

QUESTION TAKEN ON NOTICE

ADDITIONAL ESTIMATES HEARING: 13 February 2006

IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

(16) Output 1.3: Enforcement of Immigration Law

Senator Nettle (L&C 15) asked:

The first mental health issue that you mention in this table is the memorandum of understanding with the South Australian Department of Health. Is it possible for the committee to get a copy of that? What is the status of that?

Answer:

On 17 November 2005 the Department signed a Memorandum of Understanding (MOU) with the South Australian Government (as represented by the Department of Health) in relation to the provision of health services to immigration detainees in South Australia.

A copy of the MOU is attached.

MEMORANDUM OF UNDERSTANDING

between

**THE COMMONWEALTH OF
AUSTRALIA**

and

STATE GOVERNMENT OF SOUTH AUSTRALIA



(AS REPRESENTED BY THE DEPARTMENT OF HEALTH)

in relation to

**THE PROVISION OF HEALTH SERVICES TO
IMMIGRATION DETAINEES**

TABLE OF CONTENTS

1	RECITALS	3
2	INTERPRETATION	4
2.1	In this MOU, unless the contrary intention appears:	4
3	INTRODUCTION	6
3.1	Framework.....	6
3.2	Previous MoUs	Error! Bookmark not defined.
4	ROLES AND RESPONSIBILITIES	7
4.1	Roles and Responsibilities of DIMIA and the DSP under this MOU ..	7
4.2	Roles and Responsibilities of Department of Health under this MOU	7
4.3	Activities outside of the scope of this MOU.....	8
5	SERVICES	8
5.1	Cooperative and collaborative working arrangements.....	8
5.2	Service provision	9
5.3	Other Services.....	10
5.4	Location of service delivery	10
5.5	Services provided under Mental Health Act 1993 (SA).....	11
6	PROCEDURES	11
6.1	Consent to Medical Treatment - General.....	11
6.2	Consent to Medical Treatment - Children	12
6.3	Emergency Medical and Dental Treatment.....	12
6.4	Deemed Consent.....	14
6.5	Confidentiality and Privacy	15
6.6	Information sharing between parties.....	16
6.7	Media Contact	17
6.8	Occupational Health and Safety	18
6.9	Death of a Detainee.....	18
7	COSTS	19
7.1	Resources	19
7.2	Training.....	19
7.3	Rates	19
7.4	Invoices	19
8	MONITORING AND REVIEW.....	20
8.1	Monitoring.....	20
8.2	Formal review of effectiveness	21
9	OPERATION OF MOU	21
9.1	Scope and nature of MOU	21
9.2	Authorised persons for MOU provisions	21
9.3	Subpoenas	21
9.4	Variations.....	21
9.5	Disputes.....	22
9.6	Notices.....	22
9.7	Termination.....	22
9.8	Effective Date	23

SCHEDULE 1 
SCHEDULE 3


SCHEDULE 2 
SCHEDULE 4


Memorandum of Understanding (MOU) between the Commonwealth of Australia and the State Government of South Australia for the provision of health services to some Detainees.

This **MEMORANDUM OF UNDERSTANDING** is made on this 17th day of November 2005

BETWEEN

THE COMMONWEALTH OF AUSTRALIA as represented by the DEPARTMENT OF IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS (DIMIA) whose principal office is located at North Building, Chan Street, Belconnen, ACT, 2615

AND

THE STATE GOVERNMENT OF SOUTH AUSTRALIA as represented by the DEPARTMENT OF HEALTH (Department of Health) whose principal office is located at 11 Hindmarsh Square, ADELAIDE, SA 5000.

1 RECITALS

1.1 This MOU provides a framework for:

- a) the provision of health services by the Department of Health, including the provision of services through the South Australian Health Commission (SAHC) Incorporated health units, to Detainees on request from DIMIA and the Detention Services Provider (DSP);
- b) the provision of training, where requested by either party on health issues relevant to Detainees; and
- c) determining costs and payment for health services under this MoU.

2 INTERPRETATION

2.1 In this MOU, unless the contrary intention appears:

'Act' means the *Migration Act 1958 (Cth)*.

'Agency' means either DIMIA or the Department of Health in the context in which this term appears.

'Alternative place of immigration detention' is a reference to another place of immigration detention approved by the Minister in writing under subparagraph 5(1)(b)(v) of the Migration Act 1958.

'Consent to Medical Treatment Act' means the *Consent to Medical Treatment and Palliative Care Act 1995 (SA)*.

'Department of Health services' means health services provided by the Department of Health including those provided by SAHC incorporated health units and external contractors

'Designated Person' means a person who:

- a) holds a Detainee 'on behalf of an officer' while the Detainee is in an alternative place of detention; and
- b) is directed by the Secretary (DIMIA) or his/her delegate to accompany and restrain a particular Detainee when they are not in a place of detention.

'Detainee' means a person detained under the provisions of the Migration Act 1958.

'Detainee Minor' means a person under the age of 18 years held in immigration detention pursuant to the Migration Act 1958 and includes:

- a) 'unaccompanied minors' ie unlawful non-citizens under 18 years of age and who do not have a parent, or a relative over 21 years of age in Australia and who are under the guardianship of the Minister pursuant to the IGOC Act;
- b) 'accompanied minors' ie unlawful non-citizens under 18 years of age accompanied by a parent, or by a relative over 21 years of age;
- c) unlawful non-citizen minors who have a parent or other relative in Australia but not in immigration detention.

'Detention Services Provider (DSP)' means the service provider contracted by DIMIA to provide immigration detention services.

'DIMIA' means the Department of Immigration and Multicultural and Indigenous Affairs or another Department performing the statutory functions under the Migration Act 1958.

'DIMIA contact person' means a DIMIA employee identified as occupying a DIMIA contact person position specified in Schedule 1 to this Memorandum of Understanding.

'DIMIA Centre Manager' means the senior DIMIA officer occupying the position of DIMIA Manager at Baxter IDF, Port Augusta RHP, Woomera IDF.

'Director Detention Policy and Procedures' means the DIMIA Director employed at DIMIA Central Office principally responsible for policy issues in relation to immigration detention.

'Director Arrivals and Detention Centre Coordination' means the DIMIA Director employed at DIMIA Central Office responsible for operational issues in relation to IDFs.

'Director Detention Case Coordination' means the DIMIA Director employed at DIMIA Central Office responsible to coordinate case management of individual Detainees.

'IGOC Act' means the *Immigration (Guardianship of Children) Act 1946 (Cth)*.

'Immigration Detention' means:

- a) being in the company of, and restrained by:
 - (i) an officer; or
 - (ii) in relation to a particular Detainee - another person directed by the Secretary to accompany and restrain the Detainee; or
- b) being held by, or on behalf of, an officer in another place approved by the Minister in writing.

'Immigration Detention Facility' (IDF) means the Baxter Immigration Detention Facility (IDF) established under Section 273 of the Migration Act 1958, or any other IDF established under the Act.

'Minister' means the Commonwealth Minister for Immigration and Multicultural and Indigenous Affairs.

'Officer' has the same meaning as in Subsection 5(1) of the Migration Act 1958.

'Party' means either DIMIA or Department of Health depending on the context in which it appears.

‘Parties’ means DIMIA and the Department of Health.

‘Place of immigration detention’ includes Immigration Detention Facilities (IDF) and Residential Housing Projects (RHP) established in South Australia.

‘Privacy Act’ means the Commonwealth *Privacy Act 1988*.

‘Residential Housing Project’ (RHP) means a form of detention that is established within dedicated domestic residences approved for that purpose under paragraph (b)(v) under the definition of immigration detention in Subsection 5(1) of the Migration Act 1958.

‘Secretary’ means the person appointed to, or acting in the position of Secretary to DIMIA.

‘sur place’ means a situation in which a person has a well-founded fear of persecution for a reason under the Refugees Convention as a result of events that occurred while he or she was outside his or her country of nationality or former habitual residence.

‘Unaccompanied minor’ means a person under the age of 18 years held in immigration detention including:

- a) ‘unaccompanied wards’ ie who *do not* have a parent or relative (over 21 years of age) in Australia and who are under the guardianship of the Minister pursuant to the IGOC Act;
- b) ‘unaccompanied non-wards’ ie unlawful non-citizen minors who have a parent or relative over 21 years of age in Australia; and
- c) other vulnerable minors who may be treated as being unaccompanied.

3 INTRODUCTION

3.1 Framework

- 3.1.1 This Memorandum of Understanding (MOU) sets out a framework for cooperation between DIMIA and the Department of Health for the provision of health services to Detainees in detention including places of alternative detention

4 ROLES AND RESPONSIBILITIES

4.1 Roles and Responsibilities of DIMIA and the DSP under this MOU

- 4.1.1 The role of DIMIA is to regulate the movement of people into and out of Australia, in accordance with the Act. Section 189 of the Act requires that all unlawful non-citizens, including those in South Australia, be detained and section 196 requires that they must remain in immigration detention until such time as they are granted a visa or are removed from Australia. Section 198 of the Act requires that in various circumstances removal should take place as soon as it is reasonably practicable.
- 4.1.2 DIMIA has a duty of care and responsibility for the welfare, care, health and safety of all Detainees.
- 4.1.3 DIMIA has contracted an external organisation, the Detention Services Provider (DSP), to undertake the day to day operations of Places of immigration detention. The DSP provides the management and internal security of Places of immigration detention, and is responsible for resolving health matters within the detention environment on a day-to-day basis. The DSP may also sub-contract aspects of the health service delivery, eg primary health and psychological health services.
- 4.1.4 When Detainees move outside a Place of immigration detention, for example to hospital, DIMIA may establish arrangements with other parties, such as Department of Health, to confer day-to-day management for the health care of a Detainee to that other party. It is necessary for DIMIA to oversee such arrangements to ensure that Detainees remain in immigration detention as required under the Act, that DIMIA's duty of care is discharged and that DIMIA can meet its reporting requirements. In some instances, DIMIA may ask the DSP to undertake some of these tasks.

4.2 Roles and Responsibilities of Department of Health under this MOU

- 4.2.1 The primary role of the Department of Health under this MOU is to ensure, as far as possible, that Detainees referred by the DSP receive appropriate, competent and timely health services. This includes environmental health services involving detection, prevention and control of disease.
- 4.2.2 The Department of Health contracts external health service providers to provide direct services to patients or clients and these providers are responsible for determining access to and delivery of services, including the setting of priorities based on assessments of clinical need. The Department of Health will

use its best endeavours to ensure that external health service providers are advised that Detainees must have access to a level and standard and timeliness of health services broadly comparable to those available in the South Australian community.

4.2.3 The Department of Health's primary responsibility is the health of its patients and the Department of Health will use its best endeavours to ensure that this responsibility will be exercised consistently with the requirements of the Act.

4.2.4 The Department of Health will ensure that all health professionals involved in providing health services to detainees under this MOU are provided with a copy of the document contained in Schedule 2.

4.3 Activities outside of the scope of this MOU

4.3.1 Activities which are outside the scope of this MOU include the following:

- a) the processing and decision making in relation to applications for visas from persons in immigration detention and any merits or judicial review related to such decisions;
- b) the conduct of negotiations with foreign governments and international agencies on questions related to the removal from Australia of foreign nationals; and
- c) the interpretation of international agreements to which Australia is a party which might impact on the delivery of Australia's immigration detention functions and policies.

5 SERVICES

5.1 Cooperative and collaborative working arrangements

5.1.1 The Parties agree to work together, and with the DSP, in a cooperative and collaborative way to achieve Detainee access to a level and standard and timeliness of health services:

- a) broadly comparable to those available in the South Australian community;
- b) on the basis of clinical priority; and
- c) taking into account the special needs of the Detainee population.

- 5.1.2 In fulfilling this commitment, the Parties will develop agreed procedures for identified areas of service provision.
- 5.1.3 The Parties agree to treat Detainees accessing the Department of Health services without discrimination and with appropriate:
- a) dignity;
 - b) humanity;
 - c) cultural sensitivity; and
 - d) respect for privacy and personal differences.

5.2 Service provision

- 5.2.1 On request from DIMIA (or the DSP), the Department of Health agrees to:
- a) provide specific health services, directly or through its contractors, including, but not limited to:
 - health services provided at hospitals;
 - mental health services including on-site crisis team assessment and advice;
 - public health and communicable diseases services;
 - paediatric services;
 - community nursing services including early childhood community nursing services;
 - sexual health services;
 - preventative health services eg breast screening services;
 - support for Detainees with disabilities;
 - dental services;
 - optical services; and
 - ambulance services;
 - b) co-ordinate access to Department of Health services and facilities and on request provide advice on the management of Detainee health issues and the requirements and operation of South Australian law;
 - c) provide DIMIA and the DSP with sufficient information and cooperation about all Detainees receiving Department of Health services (eg Detainees that are inpatients at South Australian hospitals) to enable DIMIA and the DSP to ensure that Detainees remain in immigration detention, that DIMIA and the DSP's duties of care are discharged and that DIMIA and the DSP can meet their reporting requirements;

- d) provide training for DIMIA and DSP staff regarding South Australian statutory health obligations, policies and guidelines; and
- e) provide the DSP with sufficient prior notice of community health initiatives planned for the local Port Augusta community (eg preventative health initiatives such as visits by the breast screening van and visiting specialists) to allow the DSP to access these services for Detainees in the Baxter IDF, the Port Augusta RHP, or alternative places of immigration detention. This notice will include a nominated contact person with whom the DSP can negotiate access (if desired) and associated costs.

5.2.2 The Department of Health will provide emergency health services without DIMIA or DSP authorisation only where the Detainee is already receiving a requested service and a clear urgent clinical need arises to immediately provide another (un-requested) service. This may occur where the absence of immediate medical attention could reasonably be expected to place the patient's health in serious jeopardy, seriously impair bodily function or lead to serious dysfunction of a bodily organ or part. The provision of emergency services must be in accordance with Section 13 of the Consent to Medical Treatment and Palliative Care Act 1995 (SA). In some circumstances, emergency health services may be provided under Regulation 5.35 of the Migration Regulations, but this can only occur after the Secretary of the Department has personally authorised such action.

5.3 Other Services

5.3.1 At the request of DIMIA or the DSP, Department of Health may agree to provide to Detainees other services, either under the relevant provisions of this MOU, or not otherwise described in this MOU, on a negotiated cost-recovery basis.

5.4 Location of service delivery

5.4.1 The services described in 5.2 and 5.3 might be provided in an IDF, or an RHP or externally.

5.4.2 Where a Detainee is admitted as an in-patient to a South Australian hospital, DIMIA will arrange for:

- a) the facility to be designated as an alternative place of detention; and

- b) where practicable (subject to the proviso that the relevant Department of Health staff consent and the circumstances allow) staff being declared Designated Persons.

5.4.3 DIMIA may where it considers that it is appropriate and necessary arrange for a DIMIA officer to accompany the Detainee (eg if there is a perceived risk of escape) and the officer will undertake his/her duties in a discreet and cooperative way that does not unreasonably interfere with the provision of health care.

5.5 Services provided under Mental Health Act 1993 (SA)

5.5.1 The Department of Health will ensure, as far as possible, that Detainees referred to it by DIMIA or by the DSP receive appropriate, competent and timely mental health services. Mental health services may include comprehensive advice, assessment and management plans which may form part of a Detainee's care where a major mental illness is suspected or identified.

5.5.2 The parties acknowledge that the Department of Health will provide these mental health services, where applicable, in accordance with the Mental Health Act 1993 (SA).

6 PROCEDURES

6.1 Consent to Medical Treatment - General

6.1.1 The Parties acknowledge that:

- a) before any treatment is provided to a Detainee, the Department of Health will obtain the Detainee's full and informed consent to the provision of health services in accordance with any applicable legislative requirements; and
- b) the Department of Health will act in accordance with the provisions of section 22 of the Mental Health Act 1993 (SA) before administering prescribed psychiatric treatment to a Detainee who is a patient in any hospital or clinic.

6.1.2 Where a Detainee is unwilling to consent to necessary medical treatment, Department of Health agrees to contact DIMIA and/or the DSP to discuss the matter as soon as possible and before any services are provided.

6.1.3 Where a detainee is willing to consent to medical treatment, the Department of Health agrees to obtain that consent in the form set out in Schedule 4.

6.2 Consent to Medical Treatment - Children

- 6.2.1 The Parties acknowledge that a Detainee Minor will be treated as a “child” under the *Consent to Medical Treatment and Palliative Care Act 1995 (SA)*, for purposes of obtaining medical and dental treatment in South Australia where the Detainee is aged under 16 years of age.
- 6.2.2 The Parties acknowledge that in accordance with section 12 of the *Consent to Medical Treatment and Palliative Care Act 1995*, routine medical and dental treatment of these Detainee minors can occur where:
- a) the parent or guardian consents; or
 - b) the child consents and the medical practitioner who is to administer the treatment is of the opinion that the child is capable of understanding the nature, consequences and risks of the treatment and that the treatment is in the best interest of the child’s health and well-being; and that opinion is supported by the written opinion of at least one other medical practitioner who personally examines the child before treatment is commenced.
- 6.2.3 Any Detainee Minors who are aged 16 years of age and over will be treated as adults for the purposes of obtaining medical and dental treatment.
- 6.2.4 The Parties acknowledge that Department of Health officers who are delegated to act as guardians under the IGOC Act may consent to the treatment of a Detainee minor:
- a) where a Detainee minor is an unaccompanied ward; and
 - b) requires non-urgent, routine medical or dental treatment.
- 6.2.5 The Parties acknowledge that where a Detainee minor is an accompanied Detainee minor (ie they have a parent(s) or other guardian in Australia) and requires routine medical or dental treatment, a treating medical practitioner should contact the manager of the Baxter IDF, who will seek the consent of the Detainee minor’s parent(s) or guardian. Where the Detainee minor’s parent(s) or guardian is not in an IDF or RPH, the manager of Baxter IDF will arrange for contact with the Detainee parent(s) or guardian.

6.3 Emergency Medical and Dental Treatment

6.3.1 Subsection 13(1) of the *Consent to Medical Treatment and Palliative Care Act 1995 (SA)* provides that subject to subsection 13(3), a medical practitioner may lawfully administer medical treatment to a person “the patient” if:

- a) the patient is incapable of consenting;
- b) the medical practitioner who administers the treatment is of the opinion that the treatment is necessary to meet an imminent risk to life or health and that opinion is supported by the written opinion of another medical practitioner who has personally examined the patient; and
- c) the patient (if 16 years of age or over) has not, to the best of the medical practitioner’s knowledge, refused to consent to the treatment.

6.3.2 The second supporting opinion from another medical practitioner is not necessary if, in the circumstances of the case, it is not practicable to obtain such an opinion (subsection 13(2) of the *Consent to Medical Treatment and Palliative Care Act 1995 (SA)*).

6.3.3 Emergency medical and/or treatment must be in accordance with subsections 13(3) – (5) of the *Consent to Medical Treatment and Palliative Care Act 1995 (SA)* which states as follows:

(3) If- (a) the patient has appointed a medical agent; and (b) the medical practitioner proposing to administer the treatment is aware of the appointment and of the conditions and directions contained in the medical power of attorney; and (c) the medical agent is available to decide whether the medical treatment should be administered, the medical treatment may not be administered without the agent's consent.

(4) If no such medical agent is available and a guardian of the patient is available, the medical treatment may not be administered without the guardian's consent.

(5) If the patient is a child, and a parent or guardian of the child is available to decide whether the medical treatment should be administered, the parent's or guardian's consent to the treatment must be sought but the child's health and well-being are paramount and if the parent or guardian refuses consent, the treatment may be administered despite the refusal if it is in the best interests of the child's health and well-being.

6.3.4 Where a Detainee Minor undergoes emergency medical or dental treatment, the Department of Health agrees to

immediately report such treatment to the manager of Baxter IDF, and provide a written report within 24 hours of the treatment being provided.

6.3.5 When a parent or guardian of a Detainee Minor under the age of 16 is available to decide whether treatment should be administered, the parent's or guardian's consent should be sought as follows:

- a) where the circumstances permit, the Department of Health and DIMIA (through manager of Baxter IDF) should endeavour to make the parents or guardian available, whether in person or by telephone; and
- b) in cases where the parents or guardians are not and cannot be made available, the Department of Health and DIMIA (through Manager, Baxter IDF) will inform the parents or guardian immediately if their whereabouts are known and arrange for them to communicate with the medical practitioner.

6.4 Deemed Consent

6.4.1 The Parties acknowledge that under Regulation 5.35 of the Migration Regulations 1994, the Secretary to DIMIA may authorise medical treatment of a Detainee where a Detainee:

- a) fails to give;
- b) refuses to give; or
- c) is not reasonably capable of giving consent,
if the Secretary, acting on the written advice of a registered medical practitioner, forms the opinion that:
 - d) the Detainee needs the medical treatment; and
 - e) if treatment is not given, there will be a serious risk to the Detainee's life or health (eg where rehydration of a Detainee on a hunger strike is required).

This power cannot be delegated and can only be authorised by the person substantially or acting in the position of Secretary.

6.4.2 A Detainee for these purposes is "a person held at a detention centre in detention under the Act". This would include a person transferred from Baxter IDF to a hospital for the purpose of receiving medical treatment, but would not include anyone in an approved "alternative place of immigration detention".

6.5 Confidentiality and Privacy

- 6.5.1 DIMIA will act in accordance with the *Privacy Act 1988 (Cwth)* when handling Detainees' personal information including their medical records.
- 6.5.2 Department of Health will act in accordance with the *Code of Fair Information Practice*; section 64 of the *South Australian Health Commission Act 1976 (SA)*; and section 34 of the *Mental Health Act 1993 (SA)* when handling personal information (*Code of Fair Information Practice* is at Schedule 3).
- 6.5.3 Any person providing 'personal information' as defined in the *Code of Fair Information Practice* must be authorised to do so under the provisions of section 64 of the *South Australian Health Commission Act 1976 (SA)* and/or section 34 of the *Mental Health Act 1993 (SA)*.
- 6.5.4 The Department of Health will use its best endeavours to ensure that clinical information is only accessible to those people who need it to treat and care for Detainees.
- 6.5.5 DIMIA and Department of Health agree that all and any information or material relating to any Detainee and to either party's actions in implementing the MOU will remain confidential. DIMIA and Department of Health agree that confidential information will not be disclosed to any third party unless for the following purposes:
- a) (i) giving effect to this MOU; or
(ii) taking legal advice; or
(iii) instituting or defending legal proceedings relating to matters covered by this MOU; and
 - b) to the extent required by law.
- 6.5.6 In this MOU "confidential information" in relation to a Party means information that:
- a) is by its nature confidential;
 - b) is designated by that Party as confidential; or
 - c) the other Party knows or ought to know is confidential;
- but does not include information which:
- d) is or becomes public knowledge other than by breach of this MOU;

- e) is in the possession of the receiving Party without restriction in relation to disclosure before the date of receipt from the disclosing Party;
- f) is in respect of ideas, concepts, know-how, techniques or methodologies where disclosure is permitted under this MOU; or
- g) has been independently developed or acquired by the receiving Party.

6.5.7 The obligations on DIMIA and the Department of Health under this clause 6.5 will not be taken to have been breached to the extent that information:

- a) is disclosed by DIMIA or the Department of Health to their responsible Minister;
- b) is disclosed by DIMIA or the Department of Health, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia or the State of South Australia; or
- c) is shared by DIMIA or the Department of Health within the Agency's organisation, or with another Commonwealth or South Australian agency, to give effect to DIMIA's or the Department of Health's legal responsibilities.

6.5.8 It is also important for the privacy of Detainees, for the protection of the health and safety of their family members still in the country of origin and to prevent sur place refugee claims, that photographs of Detainees, particularly with identifying material such as names, not be published or provided to the media. Department of Health service providers, subject to adherence to Code of Fair Information Practice, agree that they will not film or photograph Detainees, except where required:

- a) as part of a medical procedure; or
- b) for legitimate medical research and teaching purposes relating to the provision of health services provided under this MOU where the filming and/or photography: (i) are agreed with DIMIA; (ii) are authorised by law; (iii) involve photographs or film where the Detainee is non identifiable; and (iv) occur in circumstances where the Detainee has given their consent.

6.6 Information sharing between parties

- 6.6.1 Except in an emergency, where a Detainee is to receive a service provided for under this Memorandum of Understanding, DIMIA will use reasonable endeavours to ensure that the DSP seeks the Detainee's consent to sharing of medical information between relevant persons using the form at Schedule 4. If the Detainee refuses to sign the form, this will not preclude them from accessing required health care and health care services.
- 6.6.2 Recognising the Department of Health's duty of care responsibilities, and to facilitate ongoing care of the Detainee, DIMIA will use reasonable endeavours to ensure that the DSP Medical Officer provides, as far as possible and subject to clause 6.5, the treating Department of Health medical officer with relevant health information (including copies of relevant medical records where it is deemed necessary) to facilitate the Detainee's ongoing care (eg relevant past and current health conditions and treatment).
- 6.6.3 Recognising DIMIA and the DSP's duty of care responsibilities, and to facilitate ongoing care of the Detainee, Department of Health will provide, as far as possible and in accordance with the provisions referred to in clause 6.5:
- a) DIMIA with sufficient information about Detainees' health and associated care arrangements during the period a Detainee is in an external health facility to enable DIMIA to meet its duty of care; and
 - b) the treating DSP Medical Officer with relevant health information necessary to facilitate Detainees' ongoing care immediately following any Detainee's treatment by a Department of Health provider (eg the DSP Medical Officer with a discharge plan where a Detainee is discharged from hospital).
- 6.6.4 Where a Detainee is unwilling to consent to the disclosure of his or her personal information, the parties will discuss the matter as soon as possible and before the Detainee is transferred to, or discharged from, the care of the Department of Health.

6.7 Media Contact

- 6.7.1 Department of Health agree to use their best endeavours to ensure that Detainees do not have contact with the media. Department of Health agree to report to DIMIA and the DPS immediately any attempts are made by the media to contact Detainees or other Designated Persons.

- 6.7.2 Department of Health agree not to issue any information, document, or article in respect of the services under this MOU to the media without DIMIA's prior consent.
- 6.7.3 DIMIA agrees not to issue any information, document, or article in respect of the services under this MOU to the media without consultation with Department of Health.
- 6.7.4 Department of Health agree to take into account the following factors when issuing a media statement in relation to Detainees:
- a) the contribution and input of all participating parties;
 - b) the obligations placed on the Department of Health by the Code of Fair Information Practice, section 64 of the *South Australian Health Commission Act 1976 (SA)* and Section 34 of the *Mental Health Act 1993 (SA)* restricting disclosure of personal information, and the *Freedom of Information Act 1991 (SA)*;
 - c) the obligations placed on the Commonwealth by the *Privacy Act 1988* and the *Freedom of Information Act 1988 (Cth)*;
 - d) the impact of any current or pending court action if known by Department of Health; and
 - e) the need to prevent *sur place* refugee claims.

6.8 Occupational Health and Safety

- 6.8.1 Where Department of Health services are provided on-site at a place of detention, the parties agree to ensure their staff are aware of and understand all applicable occupational health and safety requirements relating to the operations covered by this MOU.

6.9 Death of a Detainee

- 6.9.1 In the event of the death of Detainee whilst detained under the Mental Health Act or as a result of surgery or anaesthetic or within 24 hours of discharge from a hospital, the Department of Health must report the death to the State Coroner. The Coroners Act requires that the medical practitioner who provided care prior to the death or who examined the body after death to give their opinion as to the cause of death. For all deaths of Detainees, including those reportable to the State Coroner, the Department of Health agrees to notify DIMIA and assist DIMIA and other relevant agencies in meeting all obligations regarding post mortem investigations, reporting requirements and ensuring appropriate cultural and religious arrangements for the body.

- 6.9.2 DIMIA agrees to pay any costs incurred by the Department of Health in providing this assistance upon the presentation of an invoice correctly rendered under clause 7.4.

7 COSTS

7.1 Resources

- 7.1.1 The parties agree to provide adequate resources to fulfil their own respective statutory obligations and responsibilities. Each agency will meet its own costs in providing services to meet their own statutory responsibilities.

7.2 Training

- 7.2.1 Upon request, the Department of Health agrees to provide training to DIMIA officers and persons employed by the DSP on the requirements of South Australia's statutory obligations in particular relating to the *Health Commission Act 1976 (SA)* and *Mental Health Act 1993 (SA)*. Such training would be provided on a negotiated cost recovery basis.

7.3 Rates

- 7.3.1 DIMIA will pay the Department of Health fees for the health services it performs for Detainees under this MOU.
- 7.3.2 The fees payable for the services under this MOU will be calculated at the non-Medicare rate in accordance with South Australian Health Commission (Compensable and Non-Medicare Patients Fees) Regulations 2004 (SA) as at the date that this MOU is signed. The Department of Health agrees to notify DIMIA of any adjustments to these rates and prior to any adjustment taking effect. If DIMIA does not agree to the new rates, then the provisions of clauses 9.4, 9.5 and 9.6 can be applied.
- 7.3.3 Where fees for services provided under this MOU are not prescribed under the South Australian *Health Commission (Compensable and Non-Medicare Patients Fees) Regulations (SA)*, then the fees payable will be negotiated by the parties on a cost recovery basis and, where practicable, prior to provision of the services.

7.4 Invoices

- 7.4.1 The Department of Health, including the SAHC, will invoice the DIMIA through the DSP for these costs on a monthly basis and

the relevant party (DIMIA or the DSP) will pay within 30 days of receiving the invoice. GST will be included in the invoice.

- 7.4.2 Invoices must be submitted by the Department of Health, including the SAHC, monthly in arrears and must include the following information:
- a) reference to this MOU;
 - b) details of the health services provider;
 - c) description of the services provided;
 - d) the timeframe in which the services were provided;
 - e) itemised expenditure for the services provided;
 - f) if reimbursement for a direct expense is required (for example accommodation) - a copy of the tax invoice paid by the Department of Health; and
 - g) account details for payment by electronic funds transfer (EFT) including: Account Name; Bank Details; ABN; BSB number; and Account number.
- 7.4.3 Invoices should not identify the name of the Detainee but this information should be attached to the invoice in order for DIMIA or DSP to identify the Detainee for reconciliation purposes.
- 7.4.4 Payment will be made to the Department of Health to the account specified on the invoice.
- 7.4.5 Department of Health and SAHC will ensure that the services provided under this MoU represent an efficient and accountable use of Commonwealth money.

8 MONITORING AND REVIEW

8.1 Monitoring

- 8.1.1 Both parties agree to monitor the effectiveness of the operation of this MOU annually from the date on which this MOU is signed. DIMIA will be responsible for initiating these discussions.
- 8.1.2 Notwithstanding clause 8.1.1 either party may at any time raise issues of concern regarding the effective operation of the MOU with the other party.

8.2 Formal review of effectiveness

- 8.2.1 Both parties agree to review the effectiveness of the operation of this MOU no later than two years after the date on which it is signed. The review will assess the effectiveness of arrangements put in place through this MOU and their continuing relevance.
- 8.2.2 DIMIA will convene this review. The Department of Health agrees to assist in the efficient conduct of this review.

9 OPERATION OF MOU

9.1 Scope and nature of MOU

- 9.1.1 This MOU represents the entire agreement between the parties in relation to the recitals set out in clause 1 and replaces all previous agreements, whether oral or in writing.
- 9.1.2 This MOU is not intended to create, and does not create, legally binding obligations between the parties.
- 9.1.3 All Attachments and Schedules to this MOU form part of this MOU.

9.2 Authorised persons for MOU provisions

- 9.2.1 Where a party takes action under this MOU, the authorised person for each identified party will be as specified in Schedule 1.

9.3 Subpoenas

- 9.3.1 If either party is served with a subpoena or a summons to produce documents relating to any material, document or information provided, the party will, as soon as practicable, notify and liaise with the other party prior to production of the material.

9.4 Variations

- 9.4.1 This MOU may be varied only by agreement in writing between the parties.
- 9.4.2 Any officer of Department of Health or DIMIA to whom reference is made in this MOU may be substituted by another officer of Department of Health or DIMIA performing the same functions under this MOU without need for any formal variation of this MOU.

9.5 Disputes

- 9.5.1 A party to the agreement claiming a dispute has arisen in relation to the agreement shall give written notice to the other party. In this notice it will designate as its representative in negotiations relating to the dispute, a person who has been authorised to settle the dispute. The other party shall designate an authorised person to be its representative in negotiations relating to the dispute within 10 days of receiving notice from the first mentioned party.
- 9.5.2 The designated persons shall, within 10 days after both parties have designated a representative, seek to resolve the dispute by means of negotiation. Both parties may make whatever investigations they deem appropriate within this 10 day period.
- 9.5.3 If the dispute is not resolved within 10 days of the commencement of negotiation (or a further period agreed by the representatives) the parties will seek to resolve the dispute by mediation, facilitated by a mediator appointed by agreement between the parties.
- 9.5.4 If following the appointment of a mediator the dispute is not resolved within 45 days, either party may terminate the mediation at the conclusion of the 45 day period.

9.6 Notices

- 9.6.1 The parties agree that any notice to be given in relation to this MOU shall be in writing and addressed to the contact officers specified in Schedule 1
- 9.6.2 Notices shall be served on the other party by hand delivery, mail, electronic mail or facsimile transmission at the addresses or contact numbers or electronic mail addresses set out in Schedule 1 of this MOU.
- 9.6.3 Each party shall promptly notify the other whenever a change relevant to the operation of this MOU occurs, including the details of contact officers, operational officers and persons authorised to resolve disputes.

9.7 Termination

- 9.7.1 This MOU is to continue in operation until it is terminated.
- 9.7.2 This MOU may be terminated for any reason by either party by providing a written notice of termination to the other party, served in accordance with clause 9.6 of this MOU.

9.7.3 Unless another date is specific in the notice of termination, the MOU will terminate three months from the date of service of the notice of termination.

9.7.4 Where a dispute has arisen in relation to the MOU, a notice of termination may not be given until after the dispute resolution process in clause 9.5 has been implemented.

9.8 Effective Date

9.8.1 This MOU shall take effect from the date of signing by both parties.

SIGNED

Lyn O'Connell
First Assistant Secretary
Detention Services Division
Department of Immigration and
Multicultural and Indigenous Affairs

Date 18/10/05

SIGNED

Jim Birch
Chief Executive
Department of Health
South Australia

Date 17/11/05

SCHEDULE 1 

SCHEDULE 2 

SCHEDULE 3 

SCHEDULE 4 