



Australian Government

Comcare

Tabled document no: 2

By: *Comcare*
Date: *1/6/11*

PUTTING YOU FIRST

1 June 2011

Mr Tim Watling
Committee Secretary
Senate Standing Committees on Education, Employment
and Workplace Relations
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Watling

During Budget Estimates hearings on 30 May 2011, Comcare undertook to provide the Committee with a copy of an Improvement Notice issued to the Department of Immigration and Citizenship (DIAC).

Improvement Notices are part of the range of enforcement tools available under federal work health and safety laws to Comcare investigators to assist in achieving better safety outcomes for federal workers. These notices are issued by an investigator requiring a person to undertake certain action and includes a time limit for completion. The federal work health and safety laws provide for court-imposed penalties for failure to comply with a notice.

Comcare issued an Improvement Notice to DIAC on 1 April 2011 as part of a work health and safety inspection of the Villawood Immigration Detention Facility. That inspection was part of a broader national investigation conducted by Comcare investigators, with a series of site inspections covering seven Immigration Detention Facilities conducted during March and April 2011.

During the inspection of the Villawood centre, the lead investigator formed an opinion that DIAC had "not taken all reasonably practicable steps to identify hazards and assess risks to health and safety associated with the relocation of the Christmas Island detainees and consequently to eliminate or minimise those risks". The Improvement Notice required action by 4 April 2011 coinciding with the arrival of the detainees from Christmas Island.

DIAC put in place a number of improvements to satisfy the investigator by the due date and were allowed time to provide additional documentary evidence as part of a final response on 10 May 2011. This information was provided on a confidential basis in light of its classification level. The investigator also advised DIAC of her appreciation of the efforts of the staff of DIAC and Serco in conducting hazard identification and risk assessment in relation to the potential risks associated with the transfer.

Comcare conducted a follow-up site inspection of the Villawood centre on 24 May 2011 to verify several remaining aspects of the Improvement Notice.

The investigator is now generally satisfied with DIAC's response to the Improvement Notice. This will be formalised in an investigation report covering the series of national inspections due to be provided to DIAC shortly.

DIAC has been cooperative in supporting the investigation throughout and has actively sought to address issues raised by investigators.

If further information is required, I can be contacted at (02) 6275 0657 or steve.kibble@comcare.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kibble', written in a cursive style.

Steve Kibble
Deputy CEO



Improvement notice

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

No. EVE0020547301

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

Att: Tracey Bell, OHS Manager, DIAC

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

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

The reasons for my opinion are:

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

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

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

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

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

I am therefore of the opinion that hazard identification, risk assessment and risk control have not been undertaken and implemented by DIAC at the Villawood IDF in relation to the relocation of the Christmas Island detainees to the Villawood IDF.

You are required to take action by 10 am on Monday 4 April 2011 to prevent any further breach or likely breach of the provisions identified above.

The following action must be taken by the responsible person within the period specified above:

1. Undertake hazard identification and risk assessment of the hazards and risks associated with the relocation and arrival of the Christmas Island detainees at the Villawood IDF in accordance with regulation 1.05 of the SS Regulations and s 16(1) of the Act;
2. Take all reasonably practicable steps to implement risk control measures to eliminate or minimise the risks assessed, in accordance with regulation 1.06 and s 16(1) of the Act;
3. Take all reasonably practicable steps, in accordance with ss 16(1) and 16(2)(e) of the Act, to provide to the DIAC employees and contractors performing work at the Villawood IDF, the information, instruction and training necessary to enable them to perform their work in a manner that is safe and without risk to their health, in relation to the risk and risk control measures associated with the arrival of the Christmas Island detainees at the Villawood IDF; and
4. Provide to Comcare, documentary evidence of the action taken to address points 1 to 3 above.

Signed: _____
(Investigator)
Rhonda Murray



Dated: 01 / 04 / 11 .

✂ _____
Return this portion of the notice (when the required improvement has been completed) to:
Comcare Level 6, 535 Bourke Street, Melbourne, Vic 3000
Improvement Notice No. 4883IN01 has been complied with.

Agency: _____

Name: _____

Address: _____

Position: _____

Signature: _____

Telephone: _____

Date: / / .

Copy 1 Responsible person
Copy 2 Comcare
Copy 3 Investigator

NOTES

Note 1 Under subsection 47 (6) of the Act, the responsible person to whom this notice was issued must ensure that, to the extent that this notice relates to any matter over which the person has control, this notice is complied with. The maximum civil penalty for non-compliance with this requirement by a non-Commonwealth licensee employer, a Government business enterprise, an employee of a non-Commonwealth licensee employee or an employee of a Government business enterprise is \$1,110 for every day of the breach (see Part 1 of Schedule 2 to the Act). The maximum criminal penalty for non-compliance with this requirement by a non-Commonwealth licensee employer, a Government business enterprise, an employee of a non-Commonwealth licensee employee or an employee of a Government business enterprise is \$99,000 (see Part 2 of Schedule 2 to the Act).

Note 2 Under subsection 47 (8) of the Act, if this notice was issued to an employer, the employer must:

- (a) give a copy of this notice to each health and safety representative for a designated workgroup of employees performing work that is affected by this notice; and
- (b) display a copy of this notice in a prominent place at or near each workplace at which that work is being performed.

Note 3 Under subsection 48 (1) of the Act, any of the following persons may, in writing, ask the Australian Industrial Relations Commission to review the investigator's decision, under section 47 of the Act, to issue this notice:

- an employer affected by the investigator's decision;
- the person to whom this notice was issued;
- the health and safety representative or an employee representative in relation to a designated work group when requested by an employee affected by the decision;
- if there is no designated work group — an employee representative when requested by an employee affected by the decision;
- the owner of any plant, substance or thing to which the investigator's decision relates.

Note 4 Under subsection 48 (4) of the Act, where the decision appealed against is a decision of an investigator, under section 47 of the Act, to issue this notice, the operation of the decision is suspended pending determination of the appeal, except to the extent that the reviewing authority makes an order to the contrary.

Note 5 Under section 50 of the Act, this notice must not be tampered with or removed before the notice has ceased to have effect. The maximum criminal penalty for breach of this section by a non-Commonwealth licensee employer, a Government business enterprise, an employee of a non-Commonwealth licensee employer, an employee of a Government business enterprise, an employee of a Commonwealth authority or an employee of a Commonwealth entity is \$3,300 or imprisonment for 6 months, or both.

Note 6 This Improvement Notice is being issued in accordance with section 47 of the Act on the grounds that a person is failing to comply with a provision of the Act or regulations, or has failed to comply with a provision of the Act or regulations, and is likely to do so again.

✕ _____

This notice was delivered to: _____
(Name)

in the office/position of: _____
(Office/Position)

at: _____ am/pm on: _____ / _____ / _____.