For example, interviews with male detainees, Christmas Island IDC, 29 May 2010.
- 242 Residence Determination Guidelines, note 93, paras 4.14, 4.15.
- 243 See ICESCR, note 198, art 12; CRC, note 11, art 24.
- 244 See Immigration Detention Guidelines, note 126, section 14; *Standard Minimum Rules for the Treatment of Prisoners* (1955), rule 22(1), at www2.ohchr.org/english/law/treatmentprisoners.htm (viewed 10 August 2010).
- 245 DIAC, *Mental health screening for people in immigration detention* (April 2009).
- 246 DIAC, *Psychological Support Program for the Prevention of Self-Harm in Immigration Detention* (April 2009).
- 247 See, for example A last resort, note 1, chapter 9; GJ Coffey et al., 'The meaning and mental health consequences of long-term immigration detention for people seeking asylum' (2010) 70(12) *Social Science & Medicine* 2070.
- 248 Interview with Sri Lankan man, Christmas Island IDC, 29 May 2010.
- 249 Interview with Arabic speaking man, Christmas Island IDC, 29 May 2010.
- 250 Interview with group of asylum seekers, Construction Camp, 31 May 2010.
- 251 Interview with group of Sri Lankan men, Christmas Island IDC, 29 May 2010.
- 252 See, for example 2008 Immigration detention report, note 33, section 8.
- 253 See, for example Human Rights and Equal Opportunity Commission, *Submission to Joint Standing Committee on Migration*, note 74; A last resort, note 1.
- 254 Australian Government, Department of Immigration and Citizenship, *Health Services Contract*, Schedule 2 Statement of Work, clause 24.1(b)(i). Note the one current exception to this is Northern IDC in Darwin.
- 255 Information provided by DIAC, 29 June 2010.
- 256 See Immigration Detention Guidelines, note 126, section 14.4.
- 257 DIAC, *Identification and Support of People in Immigration Detention Who are Survivors of Torture and Trauma* (April 2009).
- 258 Interview with group of male detainees, Christmas Island IDC, 29 May 2010.
- 259 DIAC, *Identification and Support of People in Immigration Detention Who are Survivors of Torture and Trauma* (April 2009), p 3.
- 260 As above.
- 261 Residence Determination Guidelines, note 93, para 4.1.4.
- 262 Figures provided by DIAC, current as of 27 May 2010.
- 263 See Immigration Detention Guidelines, note 126, sections 2.1-2.6.
- 264 See 2009 Christmas Island report, note 5, section 12.2.
- 265 Serco IDC Contract, note 223, Schedule 2 Statement of Work, Section 2.2.1, clause 2.4.2.
- 266 See 2009 Christmas Island report, note 5, section 12.2.
- 267 See DIAC 2009 response, note 39, p16.
- 268 For example, interviews with unaccompanied minors, Construction Camp, 30 May 2010.
- 269 Interviews with two groups of Sri Lankan males, Christmas Island IDC, 1 June 2010.
- 270 See Immigration Detention Guidelines, note 126, section 4.
- 271 See 2008 Immigration detention report, note 33, section 13; 2009 Christmas Island report, note 5, sections 12.3, 12.4.
- 272 See 2009 Christmas Island report, note 5, section 12.3.
- 273 See DIAC 2009 response, note 39, p 17.
- 274 For example, interviews with male detainees in Lilac Compound, Education 3 Compound and tents in Red Compound at Christmas Island IDC, 29 May 2010; interview with group of families at Construction Camp, 30 May 2010.
- 275 See Immigration Detention Guidelines, note 126, section 2.6.
- 276 Interview with Afghan man, Christmas Island IDC, 29 May 2010.
- 277 For example, interview with group of Afghan men, Construction Camp, 30 May 2010.
- 278 See 2009 Christmas Island report, note 5, section 12.3.
- 279 See Immigration Detention Guidelines, note 126, section 7.2.
- 280 See Immigration Detention Guidelines, note 126, section 4.6.
- 281 See 2008 Immigration detention report, note 33, section 13; 2009 Christmas Island report, note 5, section 12.6.
- 282 Serco IDC Contract, note 223, Schedule 2 Statement of Work, Section 2.2.1, clause 1.10.1(a)(ii).
- 283 For example, interviews with male detainees in Aqua Compound and Gold Compounds, Christmas Island IDC, 29 May 2010.
- 284 See 2009 Christmas Island report, note 5, section 12.6.
- 285 Serco informed the Commission that the court is opened each afternoon from 2.30 to 4.30pm. Detainees told the Commission it is locked during the day and opened from 7 to 9pm.
- 286 Interviews with detainees, Construction Camp, 30 May 2010.

- 287 See Immigration Detention Guidelines, note 126, section 6.6.
- 288 See 2009 Christmas Island report, note 5, section 12.6.
- 289 See DIAC 2009 response, note 39, p 20.
- 290 For example, interview with detainees in tents in Red Compound, Christmas Island IDC, 29 May 2010.
- 291 See 2009 Christmas Island report, note 5, section 12.6.
- 292 See DIAC 2009 response, note 39, p 20.
- 293 Serco IDC Contract, note 223, Schedule 2 Statement of Work, Section 2.2.1, clause 1.10.1(v).
- 294 Serco client movement records, 12 April 2010 - 11 May 2010.
- 295 Serco weekly activity attendance records, May 2010.
- 296 See ICCPR, note 11, art 18; CRC, note 11, art 30; Immigration Detention Guidelines, note 126, section 5.
- 297 See 2008 Immigration detention report, note 33, section 13; 2009 Christmas Island report, note 5, section 12.7.
- 298 See 2009 Christmas Island report, note 5, section 12.7.
- 299 See DIAC 2009 response, note 39, p 21.
- 300 See 2009 Christmas Island report, note 5, section 12.7.
- 301 For example, interview with Sri Lankan men, Christmas Island IDC, 1 June 2010; interview with Sri Lankan families, Construction Camp, 1 June 2010.
- 302 Interview with Sri Lankan men, Christmas Island IDC, 1 June 2010.
- 303 Interviews with male detainees in various compounds, Christmas Island IDC, 1 June 2010.
- 304 Interview with Sri Lankan male, Christmas Island IDC, 29 May 2010.
- 305 For example, interview with group of Afghan men, Christmas Island IDC, 1 June 2010.
- 306 Serco client movement records, 12 April 2010 - 11 May 2010.
- 307 Interview with community representative, Christmas Island, 31 May 2010.
- 308 According to Serco client movement records for the period 12 April 2010 - 11 May 2010, nine individuals were taken from the Phosphate Hill immigration detention facility to the mosque.
- 309 Interviews with Sri Lankan and Afghan people in detention, Construction Camp, 30 May 2010.
- 310 Interviews with Sri Lankan and Vietnamese people in detention, Construction Camp, 31 May 2010.
- 311 Interviews with people in detention, Construction Camp, 30 May and 1 June 2010.
- 312 See, for example 2009 Christmas Island report, note 5, section 10; 2008 Immigration detention report, note 33, section 6; Human Rights and Equal Opportunity Commission, *Submission to the Joint Standing Committee on Migration Inquiry into Immigration Detention in Australia*, note 74, para 114.
- 313 See 2009 Christmas Island report, note 5, section 10.
- 314 See DIAC 2009 response, note 39, pp 7-8.
- 315 As above.
- 316 See Australian Human Rights Commission, *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Migration Amendment (Immigration Detention Reform) Bill 2009*, note 65.
- 317 See UNHCR, *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*, note 77, guideline 10.
- 318 See Joint Standing Committee on Migration, note 14, p 100.
- 319 See DIAC website, *Accommodation at the Christmas Island Detention Centre*, at www.immi.gov.au/managing-australias-borders/detention/facilities/locations/christmas-island/accommodation.htm (viewed 10 August 2010).
- 320 These include the Australian Human Rights Commission, the Commonwealth Ombudsman, Australian Red Cross, and the United Nations High Commissioner for Refugees.
- 321 ICCPR, note 11.
- 322 ICESCR, note 198.
- 323 CAT, note 196.
- 324 *Convention Relating to the Status of Refugees* (1951) and *Protocol Relating to the Status of Refugees* (1967) (Refugee Convention). At www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf (viewed 10 August 2010).
- 325 CRC, note 11.
- 326 ICCPR, note 11, art 9(1); CRC, note 11, art 37(b).
- 327 ICCPR, note 11, art 9(4); CRC, note 11, art 37(d).
- 328 CRC, note 11, art 37(d); Body of Principles, note 195, principle 17.
- 329 ICCPR, note 11, art 10(1); CRC, note 11, art 37(c).
- 330 ICCPR, note 11, art 7; CRC, note 11, art 37(a); CAT, note 323.
- 331 CRC, note 11, art 37(b).
- 332 ICCPR, note 11, art 2(1), 26; CRC, note 11, art 2(1); ICESCR, note 198, art 2(2).
- 333 Refugee Convention, note 324, art 33(1). This obligation is also implied in ICCPR, note 11, arts 6, 7; CAT, note 323, art 3; CRC, note 11, arts 6, 37.
- 334 Body of Principles, note 195.
- 335 *Standard Minimum Rules for the Treatment of Prisoners*, note 244.
- 336 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, note 133.
- 337 UNHCR, *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*, note 77; UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, note 108.
- 338 Immigration Detention Guidelines, note 126.
- 339 CRC, note 11, art 3(1).

- 340 CRC, note 11, art 37(b). See also *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, note 133, rule 2.
- 341 CRC, note 11, art 37(a), 37(c).
- 342 CRC, note 11, art 37(d).
- 343 CRC, note 11, art 22(1).
- 344 CRC, note 11, art 9(1).
- 345 CRC, note 11, art 20.
- 346 CRC, note 11, art 6(2), 39.
- 347 CRC, note 11, art 2.