

# Immigration Detention Guidelines

Human Rights and Equal Opportunity Commission  
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## Background

Australia has a long-standing and bipartisan policy of detaining people who arrive, whether by plane or boat, without the required documents, including a visa. Many more people, notably tourists from the UK, Japan and USA, arrive on tourist, student and other visas and unlawfully overstay their authorised time here. (At 31 December 1998, the number of overstayers was 50,603.) When located, these overstayers are not routinely detained pending their removal from Australia. They are detained if they are ineligible for a Bridging Visa.

Until early 1999 there were 4 detention centres: Port Hedland (WA), Villawood (Sydney), Maribyrnong (Melbourne) and Perth (WA). The number of boat arrivals from the Middle East (notably from Iraq and Afghanistan) during 1999 has seen the detention population increase to over 2,000 and has required the commissioning of two additional detention centres (Curtin Airbase near Derby in WA and Woomera in South Australia). All centres are managed by the Department of Immigration and Multicultural Affairs (DIMA) and operated under contract by Australasian Correctional Management (ACM) – the ‘detention service provider’.

These *Guidelines* draw on relevant international minimum standards which detail what is required for humane detention consistent with respect for human dignity as required by the *International Covenant on Civil and Political Rights* and the *Convention on the Rights of the Child*. The vulnerability of immigration detainees and the fact that they are not held as suspects or convicted offenders argue strongly for the adoption of international minimum standards for juvenile detainees where these are more favourable than those applicable to adults, including adult prisoners. Since immigration detainees are not held as criminal suspects or because they represent a risk to community safety, the most lenient detention regime is appropriate. The primary concern of immigration detention authorities should be one of care for the well-being of detainees.

The Commission regularly inspects immigration detention centres and evaluates conditions and the treatment of detainees. The adoption and publication of detailed minimum standards will enhance the consistency and transparency of our evaluations, as they will be a fuller statement of our views of what human rights law requires. Publication of these *Guidelines* does not reflect a change in the Commission’s understanding that Australia’s policy of mandatory detention for unauthorised arrivals contravenes international law. Rather, recognising that mandatory detention is current government policy, the conditions of detention must meet international minimum standards.

The Commission provided a preliminary draft of these standards to DIMA and invited its comments. It has commented that

- “DIMA already has a set of Immigration Detention Standards, which are articulated in the contractual agreement between the Department and our detention service provider, Australasian Correctional Services P/L. These

standards were developed in consultation with the Commonwealth Ombudsman. Australia's international obligations inform the approach to delivery of the detention function”

- “setting a benchmark, such as universal access to legal advice, which is clearly at odds with Australian law, raises serious questions as to whether the document seeks to set realistic benchmarks”
- “the document fails to distinguish adequately between administrative detention and criminal/custodial imprisonment, with the consequence of confusing associated standards”.

## Origins

These *Guidelines* build on the *Immigration Detention Standards: Fundamental Principles* drafted by the Detention Working Group of the New South Wales Asylum Seekers Interagency and formally endorsed by the Interagency in February 1999. Like the *Fundamental Principles*, these *Guidelines* incorporate many of the *Immigration Detention Standards* incorporated by the Department of Immigration and Multicultural Affairs (DIMA) into its 1997 contract with the detention service-provider, Australasian Correctional Management (ACM). These *Guidelines* improve on the *Fundamental Principles* and the *Immigration Detention Standards* by comprehensively translating all relevant international law and international minimum standards of detention for Australian conditions.

## Purpose

The Commission has drawn up these *Guidelines* to facilitate further dialogue and cooperation among the Commission, detention authorities (DIMA and ACM) and relevant non-government agencies in the development of acceptable minimum standards for immigration detention in Australia. The aim is to establish the benchmark against which the Commission and others may evaluate conditions and treatment in immigration detention.

One of the Commission's statutory functions is the investigation and conciliation of complaints of human rights breaches made against the Commonwealth. The Commission is also responsible for ensuring that Commonwealth agencies understand their responsibilities under international instruments. These *Guidelines* aim to assist all parties to appreciate the standards for immigration detention that are established by international law and international minimum standards.

## Detention context

Promulgation of these *Guidelines* can in no way be taken as endorsement of the current policy of mandatory non-reviewable detention of unauthorised arrivals in Australia. Grave concerns about the mandatory detention of unauthorised arrivals have been expressed by major church, human rights and non-government agencies in Australia and by the United Nations Human Rights

Committee, the International Commission of Jurists, Amnesty International and the United States Department of State.

The views of the NSW Asylum Seekers Interagency in relation to an acceptable detention regime were articulated in the *Alternative Detention Model*, submitted in 1996 by the Detention Reference Coordinating Committee to the Minister for Immigration and Multicultural Affairs. In 1998 the Human Rights and Equal Opportunity Commission found Australia's policy to violate international law. The Commission recommended the adoption of the *Alternative Detention Model*.<sup>1</sup>

## 1 Fundamental principles

- 1.1 Immigration detention is not a prison or correctional sentence. Immigration detainees are detained pursuant to the *Migration Act 1958* (Cth) and not pursuant to arrest or charge for any criminal offence. Accordingly, the treatment of immigration detainees should be as favourable as possible and in no way less favourable than that of untried or convicted prisoners.<sup>2</sup>
- 1.2 Australia's immigration detention practice must conform to international law protecting human rights<sup>3</sup> and defining the status of refugees. The relevant international law is set out in
- the *Convention* (1951) and *Protocol* (1967) *Relating to the Status of Refugees*
  - the *International Covenant on Civil and Political Rights* (1966)
  - the *International Covenant on Economic, Social and Cultural Rights* (1966)
  - the *International Convention on the Elimination of All Forms of Racial Discrimination* (1969), the *Convention on the Elimination of All Forms of Discrimination Against Women* (1979)
  - the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1987) and
  - the *Convention on the Rights of the Child* (1989).

Nothing in the present document shall be construed as restricting or derogating from rights contained in any of these international instruments.<sup>4</sup> Persuasive interpretations of these laws are authoritatively set out in non-binding international instruments including, in particular,

- the *Declaration on the Rights of Disabled Persons* (1975)
- the *Standard Minimum Rules for the Treatment of Prisoners* (1955)
- the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* (1981)
- the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (1988)
- the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (1990) and

- the various guidelines issue by the United Nations High Commissioner for Refugees (UNHCR), including the 1999 *Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers*.<sup>5</sup>

- 1.3 Each immigration detainee shall be treated in a humane manner and with respect for the inherent dignity of the human person.<sup>6</sup> Each immigration detainee aged under 18 years shall, in addition, be treated in a manner which takes into account the needs of a person of his or her age.<sup>7</sup>
- 1.4 In the design and delivery of services, facilities, activities and programs, immigration detention authorities should seek
- (a) to minimise differences between life in detention and life at liberty<sup>8</sup> and
  - (b) to meet the individual needs of each detainee taking into account his or her history and experiences, age, gender and cultural, religious and linguistic identity.<sup>9</sup>
- 1.5 Immigration detention authorities shall avoid practising discrimination among immigration detainees on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>10</sup>
- 1.6 Immigration detainees have the right to be heard in judicial and administrative proceedings affecting them.<sup>11</sup>

## **2 Information**

- 2.1 Immigration detention authorities<sup>12</sup> should inform immigration detainees, within a reasonable period from the date of detention and in a language and in terms they understand, of the reasons for their detention and their rights in connection with detention, including the right to legal assistance and advice and to the services of an interpreter when needed.<sup>13</sup>
- 2.2 In the case of asylum seekers, these rights include the right to seek asylum, to independent application advice and to contact and be contacted by the local Office of the United Nations High Commissioner for Refugees (UNHCR) and relevant refugee and human rights agencies. Immigration detention should not impede the exercise of an asylum seeker's right to pursue an application for asylum.<sup>14</sup>
- 2.3 Each immigration detainee should be informed of the reasons for every transfer to another institution, detention centre or more secure section of a detention centre.<sup>15</sup>

- 2.4 Immigration detention authorities should provide to every detainee, within a reasonable period from the date of detention, a *Handbook on Immigration Detention*. This Handbook shall advise detainees of all services available to them including
- (a) the right to request legal assistance and the contact details of legal firms and services contracted to provide legal assistance
  - (b) the right to communicate in confidence with the Commonwealth Ombudsman and the Human Rights and Equal Opportunity Commission and the addresses of each
  - (c) the right to communicate with the diplomatic or consular representatives of the State of origin or nationality<sup>16</sup>
  - (d) detainees' rights and responsibilities in detention and
  - (e) the detention centre's rules and procedures including disciplinary procedures and procedures for making complaints.<sup>17</sup>
- The Handbook should be updated regularly and translated into the principal languages spoken by immigration detainees at each centre.<sup>18</sup>
- 2.5 Where an immigration detainee is illiterate or speaks a language for which there is no translation of the *Handbook on Immigration Detention*, its contents should be communicated orally in a language and in terms or in a manner which the detainee understands.<sup>19</sup>
- 2.6 All written and oral communications concerning an immigration detainee and the refugee determination process need to be conveyed in a language and in terms which the detainee can understand. Detainees 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.<sup>20</sup>
- 2.7 Immigration detention authorities should provide effective mechanisms and procedures so that all immigration detainees have access to legal advice, legal services and other legal resources. To perform their professional functions, legal advisers should have reasonable access to their clients in detention without hindrance, harassment or improper interference.<sup>21</sup>

### **3 Privacy**

- 3.1 All personal information concerning immigration detainees will be treated in confidence.<sup>22</sup>
- 3.2 A permanent register of persons detained in each detention centre should be maintained, providing
- (a) the identifying details (including date and place of birth and passport number) and the photographic record of each detainee
  - (b) the reasons and authority for detention
  - (c) the date and time of admission

- (d) the dates, times and duration of official interviews and the names of officials present<sup>23</sup>
  - (d) medical and welfare records
  - (e) designated next of kin or contact person
  - (f) religious beliefs
  - (g) cultural and linguistic needs and
  - (h) dietary requirements.<sup>24</sup>
- 3.3 Information which is not reasonably required for the care and well-being of the individual or for the effective management of the immigration detention centre should not be collected or retained.<sup>25</sup> Access to immigration detainees' records should be restricted to authorised personnel.<sup>26</sup>
- 3.4 Each immigration detainee shall have a right of access to his or her records and to contest any inaccurate, unfounded or unfair statements<sup>27</sup> unless non-disclosure of particular information can be justified on the ground that disclosure would endanger life or physical safety or be prejudicial to the security or good order of the detention centre.
- 3.5 DIMA retains ultimate ownership of all immigration detainee records.
- 3.6 Each immigration detainee should enjoy reasonable access to and privacy of communication with his or her legal advisers,<sup>28</sup> family members, friends and community groups, subject only to restrictions lawfully and reasonably imposed for the purposes of centre security or criminal investigation.<sup>29</sup> In the case of communications with legal representatives, confidentiality may only be suspended in exceptional circumstances.<sup>30</sup>
- 3.7 Each immigration detainee shall enjoy access to and privacy of communication with the Commonwealth Ombudsman and the Human Rights and Equal Opportunity Commission in accordance with the requirements of the *Ombudsman Act 1976 (Cth)* and the *Human Rights and Equal Opportunity Commission Act 1986 (Cth)* respectively.<sup>31</sup>
- 3.8 The confidentiality of the communications of immigration detainees, including their personal correspondence, should be respected, subject only to restrictions lawfully and reasonably imposed for the purposes of centre security or criminal investigation.<sup>32</sup>

## **4 Contacts with the outside world**

- 4.1 Each immigration detainee should be entitled to enjoy contact at least weekly with his or her families, friends and the community. Contact can be facilitated through visits, correspondence and access to

telephones.<sup>33</sup> Communication with the outside world should not be denied for more than a matter of days.<sup>34</sup>

- 4.2 Every child of an immigration detainee is entitled to maintain personal relations and direct contact with his or her parent or parents on a regular basis.<sup>35</sup>
- 4.3 The right of immigration detainees to receive visitors in private should be respected and facilitated,<sup>36</sup> subject only to reasonable conditions and restrictions specified by law or lawful regulations for the purposes of centre security or criminal investigation.<sup>37</sup>
- 4.4 Each immigration detainee is entitled to engage legal assistance<sup>38</sup> and to contact the diplomatic or consular representatives of his or her State of origin or nationality<sup>39</sup> and should be provided with adequate time and facilities to communicate and consult in private with those representatives.<sup>40</sup>
- 4.5 Each immigration detainee should have the opportunity to keep informed of news and current events, including by reading newspapers, periodicals and other publications in his or her language, through access to radio and television programs and motion pictures, and otherwise as appropriate.<sup>41</sup>
- 4.6 Each immigration detention centre should have a library adequately stocked with recreational and instructional books and periodicals in the principal languages spoken by detainees at the centre.<sup>42</sup>

## **5 Religion**

- 5.1 Each immigration detainee has the right to profess and practise the religion of his or her choice in community with other members of his or her religious group where possible.<sup>43</sup> This right includes the possession of books and other items of religious observance and instruction and a diet in keeping with his or her religion.<sup>44</sup>
- 5.1 Qualified religious representatives should be allowed to hold regular services and to pay pastoral visits in private to immigration detainees, subject only to reasonable conditions and restrictions specified by law or lawful regulations for the purposes of centre security or criminal investigation.<sup>45</sup>

## **6 Education**

- 6.1 The right of children in immigration detention to education shall be recognised.<sup>46</sup> Education provision should be assured within a reasonable period of admission taking into account the need to assess the child and make necessary staffing and related arrangements.



- 6.2 The education provided to children of compulsory school age shall be of a standard and quality equivalent to that in Australian schools.<sup>47</sup> Children above the Australian compulsory school age should have an opportunity to continue their education.<sup>48</sup>
- 6.3 Special attention should be given by educators to the particular cultural, religious and linguistic needs of children in immigration detention.<sup>49</sup> Children who are illiterate or have cognitive or learning disabilities may require special education assistance.<sup>50</sup>
- 6.4 Education of children in immigration detention shall promote, among other things,<sup>51</sup> respect for their cultural identity, language and values.<sup>52</sup>
- 6.5 Wherever possible, the education of children in immigration detention should take place outside the detention centre in the general school system to facilitate the continuation of their education upon release and their social and cultural development.<sup>53</sup>
- 6.6 Opportunities for English language instruction and further education, including technical and vocational education should be provided where possible.<sup>54</sup>

## **7 Work and recreation**

- 7.1 Opportunities for association with peers and participation in cultural, spiritual and religious activities, sports, physical exercise and leisure activities should be provided where possible.<sup>55</sup>
- 7.2 Each immigration detainee should have access to materials and facilities for exercise, recreation, cultural expression and intellectual and educational pursuits to utilise his or her time in detention in a constructive manner and for the benefit of his or her physical and mental health.<sup>56</sup>
- 7.3 The range of activities and programs provided should aim to promote and sustain the health, well-being and self-respect of immigration detainees, foster their sense of responsibility and encourage the development of skills that will assist them to take their place in mainstream society.<sup>57</sup>
- 7.4 Access to open air at all times should be permitted unless restriction of access is justified as reasonably necessary for the security of the centre or the safety of detainees and/or staff.<sup>58</sup>
- 7.5 Opportunities for immigration detainees to undertake meaningful paid work should be created but detainees shall not be required to work.<sup>59</sup>

- 7.6 Under no circumstances shall any immigration detainee be subjected to forced or compulsory labour.<sup>60</sup>
- 7.7 Occupational health and safety standards applying in workplaces in the general community apply equally in the immigration detention centre. Provision should be made to indemnify immigration detainees against industrial injury, including occupational disease.<sup>61</sup>

## **8 Food**

- 8.1 Each immigration detainee shall be provided with sufficient food of nutritional value and quantity adequate for health and strength, of wholesome quality and well prepared and served. Meals shall be provided three times daily. Fresh drinking water shall be available at all times.<sup>62</sup>
- 8.2 Appropriate meals shall be provided for babies and infants, where necessary for medical reasons, on account of a detainee's religious or cultural requirements, because the detainee is vegetarian or where the detainee has other special needs.<sup>63</sup>

## **9 Accommodation, clothing and bedding**

- 9.1 Accommodation facilities in every immigration detention centre shall meet the requirements of health and human dignity.<sup>64</sup> Appropriate regard should be paid to climatic conditions, cubic content of air, minimum floor space, lighting, heating and ventilation.<sup>65</sup> Effective heating and cooling appliances suitable for the climate should be available if needed.
- 9.2 In living and working areas the windows should be large enough to enable reading and working by natural light and shall be capable of natural ventilation.<sup>66</sup>
- 9.3 Immigration detention authorities should ensure that all parts of the detention centre are maintained and kept clean to a standard which meets the requirements of health and hygiene.<sup>67</sup>
- 9.4 In every immigration detention centre there should be provided separate accommodation, ablution and sanitary facilities for men and women, and for children and adults, except where they are part of a family group or there are other religious or cultural reasons.<sup>68</sup> Wherever possible, detention authorities should meet the wishes of particular groups of detainees who, for familial, religious or cultural reasons, wish to be accommodated together.

- 9.5 Where an immigration detainee does not have his or her own suitable clothing, he or she should be provided with clothing, underwear and footwear suitable for the climate and facilities to keep them clean and fit for use.<sup>69</sup> Immigration detainees should be provided with effective protection from the rain and the sun, as required.
- 9.6 Each immigration detainee should be provided with a separate bed and with separate and sufficient bedding. This bedding should be clean when issued, kept in good order and changed often enough to ensure cleanliness.<sup>70</sup>
- 9.7 In every immigration detention centre bathing and showering installations should be such as to enable each detainee to maintain general hygiene by bathing or showering daily at a temperature suitable to the climate. Each immigration detainee should be provided with toiletries, ablution facilities and sanitary installations which are necessary for health and cleanliness, enable detainees to comply with their physical needs in privacy and are appropriate to the climate.<sup>71</sup>

## **10 Transport and removal**

- 10.1 When immigration detainees are being transported outside a detention centre, they should be protected from public view, curiosity and publicity.<sup>72</sup> Any use of restraint should be commensurate with an assessment of the individual's likelihood and capacity to abscond.
- 10.2 Immigration detainees shall not be transported in vehicles which lack adequate ventilation or light or which would subject them to unnecessary physical hardship.<sup>73</sup>
- 10.3 Immigration detainees should be informed of their transfer to another institution or removal from Australia in sufficient time to advise family and friends and to obtain items necessary for onward travel.<sup>74</sup>
- 10.4 Where there are reasons to believe that an immigration detainee may be unduly distressed by the prospect of transfer or removal, appropriate professional medical and/or counselling support should be provided.<sup>75</sup>

## **11 Detainees' property**

- 11.1 All money, valuables, clothing and other personal effects which an immigration detainee is not allowed to retain in detention should be itemised and placed in safe custody. The detainee should sign an inventory of property retained. Upon release from detention, transfer to another institution or removal from Australia, all money and other personal effects will be returned to the detainee who will sign a receipt for them.<sup>76</sup>

- 11.2 Each immigration detainee should be provided with a secure space for the storage of personal effects.<sup>77</sup>

## **12 Notification of death, illness, injury, release, transfer or removal**

- 12.1 Upon death or serious illness or serious injury to an immigration detainee, or upon the detainee's release from detention, transfer to another institution or removal from Australia, the detention authority should inform the designated next of kin or contact person as soon as possible.<sup>78</sup>
- 12.2 In the event of the death in detention of an immigration detainee the Coroner is to be notified immediately and a coronial inquiry conducted.<sup>79</sup>
- 12.3 The detention authority should facilitate notification to an immigration detainee in the event of the death or serious illness of any near relative or a member of his or her extended family. In the case of the death or critical illness of a relative in Australia, the detainee should have the opportunity to attend the funeral of the deceased or the bedside of a critically ill relative unless reasons of centre security or the safety of detainees and/or staff justify denial of attendance.<sup>80</sup>
- 12.4 Each immigration detainee should have the opportunity to inform his or her family of his or her detention, release from detention, transfer to another institution or removal from Australia as soon as possible.<sup>81</sup>

## **13 Health care services**

- 13.1 Each immigration detainee is entitled to medical treatment and care provided in a manner which is culturally appropriate and which respects the inherent dignity of the human person and to a standard which is commensurate with that provided in the general community.<sup>82</sup> Medical and treatment communications should utilise an interpreter unless the detainee freely affirms that he or she is confident and comfortable discussing these matters in English.<sup>83</sup>
- 13.2 The medical personnel of or attached to each immigration detention centre shall comply with applicable standards of ethics for medical practitioners and with applicable international standards.<sup>84</sup>
- 13.3 The health care needs of each new immigration detainee should be assessed by qualified medical personnel as soon as possible after admission. The medical assessment should seek to identify any physical or mental condition requiring medical attention, including the effects of torture and trauma.<sup>85</sup>

- 13.4 Where, upon admission, an immigration detainee is found to suffer from an infectious disease, he or she may be treated to minimise the possibility of contamination before being allowed to enter the normal routine of the detention centre.<sup>86</sup>
- 13.5 Immigration detainees isolated for health reasons enjoy all the rights and privileges accorded to other detainees to the extent that the health of others is not jeopardised. A qualified medical officer should visit regularly to assess the impact of isolation on the detainee's physical and mental health.<sup>87</sup>
- 13.6 Every instance of isolation for health reasons should be notified to DIMA with supporting medical certification.
- 13.7 Each immigration detainee should be informed in a language he or she can understand of the health issues which may affect him or her and the health care services available to him or her in immigration detention.<sup>88</sup>
- 13.8 Each immigration detainee should be provided, free of charge, with preventive and remedial medical treatment and care including dental<sup>89</sup>, ophthalmological and mental health care and treatment whenever necessary<sup>90</sup> and access to drug and alcohol abuse prevention and rehabilitation programs.<sup>91</sup>
- 13.9 Each immigration detainee should be entitled to obtain a second medical examination or opinion.<sup>92</sup>
- 13.10 The health care needs of each immigration detainee should be regularly monitored. In particular, the medical officer should report to the detention authorities whenever he or she considers that a detainee's physical or mental health has been or will be injuriously affected by continued detention or by any condition of detention.<sup>93</sup>
- 13.11 Immigration detainees who require specialist treatment should ordinarily be referred or transferred to a general community hospital or specialised institution.<sup>94</sup> A designated relative, community member or appropriate non-government agency should be informed of every transfer.<sup>95</sup>

## **14 Mental health services**

- 14.1 The mental health treatment and care provided to each immigration detainee should be based on an individually prescribed plan and in accordance with applicable standards of ethics for mental health practitioners and applicable international standards, including those contained in the United Nations *Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care*.<sup>96</sup>

- 14.2 The mental health treatment and care of immigration detainees should be overseen by mental health professionals. Any determination that an immigration detainee has a mental illness should be made in accordance with internationally accepted medical standards.<sup>97</sup>
- 14.3 Immigration detainees who are found to be severely mentally ill should be transferred to an appropriate facility as soon as possible. A designated relative, community member or appropriate non-government agency should be informed of the transfer.<sup>98</sup>
- 14.4 Survivors of torture and trauma shall 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 of the centre, referral should be made to an external specialist agency.<sup>99</sup>

## **15 Detainees with special needs**

### **Basic principles**

- 15.1 Immigration detention authorities should recognise the rights of persons in immigration detention with special needs, including unaccompanied elderly persons and minors, single women, torture and trauma victims and persons with a mental or physical disability.<sup>100</sup>
- 15.1 The individual care needs of immigration detainees with special needs should be identified. They should receive appropriate professional support including health care, rehabilitation services and education and recreation opportunities designed to enhance their quality of life, individual development and social integration.<sup>101</sup>

### **Unaccompanied minors**

- 15.2 Unaccompanied minors in immigration detention shall receive special protection and assistance. They shall be detained under conditions which protect them from harmful influence and which take account of the needs of persons of their age and gender and of their ethnic, religious, cultural and linguistic background.<sup>102</sup> A legal guardian or adviser from an independent formally accredited child welfare agency should be appointed for every unaccompanied minor.<sup>103</sup>

### **Children**

- 15.3 In all actions concerning a child in immigration detention, the best interests of the child shall be a primary consideration.<sup>104</sup>

- 15.4 Immigration detention authorities shall assure to every child capable of forming his or her own views the right to express those views freely in all matters affecting the child and to have those views accorded appropriate weight having regard to the child's age and maturity.<sup>105</sup>
- 15.5 Immigration detention authorities shall take appropriate measures to ensure that children in immigration detention, whether accompanied or not, receive appropriate protection and assistance in the enjoyment of their rights recognised in human rights and humanitarian instruments.<sup>106</sup>
- 15.6 Every child in immigration detention has the right to rest and leisure, to engage in play and recreational activities and to participate in cultural life and the arts.<sup>107</sup> Detention authorities should provide programs appropriate to each child's age and abilities, including regular outings, arts and crafts skill development, and remedial physical education and therapy. Adequate space, installations and equipment for such activities should be available.
- 15.7 Immigration detention authorities shall respect the responsibilities, rights and duties of parents, and where applicable members of the extended family and community, to provide appropriate advice and guidance in the exercise by the child of his or her rights.<sup>108</sup>
- 15.8 Immigration detention authorities shall recognise and respect the rights and responsibilities of parents, and where applicable members of the extended family and community, for the upbringing and development of their children living in immigration detention.<sup>109</sup> Where required, parenting shall be facilitated through the provision of appropriate professional support.<sup>110</sup>
- 15.9 Each child in immigration detention is entitled to be accommodated with both parents<sup>111</sup> unless
- (a) separation from one or both parents is in the child's best interests<sup>112</sup>
  - (b) one parent is transferred to another institution in the interests of that parent's health, the security of the centre or the safety of other detainees and/or staff
  - (c) one parent is not in detention.<sup>113</sup>
- 15.10 Where the parent of a child in immigration detention is hospitalised, that parent shall be consulted in relation to care arrangements for the child in his or her absence.<sup>114</sup>
- 15.11 Immigration detention authorities shall take appropriate measures to protect children in immigration detention from all forms of violence, injury or abuse, maltreatment or exploitation, including sexual abuse. Where child abuse is suspected, appropriate procedures shall be followed in accordance with statutory requirements.<sup>115</sup>

- 15.12 Immigration detention authorities shall take, without delay, all necessary measures to promote the physical and psychological recovery and social integration of child victims of abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment.<sup>116</sup>

### **Expectant mothers and infants**

- 15.13 Expectant mothers in immigration detention shall have access to necessary ante-natal and post-natal care and treatment.<sup>117</sup>
- 15.14 Where a child is a refugee or is born in an immigration detention centre, this should not be recorded on the child's birth certificate.<sup>118</sup> Where possible, arrangements should be made for children to be born in a hospital outside the immigration detention centre.
- 15.15 Appropriate professional support shall be provided to address the developmental needs of babies and young children in immigration detention.<sup>119</sup>

### **Women**

- 15.16 To respect cultural values and enhance the physical protection of women in immigration detention, women detainees should be attended and supervised only by female members of staff in the bathroom and sleeping areas of the centre. This does not preclude male members of staff, particularly medical officers and teachers, from carrying out their professional duties in the part of the centre set aside for women.<sup>120</sup>
- 15.17 Women immigration detainees should have access to services designed to address their specific needs, in particular, gynaecological and obstetric services.<sup>121</sup>

## **16 Selection and training of staff**

- 16.1 All prospective staff should undergo selection procedures that ensure their personal integrity, humanity, professional capacity and personal suitability for employment in an immigration detention centre.<sup>122</sup>
- 16.2 All staff employed in an immigration detention centre should possess the following qualities and skills
- (a) effective interpersonal communication skills
  - (b) an ability to assess individual detainee needs
  - (c) an appreciation of the anxiety and stress immigration detainees can experience
  - (d) a capacity to promote a stable and harmonious environment and to diffuse disputes between detainees and between detainees and other staff



- (e) an understanding of the diversity of ethnic, cultural and religious backgrounds of detainees and
  - (f) an understanding of the nature of refugee and migration experiences.
- 16.3 The immigration detention authorities should aim to employ staff able to speak at least one of the principal languages spoken by immigration detainees at each centre.<sup>123</sup>
- 16.4 Each immigration detention centre should employ the number of specialists, including educators, vocational instructors, counsellors, social workers, medical professionals and mental health professionals necessary to provide services commensurate with those available to people with similar needs in the general community.<sup>124</sup>
- 16.5 Before commencing employment in an immigration detention centre, all staff should be required to attend a course of training in relation to
- (a) the legislative bases of immigration detention
  - (b) detention policies, procedures and rules
  - (c) international human rights and humanitarian standards, in particular those relating to the rights of immigration detainees
  - (d) the mental health needs of immigration detainees and, in particular, of asylum seekers
  - (e) the obligation to protect the privacy of personal information<sup>125</sup> and
  - (f) techniques for the lawful restraint of aggressive detainees.<sup>126</sup>
- 16.6 In-service training should be provided to enable all staff to maintain and improve their knowledge and professional capacity.<sup>127</sup>
- 16.7 The experience and knowledge of the UNHCR, human rights experts and relevantly experienced non-government agencies should be utilised in training detention centre staff.
- 16.8 Regular assessments of staff should be undertaken to ensure their continued fitness to perform their duties in accordance with the highest professional standards.<sup>128</sup>

## **17 Discipline and punishment**

- 17.1 No person in immigration detention shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment in any circumstances.<sup>129</sup>
- 17.2 All rules concerning the discipline and punishment of immigration detainees shall conform with international human rights standards and ensure that detainees are treated with humanity and with respect for the inherent dignity of the human person.<sup>130</sup>

- 17.3 Disciplinary offences should be defined by reference only to what is necessary for safe custody and well-ordered community life.<sup>131</sup> Punishments must be proportionate to the offence and imposed for the shortest appropriate period of time.<sup>132</sup>
- 17.4 The following punishments shall be prohibited: collective punishment, solitary confinement, corporal punishment, placement in a dark cell, sensory deprivation, reduction of diet, punishment with instruments of restraint, reduction or denial of contact with family members and all other forms of cruel, inhuman or degrading treatment or punishment.<sup>133</sup>
- 17.5 The *Handbook on Immigration Detention* should specify the types of conduct which constitute disciplinary offences, the types and duration of punishment which may be imposed, the authorities competent to impose such punishment and the authorities competent to consider appeals.<sup>134</sup>
- 17.6 Prior to disciplinary action being taken against an immigration detainee he or she should be informed of the disciplinary offence alleged and given a proper opportunity to present a defence, where necessary through an interpreter. Disciplinary proceedings should be conducted in an atmosphere of understanding to allow the detainee to participate and express himself or herself freely.<sup>135</sup>
- 17.7 A decision to impose punishment upon an immigration detainee for a disciplinary offence needs to have regard to the detainee's physical and mental health.<sup>136</sup>
- 17.8 Each immigration detainee should be able to submit a decision at first instance concerning disciplinary action to a higher authority for independent review.<sup>137</sup>
- 17.9 A record should be kept of all disciplinary proceedings. A written report should be submitted promptly to the centre manager and compiled records provided regularly to DIMA and the Detention Advisory Committee.<sup>138</sup>
- 17.10 Where an immigration detainee commits a criminal offence in detention and is charged with a State, Territory or federal offence, there shall be a judicial hearing within a reasonable time. Persons charged with a criminal offence in immigration detention shall enjoy the same minimum guarantees as all other persons charged with a criminal offence, including the right to legal representation and to the assistance of an interpreter.<sup>139</sup>

## 18 Use of force

- 18.1 The use of force in an immigration detention centre is only permitted in exceptional cases to prevent the detainee inflicting self-injury, injuries to others or serious destruction of property, where all other control methods have failed or have been assessed as inadequate on reasonable grounds, only to the extent strictly necessary in the individual case and for the shortest possible period of time.<sup>140</sup>
- 18.2 Every use of force or firearms in an immigration detention centre should be in strict accordance with the United Nations *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*.
- 18.3 Every use of force in an immigration detention centre should be reported immediately by the staff member using force to the centre manager. A written incident report should be provided within 4 hours or before the staff member completes his or her shift, whichever is earlier.<sup>141</sup>
- 18.4 Where force has been applied or restraint used against an immigration detainee, the detainee should be examined in private by a medical officer as soon possible and under no circumstances any later than 12 hours after the incident.<sup>142</sup>
- 18.5 Staff training should include training to enable them to assist and, where necessary, restrain distressed or aggressive immigration detainees. Such training should emphasise techniques which allow detainees to be restrained in dignity and with minimum use of force.<sup>143</sup>
- 18.6 Staff in immigration detention centres should not be issued with weapons unless the issue has been approved by DIMA in the specific circumstances and the staff to whom the weapons are issued have received training in their use.<sup>144</sup> Where a weapon has been issued or used, a report should be made immediately to the manager of the centre.<sup>145</sup>
- 18.7 Instruments of restraint including handcuffs, leg-cuffs, chains, shackles, irons and straight-jackets, chemicals including sedatives and confinement in an observation cell shall not be applied to punish an immigration detainee.<sup>146</sup>
- 18.8 Chemicals, such as sedatives, should not be applied as an instrument of restraint. An application of chemicals should only be undertaken by a qualified medical or mental health professional who deems it necessary to meet the health needs of the detainee and only for therapeutic or diagnostic purposes.<sup>147</sup> The detainee's consent should be obtained unless he or she is judged, on medical grounds, to be incapable of giving a valid consent.<sup>148</sup>

- 18.9 Chains, irons, shackles around the ankles and leg-cuffs should not be used as instruments of restraint.
- 18.10 Other instruments of restraint should only be used to prevent an immigration detainee from injuring himself or herself or another, damaging property or escaping, and then only by order of the manager of the detention centre, where all other control methods have failed and for no longer than is necessary and only to the extent reasonably necessary for the purpose.<sup>149</sup>
- 18.11 Under no circumstances shall children in immigration detention be held in handcuffs or any other form of mechanical restraint.<sup>150</sup>
- 18.12 Staff should be made aware that the use of greater force than necessary to secure and restrain an immigration detainee may amount to criminal assault and be actionable under criminal and civil law.
- 18.13 Witnesses or parties to incidents where force has been used in an immigration detention centre and/or against an immigration detainee should not be deported from Australia until all legal matters have been resolved.

## **19 Complaints**

- 19.1 Immigration detainees should have the right to make complaints regarding the conditions of and their treatment in immigration detention to the manager of the detention centre and to other authorities including judicial authorities, the Commonwealth Ombudsman and the Human Rights and Equal Opportunity Commission. Detainees shall be able to lodge confidential written complaints in a secure box within the detention centre.<sup>151</sup> Complaints to the Ombudsman or to the Human Rights and Equal Opportunity Commission must be forwarded unopened to those authorities. Detainees wishing to communicate with those authorities should be assisted to do so by letter, fax or telephone.<sup>152</sup> Detainees should have the opportunity to seek assistance in formulating complaints, including from lawyers, non-government organisations and others.<sup>153</sup>
- 19.2 Unless evidently frivolous or groundless, every complaint submitted to the manager of the immigration detention centre should be investigated impartially and promptly and a written response provided.<sup>154</sup> Where a violation of the rights of an immigration detainee is disclosed, effective sanctions and remedies will be provided.<sup>155</sup>

- 19.3 All complaints submitted to the manager of the immigration detention centre, and the written responses which are provided, should be referred to the Detention Advisory Committee, with the name of the complainant deleted if he or she so desires.<sup>156</sup> Immigration detention authorities will not victimise, harass or prejudice complainants by reason of their complaint.<sup>157</sup>
- 19.4 Immigration detention staff who have reason to believe that a violation of the rights of an immigration detainee has occurred or is about to occur should be instructed to report the matter to the appropriate authorities.<sup>158</sup> All such reports should be referred to the Detention Advisory Committee.<sup>159</sup>

## **20 Monitoring, inspection and reporting**

- 20.1 There should be a Detention Advisory Committee at each immigration detention centre. The Committee would ideally consist of an equal number of representatives of the Department of Immigration and Multicultural Affairs, the detention service-provider, immigration detainees and relevantly experienced non-government agencies.<sup>160</sup> The Committee should work cooperatively to identify and resolve problems before they impact on detainees.<sup>161</sup> The functions of the Committee would include
- (a) to consider proposals for improving conditions of detention
  - (b) to monitor the provision of services in immigration detention centres
  - (c) to review the application of disciplinary penalties<sup>162</sup>
  - (d) to consider complaints from detainees,<sup>163</sup> legal representatives and non-government agencies<sup>164</sup>
  - (e) to consider reports from inspectors<sup>165</sup>
  - (f) to monitor and advise on compliance with these *Guidelines*.<sup>166</sup>
- 20.2 Immigration detention centres and services should be regularly inspected by qualified and independent inspectors. Inspectors should be empowered to undertake unannounced inspections on their own initiative. The tasks of such inspectors would be to ensure that centres are administered in accordance with international minimum standards and with relevant statutory requirements and regulations.<sup>167</sup> Inspectors' reports should be provided to DIMA, the detention centre manager and the Detention Advisory Committee.<sup>168</sup>
- 20.3 Inspectors should have full and unrestricted access to all immigration detainees, staff and records. They should have opportunities to communicate in private with immigration detainees.<sup>169</sup>

- 20.4 Subject to privacy provisions, DIMA, the Detention Advisory Committee and the Office of the United Nations High Commissioner for Refugees should receive regular statistical report as needed to monitor compliance with international minimum standards, these Guidelines and relevant statutory requirements and regulations.
- 20.5 Any incident or occurrence which threatens or disrupts the security or good order of an immigration detention centre or the health, safety or welfare of an immigration detainee should be reported immediately to the manager of the centre orally and within 24 hours in writing. The written reports should be forwarded to DIMA and made available to inspectors. Every allegation that a criminal offence has been committed must be reported without delay to local (State) police.
- 20.6 Immigration detention authorities should report formally to DIMA and the Detention Advisory Committee, on a regular and agreed basis, on compliance with the standards set out in these *Guidelines*.
- 20.7 Immigration detention authorities should encourage relevantly experienced non-government agencies to participate in each immigration detention centre to promote the care and well-being of immigration detainees.<sup>170</sup> However, such involvement by non-government agencies would not reduce or replace the ultimate responsibility of DIMA, the detention service provider and other detention authorities to ensure and protect the human rights of detainees.<sup>171</sup>
- 20.8 Immigration detention authorities, in consultation with the Detention Advisory Committee, should investigate and respond to expressions of concern by non-government agencies about the conditions of detention or the treatment of detainees.
- 20.9 Immigration detention authorities shall cooperate with the Office of the United Nations High Commissioner for Refugees in the exercise of its functions and in particular shall facilitate supervision by the UNHCR of the implementation of the *Convention* (1951) and *Protocol* (1967) *Relating to the Status of Refugees*.<sup>172</sup>
- 20.10 Immigration detention authorities shall cooperate with the Human Rights and Equal Opportunity Commission and the Commonwealth Ombudsman in the exercise of their functions.

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## Footnotes

- <sup>1</sup> *Those who've come across the seas: detention of unauthorised arrivals*, HREOC, 1998, chapter 16.
- <sup>2</sup> Rule 94 *Standard Minimum Rules for the Treatment of Prisoners*.

3 The following instruments have been scheduled to or declared under Commonwealth  
 legislation defining the responsibilities and functions of the Human Rights and Equal  
 Opportunity Commission: *International Covenant on Civil and Political Rights* (HREOCA  
 1986 Schedule 2), *Declaration on the Rights of Disabled Persons* (HREOCA Schedule  
 5), *Convention on the Rights of the Child* (HREOCA 1986 section 47 declaration),  
*Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based  
 on Religion or Belief* (HREOCA 1986 section 47 declaration), *Convention on the  
 Elimination of All Forms of Racial Discrimination* (RDA 1975 Schedule) and *Convention  
 on the Elimination of All Forms of Discrimination Against Women* (SDA 1984 Schedule).  
 4 General clause, *Body of Principles for the Protection of All Persons under Any Form of  
 Detention or Imprisonment*.

5 The following instruments have been described by the Human Rights Committee as  
 defining the requirements of the ICCPR right of detainees to be treated humanely  
 (article 10): *Standard Minimum Rules for the Treatment of Prisoners*, *Body of Principles  
 for the Protection of All Persons under Any Form of Detention or Imprisonment* and  
*United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.

6 Article 10 ICCPR; Principle 1 *Body of Principles for the Protection of All Persons under  
 Any Form of Detention or Imprisonment*, Guideline 10 UNHCR's *Revised Guidelines on  
 the Detention of Asylum-Seekers*.

7 Article 37(c) *Convention on the Rights of the Child* (CROC).

8 See generally Rule 60(1) *Standard Minimum Rules for the Treatment of Prisoners*; Rule  
 86(f) *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.

9 Rules 63, 66, 69 *Standard Minimum Rules for the Treatment of Prisoners*; Principle 3  
*Body of Principles for the Protection of All Persons under any Form of Detention or  
 Imprisonment*, Rule 4 *United Nations Rules for the Protection of Juveniles Deprived of  
 their Liberty*.

10 Article 26 *International Covenant on Civil and Political Rights* (ICCPR); Rule 6 *Standard  
 Minimum Rules for the Treatment of Prisoners*; Principle 5(1) *Body of Principles for the  
 Protection of All Persons under Any Form of Detention or Imprisonment*.

11 For example article 12(2) CROC. See also Rule 30(2) *Standard Minimum Rules for the  
 Treatment of Prisoners*.

12 The responsibility for ensuring respect for the human rights of immigration detainees  
 lies with DIMA. In practice, their implementation falls to the detention service provider  
 contracted by DIMA (currently ACM). DIMA and ACM jointly constitute the 'immigration  
 detention authorities' at present.

13 Principles 10, 13, 14, 17 *Body of Principles for the Protection of All Persons under Any  
 Form of Detention or Imprisonment*; Guideline 5 UNHCR's *Revised Guidelines on the  
 Detention of Asylum-Seekers*.

14 Principle 16(2) *Body of Principles for the Protection of All Persons under Any Form of  
 Detention or Imprisonment*; Guideline 5 *ibid*.

15 Principle 11(2) *Body of Principles for the Protection of All Persons under Any Form of  
 Detention or Imprisonment*.

16 Principle 16(2) *Body of Principles for the Protection of All Persons under Any Form of  
 Detention or Imprisonment*.

17 See Part 19 below on the procedures for complaints by immigration detainees.

18 Rule 35(1) *Standard Minimum Rules for the Treatment of Prisoners*; Principles 13 and  
 14 *Body of Principles for the Protection of All Persons under Any Form of Detention or  
 Imprisonment*; Rule 24 *United Nations Rules for the Protection of Juveniles Deprived of  
 their Liberty*.

19 Rule 35(2) *Standard Minimum Rules for the Treatment of Prisoners*; Rule 24 *United  
 Nations Rules for the Protection of Juveniles Deprived of their Liberty*.

20 Rule 35(2) *Standard Minimum Rules for the Treatment of Prisoners*; Rule 6 *United  
 Nations Rules for the Protection of Juveniles Deprived of their Liberty*.

21 Principles 2 and 16 *Basic Principles on the Role of Lawyers*.

- 22 Article 17 ICCPR; Rule 19 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*. See also *Privacy Act 1988* (Cth), section 14, Information Privacy Principle 11.
- 23 Principle 26 *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.
- 24 This provision draws largely upon Rule 7(1) *Standard Minimum Rules for the Treatment of Prisoners* and Rule 21 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 25 Article 17 ICCPR. See also *Privacy Act 1988* (Cth), section 14, Information Privacy Principle 1.
- 26 Rule 19 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 27 Principles 23(2), 26 and 35(2) *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*; Rule 19 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*. See also *Privacy Act 1988* (Cth), section 14, Information Privacy Principles 6 and 7.
- 28 See generally Principle 18 *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.
- 29 Principle 19 *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.
- 30 Principle 18(3) *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.
- 31 *Human Rights and Equal Opportunity Commission Act 1986* (Cth), section 20(6) and (7); *Ombudsman Act 1976* (Cth), section 7(3) and (4).
- 32 Principle 19 *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.
- 33 Rule 37 *Standard Minimum Rules for the Treatment of Prisoners*; Rules 60 and 61 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 34 Principle 15 *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.
- 35 Article 9(3) CROC.
- 36 Rule 60 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*; Guideline 10(iv) UNHCR's *Revised Guidelines on the Detention of Asylum-Seekers*.
- 37 Principle 19 *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.
- 38 Principle 17(1) *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.
- 39 Principle 16(2) *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.
- 40 For example Rules 38 and 93 *Standard Minimum Rules for the Treatment of Prisoners*; Principle 18 *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.
- 41 Rule 39 *Standard Minimum Rules for the Treatment of Prisoners*; Principle 28 *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*; Rule 62 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 42 Rule 40 *Standard Minimum Rules for the Treatment of Prisoners*; Rule 41 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 43 Articles 18(1) and 27 ICCPR; article 1(1) *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*.
- 44 Article 6 *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*; Rule 42 *Standard Minimum Rules for the Treatment of Prisoners*; Rule 48 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*; see also Guideline 10(viii) UNHCR's *Revised Guidelines on the Detention of Asylum-Seekers*.



45 Rule 41 *Standard Minimum Rules for the Treatment of Prisoners*; Rule 48 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.

46 Article 28(1) CROC; article 13 *International Covenant on Economic, Social and Cultural Rights*.

47 Article 28(1) CROC; article 13(2) *International Covenant on Economic, Social and Cultural Rights*; Rule 38 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*. See also Committee on Economic, Social and Cultural Rights, *General Comment No. 13* (1999), paragraph 34: the right to education 'extends to all persons of school age residing in the territory of a State party, including non-nationals, and irrespective of their legal status'.

48 Article 28(1)(b) CROC; Rule 39 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*; Rule 77(1) *Standard Minimum Rules for the Treatment of Prisoners*.

49 Rule 4 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.

50 Article 23(3) CROC; Rule 77(1) *Standard Minimum Rules for the Treatment of Prisoners*; Rule 38 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.

51 See generally article 29 CROC and article 13(1) *International Covenant on Economic, Social and Cultural Rights* which require education to promote respect for human rights and understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, to be directed to the full development of the human personality and abilities and the sense of its dignity and to prepare the person to participate effectively in a free society. See also article 42 CROC which requires Australia to make the principles of the Convention known to both adults and children.

52 Article 29(1)(c) CROC; Rule 38 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.

53 Rule 77(2) *Standard Minimum Rules for the Treatment of Prisoners*; Rule 38 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*; Guideline 7 UNHCR's *Revised Guidelines on the Detention of Asylum-Seekers*.

54 Articles 6(2) and 13(2)(c) *International Covenant on Economic, Social and Cultural Rights*; Rule 71(5) *Standard Minimum Rules for the Treatment of Prisoners*; Rule 42 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*; see also Guideline 10(vii) UNHCR's *Revised Guidelines on the Detention of Asylum-Seekers*.

55 Rule 32 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* and Principle 6 *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.

56 See generally articles 7 and 13 *International Covenant on Economic, Social and Cultural Rights*; Rule 78 *Standard Minimum Rules for the Treatment of Prisoners*; Principle 28 *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.

57 See generally Rule 12 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*; see also Rule 80 *Standard Minimum Rules for the Treatment of Prisoners*.

58 See generally Rule 21 *Standard Minimum Rules for the Treatment of Prisoners*; Rule 47 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.

59 Articles 6 and 7 *International Covenant on Economic, Social and Cultural Rights*; Rule 89 *Standard Minimum Rules for the Treatment of Prisoners*; Rule 45 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*. See also Rule 71(3) *Standard Minimum Rules for the Treatment of Prisoners*. Regarding the appropriate level of remuneration, Rule 73(2) *Standard Minimum Rules for the Treatment of Prisoners* and Rule 46 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* indicate standard wages are to be paid where the detention service provider would otherwise be obliged to engage employees or contractors to perform the services (eg cooking, cleaning, interpreting).

60 Article 8(3) ICCPR; International Labour Organisation *Convention No. 29 Concerning Forced Labour*. See also Rule 72(2) *Standard Minimum Rules for the Treatment of Prisoners*.

61 Rule 74 *Standard Minimum Rules for the Treatment of Prisoners*; Rule 44 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.

62 Article 11(1) *International Covenant on Economic, Social and Cultural Rights*; Rule 20 *Standard Minimum Rules for the Treatment of Prisoners*; generally Rule 37 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.

63 Articles 6(2), 24 and 27 CROC; article 18 ICCPR; Rules 37 and 49 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.

64 Rule 31 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.

65 Rule 10 *Standard Minimum Rules for the Treatment of Prisoners*.

66 Rule 11(a) *Standard Minimum Rules for the Treatment of Prisoners*.

67 Rule 14 *Standard Minimum Rules for the Treatment of Prisoners*.

68 Rule 8 *Standard Minimum Rules for the Treatment of Prisoners*; Rule 29 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*; Guideline 10 UNHCR's *Revised Guidelines on the Detention of Asylum-Seekers*; Rule 26.3 *Standard Minimum Rules for the Administration of Juvenile Justice*.

69 Rules 17 and 18 *Standard Minimum Rules for the Treatment of Prisoners*; Rule 36 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.

70 Rule 19 *Standard Minimum Rules for the Treatment of Prisoners*; Rule 33 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.

71 Rules 13,15 and 16 *Standard Minimum Rules for the Treatment of Prisoners*; Rule 34 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*; also Guideline 10(ix) UNHCR's *Revised Guidelines on the Detention of Asylum-Seekers*.

72 Rule 45(1) *Standard Minimum Rules for the Treatment of Prisoners*.

73 Rule 45(2) *Standard Minimum Rules for the Treatment of Prisoners*; Rule 26 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.

74 Rule 44(3) *Standard Minimum Rules for the Treatment of Prisoners*; Principle 16(1) *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*. See also clause 12.4 of these *Guidelines*.

75 Generally Rules 24 and 25 *Standard Minimum Rules for the Treatment of Prisoners*.

76 Rule 43 *Standard Minimum Rules for the Treatment of Prisoners*; Rule 35 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.

77 Rule 35 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.

78 Rule 44(1) *Standard Minimum Rules for the Treatment of Prisoners*; Principle 16 *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*; Rule 56 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.

79 Principle 34 *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*; Rule 57 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*; see also Guideline 5.100 of the *Standard Guidelines for Corrections in Australia*.

80 Rule 24 *Standard Minimum Rules for the Treatment of Prisoners*; Rule 58 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.

81 Rule 44(1) and (2) *Standard Minimum Rules for the Treatment of Prisoners*.

82 Article 12 *International Covenant on Economic, Social and Cultural Rights*; article 24 CROC; Principle 24 *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.

83 Rule 6 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.

- 84 Principle 1 *Principles of Medical Ethics relevant to the Role of Health personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* requires health personnel charged with the medical care of detainees to “provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained”: UN Doc. A/37/51 (1982).
- 85 Principle 24 *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*; Rule 50 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*; Guideline 10 UNHCR’s *Revised Guidelines on the Detention of Asylum-Seekers*.
- 86 Rule 24 *Standard Minimum Rules for the Treatment of Prisoners*.
- 87 Rule 25 *Standard Minimum Rules for the Treatment of Prisoners*.
- 88 Rule 35(1) *Standard Minimum Rules for the Treatment of Prisoners*.
- 89 Rule 22(3) *Standard Minimum Rules for the Treatment of Prisoners*; Rule 49 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 90 Rules 22(1), 24 and 25 *Standard Minimum Rules for the Treatment of Prisoners*; Principle 24 *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*; Rule 49 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*; also Guideline 10(v) UNHCR’s *Revised Guidelines on the Detention of Asylum-Seekers*. The test of necessity is an objective one. It must be made on medical grounds alone by reference to ethical standards and the patient’s well-being, both in the immediate and longer term. Access to medical treatment and care cannot depend upon budgetary or staffing considerations.
- 91 Rules 51 and 54 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 92 Principle 25 *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.
- 93 Rule 25(2) *Standard Minimum Rules for the Treatment of Prisoners*; Rule 52 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 94 Rule 22(2) *Standard Minimum Rules for the Treatment of Prisoners*; Rule 53 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 95 See clause 12.4 of these *Guidelines*.
- 96 Principle 9 *Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care*; also article 39 CROC; article 12(d) *International Covenant on Economic, Social and Cultural Rights*.
- 97 Principle 4(1) *Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care*.
- 98 See clause 12.4 of these *Guidelines*.
- 99 Article 39 CROC; article 14(1) *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*; Rule 22(2) *Standard Minimum Rules for the Treatment of Prisoners*. Note that this clause applies to all those who are in fact survivors of torture or trauma, regardless of any decision to that effect by any Australian authority. The clause, therefore, requires assessment of all those claiming to have experienced torture and/or trauma. Rule 49 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* recommends community health services be utilised.
- 100 Principle 5(2) *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*; Guideline 6 UNHCR’s *Revised Guidelines on the Detention of Asylum-Seekers*.
- 101 For example articles 23 and 39 CROC; articles 5 and 6 *Declaration on the Rights of Disabled Persons*.
- 102 See generally article 20 CROC; Rule 28 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 103 Guideline 6 UNHCR’s *Revised Guidelines on the Detention of Asylum-Seekers*.

- 104 Article 3 CROC; also Guideline 6 UNHCR's *Revised Guidelines on the Detention of Asylum-Seekers*.
- 105 Article 12 CROC.
- 106 See article 22 CROC in relation to refugee children.
- 107 Article 31 CROC.
- 108 Article 5 CROC; also articles 3(2), 9, 14 and 16 CROC.
- 109 Article 18(1) CROC.
- 110 Article 18(2) CROC.
- 111 Article 9(3) CROC.
- 112 Article 9(1) CROC.
- 113 If the other parent is in Australia the child should normally be released on a bridging visa to reside with him or her.
- 114 Article 5 CROC.
- 115 Article 19 CROC; Rule 28 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 116 Article 39 CROC.
- 117 Article 24(2)(d) CROC; article 12(2)(a) *International Covenant on Economic, Social and Cultural Rights*; Rule 23(1) *Standard Minimum Rules for the Treatment of Prisoners*.
- 118 Rule 23(2) *Standard Minimum Rules for the Treatment of Prisoners*.
- 119 Article 18(2) CROC.
- 120 Rule 53 *Standard Minimum Rules for the Treatment of Prisoners*.
- 121 Guideline 8 UNHCR's *Revised Guidelines on the Detention of Asylum-Seekers*; also article 12(2) *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW).
- 122 Rule 46(1) *Standard Minimum Rules for the Treatment of Prisoners*; Rule 82 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 123 See generally Rule 51(1) *Standard Minimum Rules for the Treatment of Prisoners*.
- 124 Rule 49 *Standard Minimum Rules for the Treatment of Prisoners*; Rule 81 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 125 See generally Rules 47(2) and 54(2) *Standard Minimum Rules for the Treatment of Prisoners*; Rule 85 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 126 Rule 54(2) *Standard Minimum Rules for the Treatment of Prisoners*.
- 127 See Rule 47(3) *Standard Minimum Rules for the Treatment of Prisoners*; Rule 85 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 128 For example, Principle 18 *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*.
- 129 Article 7 ICCPR; article 37(a) CROC; article 2(1) *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*; Rule 31 *Standard Minimum Rules for the Treatment of Prisoners*; Principle 6 *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.
- 130 Article 10(1) *International Covenant on Civil and Political Rights*; article 37(c) CROC.
- 131 Rule 27 *Standard Minimum Rules for the Treatment of Prisoners*; Rule 66 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 132 Rule 64 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.  
See also articles 37(b) and 40.4 CROC.
- 133 Rules 31, 32 and 33 *Standard Minimum Rules for the Treatment of Prisoners*; Principle 6 *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*; Rule 67 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.

- 134 See Rule 29 *Standard Minimum Rules for the Treatment of Prisoners*. These matters should also be specified by legislation or regulations as required by Rule 29 and Principle 30 *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*; see also Rule 68 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 135 Rule 30(2) and (3) *Standard Minimum Rules for the Treatment of Prisoners*; Principle 30(2) *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*; Rule 70 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*; Rule 14.2 *Standard Minimum Rules for the Administration of Juvenile Justice*.
- 136 Rule 32(2) and (3) *Standard Minimum Rules for the Treatment of Prisoners*.
- 137 Principle 31 *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*; see also article 14(5) ICCPR.
- 138 Rules 69 and 70 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 139 See article 14 ICCPR.
- 140 Rule 54(1) *Standard Minimum Rules for the Treatment of Prisoners*; Rule 64 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*; Article 3 *Code of Conduct for Law Enforcement Officials*; Principle 15 *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*.
- 141 Rule 54(1) *Standard Minimum Rules for the Treatment of Prisoners*; Rule 64 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 142 Rule 33(c) *Standard Minimum Rules for the Treatment of Prisoners*; Rule 64 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 143 Rule 54(2) *Standard Minimum Rules for the Treatment of Prisoners*. See also clause 16.5 of these *Guidelines*.
- 144 Rule 54(3) *Standard Minimum Rules for the Treatment of Prisoners*.
- 145 Article 3 *Code of Conduct for Law Enforcement Officials*.
- 146 Rule 33 *Standard Minimum Rules for the Treatment of Prisoners*. See also clause 17.4 of these *Guidelines*.
- 147 Principle 5 *Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* stipulates that "It is a contravention of medical ethics for health personnel ... to participate in any procedure for restraining a ... detainee unless such a procedure is determined in accordance with purely medical criteria as being necessary for the protection of the physical or mental health or the safety of the ... detainee himself, of his fellow ... detainees, or of his guardians, and presents no hazard to his physical or mental health": UN Doc. A/37/51 (1982).
- 148 Rule 55 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*; Principle 10(1) *Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care*.
- 149 Rules 27 and 33(c) *Standard Minimum Rules for the Treatment of Prisoners*.
- 150 Article 37(c) CROC; see also Rule 64 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 151 Rules 35 and 36 *Standard Minimum Rules for the Treatment of Prisoners*; Principles 9 and 33 *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*; Rules 75, 76 and 77 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 152 *Human Rights and Equal Opportunity Commission Act 1986* (Cth), section 20(6) and (7); *Ombudsman Act 1976* (Cth), section 7(3) and (4).
- 153 Rule 78 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.

- 154 Rule 36(4) *Standard Minimum Rules for the Treatment of Prisoners*; Rule 76 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*; Principles 7 and 33(4) *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.
- 155 Principle 7(1) *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.
- 156 Principle 33(3) *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.
- 157 Principle 33(4) *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.
- 158 For example Principle 7(2) *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* and Rule 87(b) and (c) *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 159 Principle 7(2) and (3) *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*; also article 8 *Code of Conduct for Law Enforcement Officials*.
- 160 Detention Advisory Committees have been established in each centre under various titles.
- 161 Recommended by the Joint Standing Committee on Migration in its 1994 report *Asylum, Border Control and Detention*, pages 190-193.
- 162 See clause 17.9 of these *Guidelines*.
- 163 See clauses 19.3 and 19.4 of these *Guidelines*.
- 164 See clause 20.7 of these *Guidelines*.
- 165 See clause 20.2 of these *Guidelines*.
- 166 See clause 20.4 of these *Guidelines*.
- 167 Rule 55 *Standard Minimum Rules for the Treatment of Prisoners*; Rule 72 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 168 Rule 74 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 169 See Principle 29(2) *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*; Rule 73 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 170 Rule 81 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 171 Principle 4 *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.
- 172 Article 35 of the *Convention (1951)* and article II of the *Protocol (1967) Relating to the Status of Refugees*.