

## **QUESTION TAKEN ON NOTICE**

**BUDGET ESTIMATES HEARING: 26 May 2005**

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

### **(126) Output 1.3: Enforcement of Immigration Law**

Senator Nettle (L&C 40) asked:

“The other question is about people who have declined to appear before the Palmer inquiry. I understand there are a number of Queensland corrections officers who have expressed concern about the lack of legal protection for them in appearing before the Palmer inquiry. I understand that similar concerns have been expressed by detainees at the Baxter detention centre. Could you explain what, if any, legal protections exist for those people to enable them to give evidence in the Palmer inquiry as it is currently constituted?”

*Answer:*

DIMIA staff who disclosed personal information to the Inquiry did not breach the Commonwealth Privacy Act 1988 on account of the Secretary's direction to staff to cooperate fully with the Inquiry. Whether there was any protection available for State officers would depend on the relevant State laws.

There is no specific statutory protection available for detainees who may have given evidence to the Inquiry, but there is no question of them being penalised in any way for having done so.

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**(127) Output 1.3: Enforcement of Immigration Law**

Senator Nettle (L&C 40) asked:

In relation to the Palmer inquiry, you have mentioned the idea of a statutory declaration. I would be interested to hear if you think that is an adequate form of legal protection for somebody who wanted to provide evidence to the inquiry.

*Answer:*

A statutory declaration is a written statement declared to be true in the presence of an authorised witness. Statutory declarations in relation to Commonwealth matters may be made under The Statutory Declarations Act 1959.

Under the Act a person who intentionally makes a false statement in a statutory declaration is guilty of an offence. However, a statutory declaration does not provide any particular legal protection to the person making it.

Mr. Palmer has advised that statutory declarations were not generally utilised in his Inquiry.

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### **(128) Output 1.3: Enforcement of Immigration Law**

Senator Faulkner (L&C 56-57) asked:

“This raises in the first instance, it seems to me, the threshold issue, which I touched on a little earlier in the day, about the status of some of these matters that are included in the ongoing inquiries of Mr Palmer, which might be subject to other action. I do not know if you heard the question I asked about this. Possibly I mentioned compensation and the like. That is the threshold issue, it seems to me – or one of the threshold issues here.

How would the department expect those that have been given a responsibility for investigating those matters as consultants to the department to deal with an issue like this, which you are saying is also subject to court action?

There is still clearly a threshold issue of how those who have been provided with these 201 instances are going to balance that function and role, given that there is some ongoing court action. Court action is one of the examples I mentioned. I thought there might be some other process problems here with some of these issues. Here is one that is pretty stark, given that it is before the courts as well as being before Mr Palmer.”

*Answer:*

The Department had taken steps to ensure that the Inquiry was aware of cases where there has been or there was litigation, including reviews by courts and tribunals. It was for the Inquiry to determine how it should proceed with its enquiries, with legal advice if necessary.

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**(129) Output 1.3: Enforcement of Immigration Law**

Senator Faulkner (L&C 57) asked:

Provide a copy of the written instruction that was issued to all DIMIA staff requiring them to give whatever assistance was required by Mr Palmer.

*Answer:*

A copy of the letter is attached. The written instruction, the media release and the Inquiry's Terms of Reference was sent electronically to all staff.



**Australian Government**

**Department of Immigration and Multicultural and Indigenous Affairs**

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**Secretary**

All Staff

**Independent inquiry by Mr Mick Palmer AO APM**

Today the Minister announced an inquiry into the Cornelia Rau case, to be conducted by Mr Mick Palmer AO APM. A media release announcing the inquiry and including the terms of reference is attached.

It is essential that we facilitate Mr Palmer's work in every appropriate way and I expect all staff to provide Mr Palmer with their total cooperation.

To that end, and to ensure staff are able to receive any necessary protection, in the exercise of my powers under the *Public Service Act 1999* I now formally direct all APS employees engaged within the Department of Immigration and Multicultural and Indigenous Affairs to cooperate fully with the inquiry. This includes, as appropriate, answering questions, providing departmental documents and giving any other evidence to the inquiry.

I am confident that each of us will provide Mr Palmer with our utmost cooperation as required.

W J Farmer  
8 February 2005

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

**(130) Output: Internal Product**

Senator Faulkner (L&C 58) asked DIMIA to provide advice on what the Public Service Act provisions are for people who are acting in accordance with an instruction by the Secretary issued under the Act.

Answer:

Under section 13(5) of the *Public Service Act 1999*, an APS employee must comply with any lawful and reasonable direction given by someone in the employee's agency who has authority to give the direction. An officer complying with such a direction will therefore not be in breach of the APS Code of Conduct in relation to that action. Furthermore, a disclosure of personal information pursuant to a direction by the Secretary under the *Public Service Act 1999* will not breach the *Commonwealth Privacy Act 1988*.

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### **(131) Output 1.3: Enforcement of Immigration Law**

Senator Buckland (L&C 64-65) asked:

Can you tell us the size of the budget that is available for mental health? I guess I am asking for all the centres, and this might need to be taken on notice. I would like a breakdown of the size of the budget set aside for mental health care. Also, I would like to know how that compares to the overall health care budget.

*Answer:*

The Detention Services Contract covers the provision of all detention services. This contract and the fees in it include all the services required for the daily care of detainees, including health related services. That is, it does not have separate payments for mental health.

The detention program is funded under the 'quarantined' arrangement. Quarantined funding means that funds are provided specifically for these programs (eg detention services) and can only be used on activities related to these programs (detention services). As a result, the Department is adequately funded for the full range of detention activities, and can seek additional funding for any justifiable increases in detention related expenses, including for mental health services for detainees.

Due to the unpredictable nature of detainee health requirements there is no set budget for mental health services. The quarantined funding arrangement, in part, provides a mechanism for additional funding on a needs basis for detention related costs including, but not limited to, mental health services for detainees.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

### **(132) Output 1.3: Enforcement of Immigration Law**

Senator Kirk (L&C 65) asked:

Provide a summary of the reviews of the health services that were conducted in Maribyrnong and Villawood.

*Answer:*

The Department commissioned Knowledge Consulting Pty Ltd (KC) to undertake an independent review of health and mental health services at Maribyrnong Immigration Detention Centre (MIDC) in January 2005 and Villawood IDC in March 2005.

The findings of both reports were generally positive. They found that access to and utilisation of health services, including mental health services, at both Centres is adequate and appropriate to the needs of detainees. All staff providing medical services at each Centre were found to be properly qualified, skilled and experienced and were carrying out their duties in accordance with all relevant Commonwealth and State health, mental health and quarantine Acts. It was found that detainees' access to medical services at both Centres was broadly consistent with that available to the Australian community. Nursing staff and a general practitioner are available after hours at all times at each Centre.

Individual detainee care plans for detainees at both Centres were found to be sufficient in terms of identifying health problems and then managing them. The needs of detainees identified as having special care needs, expectant mothers and detainees suffering physical or mental illness for example, were found to be adequately managed at both Centres.

Psychological and counselling services are being provided by a mix of both onsite and offsite medical professionals at each Centre. The reports found that the provision of these services was appropriate and timely. The MIDC report found that there were no impediments to detainees accessing offsite external inpatient mental health care but that the current provider, a state public institution, had had problems with allowing GSL officers onsite in order for them to fulfil their responsibilities. The VIDC report noted that VIDC did not have a visiting psychiatrist and this may be of concern given the size of its population. It went on to find, however, that onsite medical staff had a positive and productive relationship with the public institution providing offsite psychiatrist services to VIDC detainees. As such the absence of a visiting psychiatrist had not resulted in any adverse impact on the delivery of mental health services to VIDC detainees.



Both reports did identify some areas for improvement and made a number of recommendations. The MIDC report recommended consideration be given to the provision of additional part-time administrative support for the nursing staff at the Centre and ensuring all health staff working there were provided with a minimum of cultural awareness training. The report further recommended consideration is given to the possibility of using a private mental health institution given that it may allow greater flexibility in terms of GSL officers' supervision of detainees receiving inpatient treatment. The VIDC report found that both DIMIA and GSL needed to finalise the Centre specific health care plan. A formal process of reviewing the needs of long-term detainees also needed to be implemented. The report also found that consideration should be given to employing a visiting psychiatrist should the availability of offsite psychiatric services be in any way reduced.

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### BUDGET ESTIMATES HEARING: 26 May 2005

#### IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

#### (133) Output 1.3: Enforcement of Immigration Law

Senator Buckland (L&C 65) asked:

How many detainees in each centre are receiving mental health care of some nature? I am interested to know how many of the folk who are staying in the alternative accommodation at Port Augusta are actually receiving care of that nature.

*Answer:*

The Detention Services Provider (DSP) has advised that the following number of counsellor and psychologist appointments were had during the month of June 2005:

|                   |     |
|-------------------|-----|
| Villawood:        | 175 |
| Baxter:           | 240 |
| Perth:            | 25  |
| Christmas Island: | 11  |
| Maribyrnong:      | 70  |

The DSP has advised that as at 1 August 2005 the following numbers of detainees were receiving other mental health interventions:

Detainees in in-patient Mental Health Care facilities, across the country

|              |    |
|--------------|----|
| Villawood:   | 1  |
| Baxter:      | 13 |
| Perth:       | 0  |
| Maribyrnong: | 2  |

Detainees currently being treated by the visiting psychiatrist at each immigration detention facility

|              |                                |
|--------------|--------------------------------|
| Villawood:   | 8                              |
| Baxter:      | 30                             |
| Perth:       | 1 (sees external psychiatrist) |
| Maribyrnong: | 6                              |

Detainees currently subject to a Mental Health Care Plan (under the care of the Mental Health Multidisciplinary Team) (available at Baxter)

|         |    |
|---------|----|
| Baxter: | 30 |
|---------|----|

As at 1 August 2005 there are no detainees in the Residential Housing Project at Port Augusta.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

**(134) Output 1.3: Enforcement of Immigration Law**

Senator Buckland (L&C 65) asked:

In the case of a child receiving mental health counselling, is this done with a guardian present?

*Answer:*

Where children require mental health counselling, a parent or guardian would accompany the child if they wished to do so. The only exception would be if abuse or neglect was suspected and this involved the parent or guardian. In such cases the relevant State/Territory child protection authorities would be involved.

Counselling staff are required to act in accordance with Memoranda of Understanding and/or agreements between the Department and State Governments pertaining to child welfare/protection protocols and to act as mandated notifiers in relation to suspected abuse or neglect.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

**(135) Output 1.3: Enforcement of Immigration Law**

Senator Buckland (L&C 66) asked:

Are the people providing counselling for people with disturbed minds, particularly children, trained to deal with children?

*Answer:*

General health services for immigration detainees are provided by the International Health and Medical Service (IHMS) and mental health services are provided by counsellors and psychologists employed by Professional Support Services (PSS).

As at 28 May 2005 IHMS employed three mental health nurses (to cover two seven day per week positions) to enhance mental health services at Baxter Immigration Detention Facility. The Detention Services Provider (DSP) advises that although the mental health nurses do not hold formal qualifications in the area of child and adolescent mental health, they do have experience in the area.

The DSP also advises that, as at 14 July 2005 six of the ten PSS staff working in detention centres have received training in child and adolescent mental health, or have had supervised experience in child and adolescent health.

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**(136) Output 1.3: Enforcement of Immigration Law**

Senator Buckland (L&C 66) asked:

There have been a number of suggestions – and I have no knowledge of whether this is right or wrong – that the detainees do not always see the same counsellor. Do you have any knowledge of that?

*Answer:*

The importance of the development of a consistent and ongoing therapeutic relationship between counsellor and client is recognised and valued. For this reason each Immigration Detention Facility, with the exception of Christmas Island, has permanently appointed counselling staff attached to it and every effort is made for individuals to continue to see the counsellor with whom they have developed a therapeutic relationship or with whom they feel most comfortable.

In the case of Christmas Island - visits occur on a rotational basis. For example over the past 6 months two counsellors have visited the facility on a rotational basis. In these circumstances detainees are given the opportunity to consult with their preferred counsellor by telephone or to see the visiting rotational counsellor.

The exception to this is where emergency situations occur out of hours and this would be managed by on-site medical staff in conjunction with offsite resources available in each locale (eg: community mental health teams, local hospitals).

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### **(137) Output 1.3: Enforcement of Immigration Law**

Senator Buckland (L&C 68) asked:

Provide information on the number of people that have been in the Red 1 compound continuously since Easter.

*Answer:*

Between 29 March 2005 and 1 June 2005, seven detainees were housed in the Red One Compound at Baxter Immigration Detention Facility.

Of the seven individuals, their stays in Red One Compound were as follows:

- Two were present for one day;
- One was present for less than one week;
- One was present for two weeks;
- One was present for less than five weeks;
- One was present for less than ten weeks; and
- One was present for twelve weeks.

As at 1 June 2005, there were no detainees housed in Red One Compound.

Source: MSU Red 1 chart sent to Ombudsman 17 June 2005

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**(138) Output 1.3: Enforcement of Immigration Law**

Senator Buckland (L&C 69) asked:

In relation to the low dependency medical unit at Baxter, do you know how many people are currently in this ward and what was the total for the last 12 months?

*Answer:*

As at 22 June 2005, there are currently no immigration detainees in the low dependency medical unit. In the last 12 months 64 patients have used the facility.

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### **(139) Output 1.3: Enforcement of Immigration Law**

Senator Buckland (L&C 69-70) asked:

In relation to the low dependency medical unit at Baxter, what about phone access while they are in that unit? What about for people phoning in to talk to a person? You might take into account that the report is that this phone is for staff and no one else. If there is insistence that someone be spoken to, you are limited to five minutes and the phone hangs up.

*Answer:*

Detainees have phone access while they are in the low dependency medical unit at Baxter IDF.

Detainees in the medical unit can receive phone calls at any time, their medical condition permitting.

Detainees who request to make outgoing phone calls can either use the staff phone or be escorted to the Telstra public phone, provided they are well enough to go to the phone. Detainees would not be denied a phone call.

If for any reason a call is received from an external person to a detainee, and a detainee spends a considerable period on the phone, the DSP may request the detainee to continue the call from another phone. This is because the phone inside the low dependency medical unit is primarily for the use of medical staff who need to not only make but receive calls in relation to the health of detainees. There is no automatic system to interrupt and terminate the call after five minutes.



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**(140) Output 1.3: Enforcement of Immigration Law**

Senator O'Brien (L&C 70) asked:

In relation to detainees on Christmas Island, does the overall number include any detainees who were under the age of 18 when they arrived but have since turned 18?

*Answer:*

As at 22 June 2005, 1 detainee on Christmas Island was under the age of 18 when they arrived and has since turned 18.

Source: ISIS data

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**(141) Output 1.3: Enforcement of Immigration Law**

Senator O'Brien (L&C 72) asked:

I understand that detainees have on a number of occasions asked for the removal of the green shade cloth from the cyclone wire and perimeter fence so that they can, in their words, 'see the world'. Why have the department and GSL not acceded to that simple request?

*Answer:*

The shade cloth was erected as a dust suppression measure during a period where road works were being conducted adjacent to the facility. However, it was removed upon completion of the works.

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**(142) Output 1.3: Enforcement of Immigration Law**

Senator O'Brien (L&C 73) asked:

In relation to the contingency facility at Christmas Island, how much will this work cost? When is it intended that the work will be completed?

*Answer:*

The cost of terracing Charlie Compound for contingency tent capacity is \$65,000. Due to continued unseasonal wet weather preventing the crushing of 'chalk' for the base material, the project is not expected to be completed until mid August 2005. This will be dependent on a return to dry conditions.

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### **(143) Output 1.3: Enforcement of Immigration Law**

Senator O'Brien (L&C 73) asked:

During my visit I was told by the management that there were no restrictions placed on detainees' telephone contact with legal representatives. My attention has since been drawn to a report of the independent detention advisory group, which expressed concern about interruptions to these calls. This is the most remote part of Australian soil or, if it is not, it is the second most remote, and the centre is there as a matter of government policy. Isn't it appropriate that detainees be given unfettered contact with their lawyers?

I have a document titled 'Response to IDAG re Christmas Island public submission December 2004'. Page 7 of that submission refers to it.

*Answer:*

Telephone calls and conferences between detainees and their legal representatives are facilitated by the Department and the Detention Services Provider (DSP).

Where a detainee's legal representative calls Christmas Island IRPC, the DSP will arrange for the detainee to receive the call.

Detainees also have a phone located in their compound that is accessible 24 hours a day, seven days a week. Detainees are able to make outgoing calls at any time, using phone cards which they purchase through the DSP. If a detainee wishes to speak to a lawyer and has no funds, a phone card is provided at no cost to the detainee.

The document referred to by Senator O'Brien, "Response to IDAG re Christmas Island public submission December 2004", refers to a period during which the Department facilitated a number of calls from the legal representative of the majority of Christmas Island IRPC detainees. The legal representative requested teleconferences with groups of detainees. To ensure all groups could participate in these calls, and that calls could be held in private, the Department provided a meeting room and teleconference equipment. Due to the staffing levels at Christmas Island IRPC, and the significant time difference between Christmas Island and the eastern states where the office of the legal representative is located, some limits needed to be placed on the length of these sessions and the times they were held. Departmental staff made considerable efforts to meet the legal representative's requests for group sessions with detainees, at times working late and offering to come into the centre on the weekend.

The Department acknowledges that the incident as reported in the IDAG report does not appear to have been handled as well as it could have been. DIMIA would prefer that the needs of individual detainee be handled with greater sensitivity.

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**(144) Output 1.3: Enforcement of Immigration Law**

Senator O'Brien (L&C 74) asked:

Can you provide the Committee with a copy of the operational procedures for visits to the Christmas Island IRPC?

Do you know if the conditions of entry displayed at the entrance are consistent with the operational procedures?

*Answer:*

The Operational Procedures for visitors to all immigration detention facilities applied to Christmas Island.

For operational reasons potentially impacting on the good order and security of the detention facilities, and the safety of all within them, it would not be appropriate to provide Operational Procedures for public release in their entirety. However, relevant information needed by visitors is displayed as a matter of course at the entrances to all immigration detention facilities.

The centre is no longer operational. However, at the time of closure, the procedures that were displayed at the centre were consistent with the Operational Procedures

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**(145) Output 1.3: Enforcement of Immigration Law**

Senator O'Brien (L&C 74) asked:

In relation to restrictions being placed on gifts being brought into detention centres, do you have concerns about birthday cakes for 18-year-old girls?

*Answer:*

The Department does not have any concerns about 18-year-old girls receiving birthday cakes.

It would appear that the Detention Services Provider (DSP) did not allow a member of the public to bring a homemade cake into Christmas Island Immigration Reception and Processing Centre (CIIRPC).

That member of the public, however, was allowed to bring a purchased cake into CIIRPC visits centre and share it with detainees.

Unfortunately on this occasion, the DSP provided incorrect advice to the member of the public about what could and could not be brought into the centre.

Standard operational procedures are that any food brought in by visitors to detainees must be consumed during the visit.

The Department has apologised to the person concerned and has offered to pay for costs incurred or for a further homemade cake.

The DSP at CIIRPC also provided this detainee with a cake on their birthday.

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### **(146) Output 1.3: Enforcement of Immigration Law**

Senator O'Brien (L&C 75) asked:

In addition to the Christmas Island community, I understand the Vietnamese community on mainland Australia, and other concerned Australians, have donated goods for the detainees at the centre. Do you know if distribution of donated goods had been delayed for any reason? Is that something in the knowledge of the department?

I would like the details of this: if there is some reason for a delay or if there is no knowledge of a delay, because that is an issue that has been raised. The suggestion is that things have been sent which have not arrived. Maybe it is Australia Post or maybe it is something else. Has the department received any request to investigate missing donated goods dispatched by Australia Post?

*Answer:*

In early 2004 an enquiry was received by the Minister's Office from members of the Vietnamese community as to whether some gifts for detainees, for Vietnamese New Year celebrations, had been received. No gifts were received by Christmas Island Immigration Reception and Processing Centre (CIIRPC) and the Vietnamese community members were requested to contact Australia Post regarding the missing items.

The Department has not received any request to investigate missing donated goods dispatched by Australia Post.

All postal items received (either air freight or sea freight) are regularly cleared from the Detention Services Provider (DSP) mailbox at Australia Post on the island.

Letters to detainees are distributed on the day of receipt at the facility. Larger items and gifts are distributed by the DSP Property Officer after being checked to ensure these can be permitted into the facility.

It is not uncommon for sea freight (surface mail) items to take between six to eight weeks to arrive from the mainland to Australia Post on Christmas Island.

There are no records to indicate that the distribution of any donated goods has been delayed.



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**(147) Output 1.3: Enforcement of Immigration Law**

Senator O'Brien (L&C 76) asked:

Have GSL or the department prevented or censored the depiction of Vietnam and/or the immigration reception and processing centre on any paintings or drawings by detainees, including children, held at the centre?

This was an issue that was also raised in the IDAG report, at page 8.

*Answer:*

As noted in the document referred to by Senator O'Brien, 'Response to IDAG re Christmas Island public submission December 2004', neither DIMIA nor GSL have any further information, nor understand the complaint about alleged censorship. Neither the Department nor GSL have prevented or censored the depiction of Vietnam and/or the immigration reception and processing centre in any paintings by detainees, including children, held at the centre.

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**(148) Output 1.3: Enforcement of Immigration Law**

Senator Buckland (L&C 79) asked:

Provide a copy of the operational procedure for the processes associated with transferring people to more restrictive places of detention within a facility.

*Answer:*

The Immigration Detention Standards and Migration Series Instruction 403: *Transfer of Detainees within Immigration Detention Facilities* recognise that from time to time, some groups, or individuals will need to be separated from the larger community of people within detention centres and have a more restrictive management approach. This is to ensure that their welfare and/or the welfare of the community as a whole and staff is maintained. The Immigration Detention Standards (IDS) can be accessed online at [http://www.immi.gov.au/detention/standards\\_index.htm](http://www.immi.gov.au/detention/standards_index.htm). A copy of MSI 403 is attached.

For operational reasons potentially impacting on the good order and security of the detention facilities, and the safety of all within them, it would not be appropriate to provide Operational Procedures for public release in their entirety. However, it may be possible to provide a relevant extract, in relation to specific issues, provided the relevant part of the procedures did not disclose information that may jeopardise centre security.

The Operational Procedures are consistent with the IDS and MSI referred above.

# **MSI 403: TRANSFER OF DETAINEES WITHIN IMMIGRATION DETENTION FACILITIES**

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### **ATTACHMENT 7 - CHECKLIST FOR TRANSFER OF A DETAINEE WITHIN AN IDF FOR REASONS OTHER THAN BEHAVIOUR MANAGEMENT**

## **1 INTRODUCTION AND SCOPE**

1.0.1 This Migration Series Instruction (MSI) provides a framework for the transfer of detainees within an immigration detention facility (IDF).

1.0.2 It may be necessary to transfer a detainee to another place of accommodation within an IDF to:

- restrict a detainee's movements for behaviour management reasons or
- manage the behaviour of detainees (when other strategies to manage detainees who are non-compliant with orders and directions which impact on security and safety are unsuccessful) or
- recognise compliant detainee behaviour or
- improve the welfare and care arrangements for the detainee and/or his or her family or
- protect the physical and mental health of the detainee and/or his or her family or
- protect the physical safety of other detainees and staff or
- prevent the probable occurrence of a serious incident (where there is intelligence that the transfer of the detainee is likely to assist in preventing such an incident).

1.0.3 Transfer of a detainee to another place of accommodation within the IDF may also be considered necessary for:

- logistical purposes (such as to enable a detainee to be closer to internal medical facilities)
- infrastructure purposes (such as the reorganisation of compounds as a consequence of changes to detainee numbers, where appropriate facilities are not available in the existing place of accommodation for an individual detainee or structural problems such as a roof collapse) or
- facilitating a detainee's request that he/she be transferred.

Note, this list is not exhaustive and the transfer of a detainee to another place of accommodation within an IDF may be considered necessary for other purposes.

1.0.4 This MSI provides procedural guidance for effecting the transfer of detainees within an IDF in a fair and equitable manner, while maintaining the rights of detainees.

1.0.5 This MSI contains strategies and procedures to:

- manage detainees who are non-compliant with lawful and reasonable orders and directions which impact on security and safety of the IDF and

- recognise detainees who behave in a compliant manner.

1.0.6 Detainees may be transferred between places of accommodation within an IDF on a scale ranging from less restrictive to more restrictive. Transfers may also be made to other IDFs, alternative places of detention and correctional facilities although these types of transfers are not detailed in this MSI.

1.0.7 This MSI should be read in conjunction with the MSIs on

- *General detention procedures*
- *Transfers of detainees to state prisons*
- *Procedures for unaccompanied wards in Immigration Detention Facilities*
- *Alternative places of detention* and
- *Bridging E visa (Subclass 051) - Legislation and guidelines*

which detail the procedures for the transfer of detainees from IDFs. DIMIA officers should also refer to the relevant Detention Services Provider (DSP) operational procedures.

## **2 SCALE OF PLACES OF ACCOMMODATION WITHIN IMMIGRATION DETENTION**

2.0.1 Places of immigration detention range from the less restrictive to more restrictive encompassing:

- alternative places of detention external to IDFs (these are not discussed in this MSI)
- different types of accommodation in the IDFs ranging from
  - self-contained family units
  - family and/or singles general compounds
  - more restrictive compounds
  - behavioural management units
  - observation rooms (medical observation rooms or other observation rooms not located within a management support unit) and
- correctional facilities (these are not discussed in this MSI).

2.0.2 There are additional places of accommodation in which detainees may be lodged due to operational or medical reasons such as a self-harm prevention unit or a medical unit within an IDF or a motel or hospital external to the IDF.

2.0.3 Within some places of accommodation there may be further means of restricting movement such as fencing in particular sections of a compound, closure of facilities within the compound (eg the recreation room), the

‘lockdown’ of separate accommodation areas or by restricting detainees to individual rooms.

2.0.4 It is important to note that the list of places of accommodation is not exhaustive and that other places may be developed as IDFs are expanded, remodelled or constructed. The use of individual areas of an IDF for a specific purpose may differ over a time as operational needs of the IDF change.

2.0.5 Each IDF may differ as to the range of places of accommodation that is available. Further, each place of accommodation within an IDF can hold a limited number of people. These logistical limitations may impact on the ability to transfer detainees within IDFs. The development of a national network of IDFs provides greater flexibility in the management of detainees through transfers between IDFs.

### **3 LOCATION OF INDIVIDUAL DETAINEES-GENERAL PRINCIPLES**

#### **3.1 General principles regarding transfer of detainees within an IDF**

##### **Transfer of detainees to a more restrictive place of accommodation**

3.1.1 The transfer of detainees to a more restrictive places of accommodation within an IDF may be appropriate where detainees are engaging in disruptive behaviour and/or have refused to comply with lawful orders/directions of Detention Services Provider (DSP) staff or DIMIA officers and other behaviour management strategies have proved ineffective. See [3.4.24](#) for examples of such strategies.

3.1.2 Transfer of detainees to more restrictive places of accommodation for behaviour management reasons are to be made only where behaviour cannot be effectively managed within the existing level of accommodation. Such a transfer may be appropriate where:

- a detainee exhibits violent and/or unlawful behaviour and refuses an order or direction to cease such behaviour
- a detainee is a continuing risk to themselves or others in the IDF
- a detainee wilfully damages property
- there is valid intelligence of an impending serious incident instigated (solely or partly) by the detainee
- there is valid intelligence of a risk of the detainee escaping from immigration detention
- the detainee is highly likely to respond in a violent/disruptive manner to a decision refusing to grant him/her a visa, or a decision by a Court/Tribunal to affirm such a decision of the Department or
- other behaviour management strategies have not been successful.

- 3.1.3 Where practicable, an expert medical opinion on the mental and physical health of a detainee should be obtained from a qualified professional prior to any transfer to a more restrictive place of accommodation for behaviour management reasons. This opinion will inform a decision on whether a transfer is necessary or desirable, and if so, to which particular place of accommodation. Transfer to an internal medical facility may be more appropriate than transfer to a more restrictive place of accommodation if a medical or mental condition is determined to be a cause of non-compliant behaviour.
- 3.1.4 Where no expert medical opinion has been obtained prior to transfer, a medical examination of the detainee must be undertaken no later than 24 hours following the transfer.
- 3.1.5 The Immigration Detention Standards (IDS), which form part of the Detention Services Contract between the Commonwealth and the DSP for the provision of detention services, states at Performance measure (c) of IDS 6.4.6 that there must be “no substantiated instance of a detainee whose movements are restricted not being seen daily by qualified medical staff”. This necessarily refers to a greater level of restriction than at the compound level eg placement in a management support unit.
- 3.1.6 Where it is deemed necessary to place a minor in a more restrictive place of accommodation, particular attention must be given to the development of a detainee care plan and behaviour management agreement [see [3.4.29 – 3.4.36](#) and [3.4.37 – 3.4.43](#)]. Minors should be held in a more restrictive place of accommodation for the shortest period possible.
- 3.1.7 A detainee may also be transferred to a more restrictive place of accommodation for reasons other than behaviour management. See [4.2](#) for procedures in relation to such transfers.
- 3.1.8 The DSP must be responsive to changes in the number of available places for detainees at IDFs and must be aware of the capacity to place detainees in particular areas of the IDF.
- 3.1.9 Where a part of an IDF is to be used as a place where detainee movements are restricted, the DSP General Manager, or his or her delegate, is to ensure that approval for such use has been obtained from the DIMIA Manager or Deputy Manager, prior to a detainee being transferred.

### **Management support unit**

- 3.1.10 The transfer of a detainee to a management support unit must not be used as a form of punishment. Legitimate purposes for such a transfer include where a detainee exhibits violent and unlawful behaviour and refuses an order



to cease such behaviour. It is ordinarily appropriate to transfer a detainee to a management support unit on a short term basis only.

- 3.1.11 It may be necessary to place a detainee who is at risk of self-harm in an observation room with appropriate supervision. Such a unit would allow for an appropriate level of care through regular observation and interaction as appropriate.
- 3.1.12 If it is considered that security at the IDF can only be maintained by ongoing accommodation of an individual in a management support unit, alternative measures must be investigated (such as transfer to another IDF or another place of detention). It is not appropriate to allow a detainee to remain in a behaviour management support unit for an extended period of time and alternative measures must be considered after placement of a detainee in a management support unit for a period in excess of 48 hours. Relevant procedures for transferring a detainee within an IDF for behaviour management reasons outlined at [4.1](#) must be followed.

#### **Transfers to another IDF or a correctional facility**

- 3.1.13 It may be necessary to transfer a detainee to another facility or to another place of detention, such as a correctional facility. The MSI on [Transfers of detainees to state prisons](#) should be consulted for procedural guidance on this matter.

#### **Transfers to a less restrictive place of accommodation**

- 3.1.14 Transfers to a less restrictive place of accommodation may be appropriate to recognise compliant behaviour by the detainee or for reasons outlined at [4.2.1](#). This may be considered as a result of regular review of the place of detention at the request of the detainee, or it may be an outcome of adherence to a behaviour management agreement detailed at [3.4.37 - 3.4.43](#).
- 3.1.15 Detainees may also be transferred between places of accommodation at the same level of restriction.

#### **Circumstances in which assessment procedures need not be followed**

- 3.1.16 It will not be possible to implement all assessment procedures for transfers set out at [4.1](#) in every situation which arises in an IDF. For example, in situations where the health and safety of any person in an IDF is at serious risk, a transfer to another place of accommodation may be instituted without strict adherence to the assessment procedures.
- 3.1.17 Where a transfer occurs and the assessment procedures set out at [4.1](#) have not been followed, the DSP must ensure it notifies the appropriate

DIMIA officer of the transfer as soon as practicable, but no later than 2 hours following completion of the transfer. The DIMIA officer must make a record of the advice provided by the DSP regarding the transfer.

- 3.1.18 The reasons for not following the assessment procedure set out in this MSI must be detailed in writing within 6 hours of the transfer and provided to DIMIA. A copy must be placed on the detainee's file.
- 3.1.19 The detainee should be advised, in a language and terms he or she understands, of the reason for the transfer and the date on which a review of the decision to transfer will take place. A notation that this has occurred must be placed on the detainee's file.
- 3.1.20 The review procedures set out at [4.1.35 - 4.1.46](#) must be followed, including in circumstances where a transfer is made in an emergency situation and the assessment procedures have not been followed.
- 3.1.21 The review procedures in this MSI need not be followed where the transfer is made so that the detainee can receive medical treatment. In this situation, a medical review should be undertaken by qualified medical staff and the outcome noted on the detainee's file.

## **3.2 Considerations influencing placement in places of accommodation within an IDF**

### **Allocation of accommodation on arrival at an IDF**

- 3.2.1 During the initial reception of a detainee into an IDF, assessments are made by the DSP of detainee needs and operational requirements to enable allocation of appropriate accommodation.
- 3.2.2 Unauthorised arrivals (that is, persons who arrive in Australia without a visa that is in effect and are not taken to hold a visa by operation of law on arrival in Australia) are usually accommodated in separation detention until after initial entry interviews take place. If a detainee has not invoked Australia's protection obligations by applying for a protection visa or has not applied for a visa of any other class, he or she must be removed from Australia as soon as reasonably practicable. Once a detainee leaves separation detention for detention in the general population, a further accommodation allocation is made.
- 3.2.3 IDS 2.1.4.2 states that "to the extent practicable and subject to the good order and security of the detention facility and the safety of all those within it, detainees have access to accommodation which recognises the special needs of particular groups, including but not limited to families, unaccompanied minors/women/men and persons who are ill and/or have a disability".

3.2.4 The various characteristics of individuals and groups need to be addressed by the DSP when allocating accommodation, within the parameters of the available capacity. Such detainee characteristics include, but are not limited to:

- gender
- age
- health needs
- cultural and religious requirements
- language skills
- anticipated length of time in the IDF
- the risk profile of the detainee including the risk of escaping from immigration detention, any history of threatening/violent behaviour towards other detainees and the risk to the security and safety of others in the level of accommodation and
- family circumstances, including if the detainee is an unaccompanied minor.

3.2.5 Family groups and women and children, including unaccompanied minors, should be accommodated separately from adult males without dependents in the facility, to the extent that this is possible.

3.2.6 The overall requirements of the IDF and the capacity of each place of accommodation within the IDF are important factors in assessing initial placement.

3.2.7 New arrivals who are transferred from another IDF or other place of detention will usually be placed in general compounds in the first instance. If the appropriate DSP officer has a reasonable suspicion that the detainee will be non-compliant with orders and directions which impact on security and safety within the IDF, based on previous behavioural history, the detainee may be placed in a more restrictive compound. The basis for this reasonable suspicion must be documented.

3.2.8 The DSP must take account of all relevant views in relation to the initial placement of a detainee in accommodation, including but not limited to, those of medical staff, the DIMIA Manager or Deputy Manager and the DIMIA case coordinator (in those IDFs which employ a case coordinator).

3.2.9 Regular ongoing monitoring and assessment by the DSP may result in transfer of a particular detainee to a more restrictive place of accommodation based on non-compliance with other behaviour management strategies (listed at [3.4.24](#)).

**Non-exhaustive list of factors to consider when deciding whether to transfer a detainee within an IDF**

3.2.10 A DSP Detention Services Officer must consider the following factors in deciding whether to recommend to transfer a detainee to another place of accommodation within an IDF (note, this list does not preclude the DSP Detention Services Officer from taking account of other factors he/she considers relevant in making a recommendation to transfer a detainee):

- the capacity of each place of accommodation within the IDF
- the overall logistical requirements of the IDF
- the population of the place of accommodation to which transfer is being considered (eg gender mix)
- the configuration of the place of accommodation to which transfer is being considered (eg availability of family units)
- the risk profile of the detainee including both the risk of escaping from immigration detention and the risk to the security and safety of others in the level of accommodation (taking into account any previous history of escapes or violence)
- the gender mix in the place of accommodation to which transfer is being considered
- the age of the detainee
- the religion of the detainee
- the immigration processing status of the detainee (that is, whether the detainee has made a visa application, an application for merits review, an application for judicial review, or is about to be removed from Australia)
- family composition (taking into account whether separation from the detainee's family or other support networks within or outside the IDF will occur)
- health needs (taking into account special needs due, but not limited to, illness, disability, immobility and psychological or psychiatric conditions)
- behaviour management issues, including:
  - seriousness of behaviour (taking into account factors such as previous escapes, rioting, arson, destruction of property, sexual offences, attacks on staff, self-harm and bullying/standover tactics and any previous difficulties with other detainees within the IDF). See [5.2](#) in relation to referral of unlawful behaviour to policing authorities
  - whether violence is involved
  - intention or malice
  - frequency of any of the behaviour referred to above
  - effect of behaviour on other detainees
- all relevant views in relation to the transfer of a detainee to another place of accommodation, including but not limited to, those of medical

staff and the DIMIA Manager or Deputy Manager and the DIMIA case coordinator (in those IDFs which employ a case coordinator)

- wishes of the detainee to be transferred and of any other detainee who may be affected by the transfer
- the likelihood of imminent release from immigration detention or removal from Australia
- operational needs in regard to a particular detainee or other detainees within an IDF and
- any relevant factors as specified in the MSIs on *[General detention procedures](#)*, *[Transfer of detainees to state prisons](#)*, *[Procedures for unaccompanied wards in Immigration Detention Facilities](#)* and *[Alternative places of detention](#)*.

3.2.11 The DSP must take reasonable steps to ensure a medical, psychological or psychiatric condition is not responsible for the non-compliant behaviour as outlined at [3.1.3](#). Transfer to an internal medical facility may be more appropriate than transfer to a more restrictive place of accommodation if such a condition is determined to be a cause of non-compliant behaviour.

### **3.3 Decision making responsibilities**

#### **Responsibilities of the Detention Services Provider**

3.3.1 IDS 6.4.6 provides that as a result of non-compliance with lawful and reasonable orders and directions detainees may:

- be transferred to another part of the facility
- have their movements within the facility restricted or
- be transferred to another place of immigration detention.

3.3.2 The DSP is responsible for deciding and effecting all transfers and restrictions of movement within IDFs. DSP staff, however, must consult with the DIMIA Manager or Deputy Manager in the IDF in relation to any such decision prior to taking action, unless the situation is so urgent that to take the time to do so would impact on the good order and security of the IDF or the safety of any individual in it.

3.3.3 Any decision to transfer detainees within an IDF must take into account all relevant considerations listed at [3.2.10](#) and must not be made on an arbitrary basis.

3.3.4 If there is any suspicion that a medical, psychological or psychiatric condition may be causing or contributing to non-compliant behaviour and it is practicable to do so, expert medical opinion from a qualified professional should be sought before behaviour management strategies, including a transfer to a more restrictive place of accommodation, are put in place.

- 3.3.5 The appropriate DSP officer to make a recommendation to transfer a detainee within an IDF is normally a Detention Services Officer. The appropriate officer to approve such a decision is normally the DSP General Manager, or delegate at a managerial level, of the relevant IDF.
- 3.3.6 IDS 2.1.3.1 provides that “a permanent, current and comprehensive record of each detainee is created and maintained in each facility...”. The DSP must ensure that all information in relation to transfers within IDFs is recorded in a timely, accurate and comprehensive manner. See [4.3](#) for further details on record management.

### **Responsibilities of DIMIA officers**

- 3.3.7 DIMIA officers are responsible for decisions to transfer detainees to another place of detention such as other IDFs, an alternative place of detention or a correctional facility. In making such a decision, the appropriate DIMIA officer must consider any assessments made by the DSP and the resources provided through the national network of IDFs. See the MSI on [Transfer of detainees to state prisons](#) for procedures on transfers to another place of detention.
- 3.3.8 While the decision to transfer a detainee within an IDF rests with the DSP, the DSP should consult the appropriate DIMIA officer regarding a transfer within an IDF to give DIMIA the opportunity to input into ongoing detainee management strategies. Preferably this will happen before a transfer but in all cases should occur after the transfer.
- 3.3.9 The appropriate officer with whom the DSP officer should consult is normally the DIMIA Manager or the Deputy Manager.
- 3.3.10 In those IDFs which employ a DIMIA case coordinator, the case coordinator should be consulted to provide input.
- 3.3.11 The appropriate DIMIA officer should provide any relevant information for consideration by the DSP (eg knowledge of the detainee’s behaviour and attitude during interactions with DIMIA officers and notification of an upcoming adverse decision on a visa application, an application for merits review, an application for judicial review, or a request for Ministerial Intervention).
- 3.3.12 DIMIA officers must ensure that the DSP maintain timely, accurate and comprehensive records in relation to the transfer of detainees within IDFs. See [4.3](#) for further details on record management.

3.3.13 Both DIMIA officers at IDFs and the Detention Contract Management Section in Central Office have a role in monitoring service provision by the DSP to ensure that the DSP fulfils its contractual obligations.

3.3.14 The responsibilities of Detention Contract Management Section include monitoring performance of the DSP against the IDS and relevant operational procedures through the review of written and audiovisual records of incidents and regular visits to IDFs.

3.3.15 The DIMIA Manager or Deputy Manager must be satisfied that detainees have access to the complaints mechanism before, during and after any transfer within an IDF.

### **3.4 Behaviour management strategies**

#### **Structured communication with detainee**

3.4.1 IDS 4.1.1 states that “detainees are informed of:

- the services available to them in detention
- their rights and obligations during their residence at the IDF
- complaints mechanism
- life in multicultural Australia
- the rule of law in Australia and
- any other pertinent matters

through the use of effective information, communication and consultative strategies and mechanisms which are responsive to the changing profile and needs of the detainee population”.

3.4.2 IDS 4.4.1 states that “detainees and the Detention Services Provider effectively communicate with each other through the application by the Services Provider of appropriate communication strategies, taking into account:

- the languages detainees understand
- the particular circumstances in which the communication is taking place and
- the special needs of illiterate or hearing and/or visually impaired detainees”.

3.4.3 IDS 4.4.2 states “where the use of an interpreter or translator is assessed as necessary, that interpreter or translator is appropriately trained, qualified and accessible”.

- 3.4.4 Strategies must be put in place by the DSP to advise detainees of the consequences of non-compliance with reasonable and lawful orders and directions.
- 3.4.5 IDS 2.1.1.1 states that “detainees are made aware, in a language and in terms they understand, of:
- the operations of the detention facility including but not limited to:
    - the guidelines for residing at the facility
    - the facilities available
    - complaints mechanisms
    - procedures for the management of personal property and
    - respective roles and responsibilities of the Detention Services Provider and the Department and
  - the expectations of their behaviour as set out in the Detainee Code of Conduct, including but not limited to:
    - understanding and complying with Australian law, in particular in relation to their actions while in detention and
  - their obligations to respect the diversity of culture and beliefs among persons (such as other detainees and staff) at the facility, to treat them with dignity, and accord them respect”.
- 3.4.6 It is critical that detainees understand how to request the assistance of an interpreter for the purpose of effectively communicating with staff of the DSP and DIMIA staff.
- 3.4.7 Detainees are briefed by the DSP about behavioural expectations during the reception interview and the induction period undertaken within 5 days of a detainee’s arrival at an IDF. The DSP is responsible for making lawful and reasonable orders and directions and for ensuring detainees are made aware of these.
- 3.4.8 This includes the development of a Code of Conduct, approved by DIMIA, setting out the responsibilities of detainees including respect for diversity of cultures and beliefs, the need for compliance with Australian law and the rules of the IDF and the consequences of not adhering to these.
- 3.4.9 Detainees are requested and encouraged to read and sign the Code of Conduct or have it signed on his or her behalf by an appropriate person, during the induction. The DSP must ensure the Code of Conduct has been effectively communicated to detainees in a language and terms that the detainee understands, using translation where reasonable. Detainees should be provided with a copy of the document for their ongoing reference.
- 3.4.10 Detainees should be counselled regarding their non-compliant behaviour and advised that unless there is an improvement in conduct, transfer to a more



restrictive place of accommodation may result. Counselling can also be used to assist in assessing the likelihood of any further incidents or disturbances.

- 3.4.11 It is important that detainees are informed of the possible outcomes of their behaviour and accept their share of responsibility in resolving the issue of non-compliant behaviour. Minutes of counselling should be placed on the detainee's file.
- 3.4.12 In most instances, detainees should be informed of all stages of the assessment and review process for transfers and be given the opportunity to improve any non-compliant behaviour.
- 3.4.13 Detainees are more likely to cooperate in any ongoing behaviour management process when they have been able to participate in it. This requirement can be dispensed with when the situation is so urgent that to take the time to do so would impact on the good order and security of the IDF or the safety of any individual in it.
- 3.4.14 Detainees must be made aware of all incidents or behaviour that lead to any decision to transfer, be given the opportunity to comment on these, and be informed of the procedures for a review of the decision to transfer.
- 3.4.15 Evidence that this has occurred must be provided in writing, prior to the transfer being effected. This may not be possible in particular circumstances such as emergency medical transfers or riots.
- 3.4.16 Detainees must be informed by the DSP of all avenues for complaint regarding the transfer, including to the DSP, DIMIA, the Human Rights and Equal Opportunity Commission (HREOC) and the Commonwealth Ombudsman.
- 3.4.17 If a transfer to a more restrictive place of accommodation occurs for behaviour management reasons, a behaviour management agreement should be entered into by the DSP and the detainee, as outlined at [3.4.37 - 3.4.43](#). Such agreements may also be appropriate as a behaviour management strategy prior to any transfer.

### **Behaviour management strategies**

- 3.4.18 IDFs accommodate a diverse population including unauthorised arrivals and compliance cases (persons whose visas have ceased/been cancelled), family units and single persons and children and the elderly. Unlike a correctional setting, immigration detention is usually communal with families able to remain together and men, women and children able to mix. The variety of needs of the detainees and the stresses and strains within a detention facility will impact on the behaviour of detainees.

- 3.4.19 The DSP must provide a safe and secure detention environment whilst taking into account its holistic duty of care to detainees. Under IDS 6.4.2, non-compliant, uncooperative behaviour or conflict is to be addressed, as far as practicable through communication, counselling, negotiation and conflict resolution.
- 3.4.20 In the first instance, attempts should be made to identify the underlying cause of a detainee's behaviour to fully inform behaviour management decisions. See [3.1.3](#).
- 3.4.21 The DSP is expected to use flexible and innovative management strategies and techniques aimed at defusing any tensions and resolving conflicts before they become serious or violent.
- 3.4.22 IDS 6.4.7 states that “force is used as a measure of last resort and only where all other control methods have failed or have been assessed as inadequate. Only such force as is reasonably necessary and proportionate in the particular circumstances to resolve the situation is used”.
- 3.4.23 Reasonable force to transfer a detainee to a more restrictive place of accommodation within an IDF may only be used as a last resort after all other avenues of moral persuasion and negotiation have failed. See [5.1](#) on the use of reasonable force.
- 3.4.24 Transfers of detainees to more restrictive places of accommodation within IDFs are one aspect of a broader detainee management strategy which aims to achieve constructive participation by detainees in the daily life of the IDF. A multi-faceted approach to addressing behaviour management is utilised by the DSP which is incentive and progress based. Such strategies include, but are not limited to:
- recreational and educational programs
  - praise and positive feedback
  - counselling
  - regular medical/mental health assessment
  - mediation by residents' committees, friends of the detainee or professional mediators
  - an effective complaints mechanism
  - timely resolution of complaints
  - facilitation of access to DIMIA officers
  - referral to external agencies for assistance or investigation
  - formulation of behaviour management agreements

- withdrawal of access to amenities (eg telephones { apart for the purposes of contacting HREOC or the Commonwealth Ombudsman and legal representatives }, gym, TV)
- curfews
- restriction of movement to specific areas within compounds
- restriction of movement to individual rooms and
- restriction on the periods of access to specific areas of the IDF.

3.4.25 Consideration should be given to whether other behaviour management strategies, such as those listed at 3.4.24, should be utilised prior to transfer of a detainee to a more restrictive place of accommodation.

3.4.26 Transfer of detainees to more restrictive places of accommodation enable non-compliant detainee behaviour to be managed effectively to ensure the good order and security of an IDF and the safety and welfare of detainees, staff and other visitors to the IDF.

3.4.27 Compliant detainee behaviour can also be recognised. If a detainee who has been placed in a more restrictive place of accommodation complies with agreed behaviour management strategies (contained in a behaviour management agreement), he or she may be moved to a less restrictive place of accommodation as an incentive for continuing compliant behaviour.

3.4.28 Action to be taken by DSP and DIMIA officers in relation to allegations of unlawful behaviour by detainees is outlined at [5.2](#)

### **Detainee care plan**

3.4.29 Performance measure (c) of IDS 6.4.6 states there must be “no substantiated instance of a detainee whose movements within the facility are restricted not having a comprehensive Detainee Care Plan formulated and implemented”.

3.4.30 The DSP must develop a detainee care plan for all detainees who have been transferred to a more restrictive place of accommodation within an IDF. This plan will be developed on the basis of continuing, regular assessment, data gathering and structured communication with the detainee and must be placed on the detainee’s file.

3.4.31 The plan must include, but is not limited to the following:

- background history of detainee in immigration detention
- immigration processing status of detainee (that is, whether the detainee has applied for a visa, has had a visa application refused and/or made an application for merits review or judicial review or a request for Ministerial Intervention)

- health assessment of detainee
- behaviour management strategies utilised
- any participation in recreational and educational programs
- any detainee contact with, or advice on detainee received from, community or welfare organisations and
- any behaviour management agreements in place.

3.4.32 The DSP case manager must have regular contact with the detainee whether as an individual or through the case management team.

3.4.33 If the detainee is transferred to a management support unit or self harm prevention unit, contact must be made by the DSP case manager each day. If the detainee is transferred to a more restrictive place of accommodation (apart from a management support unit or a self-harm prevention unit), contact must be made by the DSP case manager with the detainee on at least a weekly basis. A notation of this contact must be made on the detainee's file.

3.4.34 If the detainee is placed in a management unit or a self-harm prevention unit, personal contact must be made daily by medically qualified staff employed by the DSP. A notation of this contact must be made on the detainee's file.

3.4.35 Both the DSP case manager and the DIMIA case coordinator (in those IDFs which employ a case coordinator) must respond to reasonable requests from a detainee for personal contact.

3.4.36 The DSP case manager must ensure that the detainee is aware of their rights to contact HREOC, the Commonwealth Ombudsman, the Australian Red Cross (ARC), interpreting services and any other organisation or group as determined by DIMIA at all times during the transfer process. See [3.5.6 - 3.5.8](#) on visits to detainees.

### **Behaviour management agreement**

3.4.37 In addition to the detainee care plan, the DSP may enter into a behaviour management agreement with an individual detainee (see [Attachment 1](#)). Such an agreement should always be entered into where a detainee has been transferred to a more restrictive place of accommodation for behaviour management reasons.

3.4.38 The purpose of the behaviour management agreement is to provide incentives for detainees to improve their behaviour. If a detainee behaves in a responsible and compliant manner he or she may have the opportunity to move to a less restrictive level of accommodation.

3.4.39 The behaviour management agreement should be entered into as soon as possible after the transfer of the detainee to a more restrictive place of accommodation. A translation of the behaviour management agreement must be given, either in writing or orally, into a language and terms the detainee understands if this is required.

3.4.40 The behaviour management agreement should be specific to the individual and include the following:

- background history of behaviour management difficulties
- action that was taken which resulted in the transfer of the detainee to the particular place of accommodation
- an undertaking by the DSP to treat the detainee in a dignified and impartial manner
- an undertaking by the detainee to behave in a specified manner
- milestones at which time or event behavioural improvement is assessed
- any medical, psychological or psychiatric assessment and recommended treatment
- access to amenities and visitors and
- signature(s) of the relevant DSP officer(s) and detainee.

3.4.41 The milestones must not simply be standard behavioural objectives and must be specifically tailored for the individual detainee.

3.4.42 The behaviour management agreement should include additional pages on which it is noted whether the milestones have been met and the outcome of the review of a decision to transfer the detainee to a more restrictive place of accommodation (see [4.1.39](#)).

3.4.43 The behaviour management agreement must be placed on the detainee's file. The fact that a detainee refuses to sign the behaviour management agreement does not render it void. Failure to sign the behaviour management agreement would not prevent the transfer of the detainee back to a less restrictive environment.

## **3.5 Access to amenities**

### **Communication**

3.5.1 Detainees must be provided with current, accurate and comprehensive information relevant to them in a language and terms they understand. All communication with detainees must be clear and unambiguous. The DSP is required to take into account factors such as the particular circumstances in which the communication is taking place and the special needs of illiterate or hearing and/or visually impaired detainees. See [3.4.1 - 3.4.3](#).

3.5.2 Whenever the detainee has difficulty understanding and/or speaking English, DSP officers should seek the assistance of an appropriately trained and qualified interpreter, such as an interpreter from DIMIA's Translating and Interpreting Service. Other methods of communication may include printed material, telephones, video and audio-visual aids. The assessment of language skills provided by DIMIA on arrival at an IDF should be used as a guide to the interpreting needs of the detainee.

3.5.3 The routine of any place of accommodation to which a detainee has been transferred must be effectively communicated to him or her, preferably by way of written explanation in a language and terms the detainee understands. The routine of the place of accommodation includes, but is not limited to:

- meal times
- access to health services
- when medication is dispensed
- mail and property deliveries
- arrangements for visitors
- arrangements for smokers and
- any curfews.

### **Counselling**

3.5.4 IDS 2.2.1.1.1 states that detainees are able to access timely and effective primary health care, including psychological / psychiatric services (including counselling):

- in a culturally responsive framework and
- where a condition cannot be managed within the facility, by referral to external advice and/or treatment.

3.5.5 The DSP must consider the cultural and social implications for individual detainees who have been transferred within an IDF. Counselling services must be made available to detainees where this is recommended by a qualified medical professional.

### **Visits**

3.5.6 IDS 4.2.2 and 4.2.3 relate to personal and other visits. Detainees are able to receive visits from relatives, friends, community contacts or diplomatic or consular representatives subject to restrictions on the detainee's movements for management reasons. Access by detainees to HREOC, the Commonwealth Ombudsman, ARC, legal representatives and other organisations or groups as determined by DIMIA should always be facilitated.

3.5.7 If a detainee is denied access to a visitor for management reasons a record must be kept of the reason for refusal.

3.5.8 If the transfer of the detainee will limit access to visits, arrangements should be made to inform any regular visitors of the restriction whether by the detainee or the DSP. It is particularly important that if a decision is made to cancel a pre-approved visit, the visitor be informed in a timely manner.

### **Access to services, amenities and open air**

3.5.9 Detainees who have been transferred to more restrictive places of accommodation will continue to receive services such as medication, access to daily nursing clinics, regular meals and laundry facilities.

3.5.10 Detainees whose movements are restricted will continue to have access to the telephone and mail, subject to the good order and security of the IDF and the welfare of those within it. The DSP must ensure that the detainee has reasonable access to facilities (such as mail and telephone) for obtaining legal advice or taking legal action in relation to his/her immigration detention ([s 256](#) of the *Migration Act 1958* (Migration Act)).

3.5.11 IDS 3.2.4 requires that detainees whose movements are restricted for management reasons must be able to access services and amenities and open air subject to the good order and security of the facility and safety of those in it. Detainees must be provided with reasonable access to open air, including for the purposes of smoking, as smoking is not permitted in Commonwealth buildings.

3.5.12 Detainees whose movements are restricted must not be subject to enclosed spaces which do not have sufficient ventilation.

3.5.13 Detainees must have access to supervised exercise periods as much as possible, but for not less than two 1 hour periods per day, at least one of which, where practicable, must be in daylight hours.

## **4 PROCEDURES AND RECORD KEEPING**

### **4.1 Compulsory components of decision to transfer a detainee to a more restrictive place of accommodation within an IDF**

4.1.1 There are two compulsory components of a decision to transfer a detainee to a more restrictive place of accommodation within an IDF for behaviour management reasons:

- initial assessment of the appropriateness or otherwise of transferring a detainee to a more restrictive place of accommodation and
- review of the decision to transfer a detainee to a more restrictive place of accommodation.

4.1.2 In making initial assessments and reviewing transfer decisions, it should be noted that the capacity of each place of accommodation within the IDF and the overall logistical requirements of the IDF are crucial considerations. See [3.2.10](#) for a non-exhaustive list of factors to consider when deciding whether to transfer a detainee to a more restrictive place of accommodation within an IDF.

### **Initial assessment**

#### *Warning of transfer*

4.1.3 A detainee ordinarily should be given a warning, in a language and terms he or she understands (including using interpreters as needed), that a transfer to a more restrictive place of accommodation within the IDF will occur on behaviour management grounds unless there is a cessation of specified non-compliant behaviour. A warning should be given unless the situation is so urgent that to take the time to do so would impact on the good order and security of the IDF or the safety of any individual in it. The warning should include advice to the detainee about how he or she could improve the non-compliant behaviour and the consequences of non-compliance with the warning.

4.1.4 The detainee should be given sufficient opportunity to improve the non-compliant behaviour. The period of time given within which to improve the behaviour will depend on the particular circumstances, such as the seriousness of the behaviour.

4.1.5 All details of a warning of possible transfer should be recorded on the detainee's file, including the date of the warning, the advice given to the detainee of the consequences of non-compliance with the warning, use of interpreters if applicable and the response of the detainee to the warning.

#### *Recommendation regarding transfer*

4.1.6 If the DSP Detention Services Officer considers that the detainee is compliant with the order or direction to improve the non-compliant behaviour the detainee will remain in the existing place of accommodation.

4.1.7 If the DSP Detention Services Officer considers that the detainee is continuing the behaviour which prompted the warning, and having taken into



account the factors at [3.2.10](#), he or she may recommend that the detainee be transferred to a more restrictive place of accommodation.

4.1.8 If a DSP Detention Services Officer is involved in an incident which subsequently leads to the transfer of the detainee, it is ordinarily not appropriate for that officer to recommend the transfer.

4.1.9 The DSP Detention Services Officer must record a decision or recommendation under [4.1.6](#) or [4.1.7](#) above on the detainee's file.

#### *Format of approval*

4.1.10 The DSP Detention Services Officer must prepare a "Request for approval for transfer of detainee to a more restrictive place of accommodation within an immigration detention facility" form for consideration by the DSP General Manager, or delegate (see [Attachment 2](#)).

4.1.11 It is essential that a clear record of the decision making process is available. The reasons for the transfer should be clearly stated, and all relevant considerations that were addressed in the decision making process should also be documented. It is not sufficient to state the reason(s) in general terms, such as "for the good order and security of the IDF".

4.1.12 The DSP General Manager, or his or her delegate, must signify on the form either an approval or refusal of the transfer in writing.

#### *Notice to transfer*

4.1.13 Where a decision to transfer a detainee to another place of accommodation has been made in accordance with this MSI, the detainee is to be provided with a "Notice to detainee of transfer to another place of accommodation within an immigration detention facility" (see [Attachment 3](#)) prepared by the DSP Detention Services Officer. This notice documents the reasons for transfer and when and by whom a review of this decision will be conducted.

4.1.14 A detainee must be given the opportunity to read and to sign the notice of transfer detailing the reasons for transfer unless the situation is so urgent that to take the time to do so would impact on the good order and security of the IDF or the safety of any individual in it. A translation must be given, either in writing or orally, into a language and terms the detainee understands. It would be preferable for the notice to be translated for the detainee in writing.

4.1.15 The detainee may then:

- (i) Indicate an intention to comply with all lawful orders and directions

- (ii) Provide additional information (for example, that he or she is not the person who was involved in a particular incident). The detainee may request an interview to discuss the matter with the DSP General Manager, or his or her delegate, to pass on this additional information. The DSP may decide not to proceed with the transfer on the basis of this information or
- (iii) Signify an intention to remain non-compliant with all lawful orders/directions.

4.1.16 If the DSP General Manager, or his or her delegate, is satisfied that circumstances in 4.1.15 (i) or (ii) apply, he or she may decide that the detainee is to remain in the existing place of accommodation. This decision must be noted on the detainee's file and dated.

### **Consultation with DIMIA officer**

4.1.17 Performance measure (d) of IDS 6.4.6 states that there must be "no substantiated instance of a facility or part of a facility being used as a place where detainee movements are restricted without the prior approval of the Department". Therefore the DSP must gain approval from the DIMIA Manager before part of a facility is used as a more restrictive place of accommodation.

4.1.18 If the DSP General Manager, or his or her delegate, is satisfied that a detainee intends to continue to refuse to comply with lawful/reasonable directions, he or she must consult with, the DIMIA Manager or Deputy Manager, prior to the detainee being transferred to a more restrictive place of accommodation in an IDF so that the DIMIA Manager or Deputy Manager is informed of the detainee's movement and has the opportunity to input into ongoing detainee management strategies..

### **Appropriate period of notice of transfer to be given to detainee**

4.1.19 The DSP General Manager, or delegate at a managerial level, should ensure that the detainee has been provided with an appropriate period of notice of the transfer depending on the particular circumstances of a case.

4.1.20 The appropriate period of notice will vary on a case by case basis. For example, no formal notice is required where a detainee is transferred to a management support unit during a riot.

4.1.21 There may be operational reasons why a detainee cannot see the notice prior to transfer. For example, intelligence may be received as to an impending serious incident involving a detainee and it is considered that the security of the IDF would be put at risk if the detainee received prior notification of a

transfer. See [3.1.16 - 3.1.21](#) for the circumstances in which assessment procedures may not be followed.

### **Transfer of detainee**

4.1.22 If the DSP General Manager, or his or her delegate, decides to transfer the detainee to another place of accommodation, the transfer must be effected as soon as practicable after the decision is made and the DIMIA Manager or Deputy Manager has been consulted regarding the transfer.

4.1.23 The DIMIA Manager or Deputy Manager is to ensure that the DSP has made the appropriate arrangements prior to any transfer taking place. Such arrangements include, but are not limited to, the following:

- identification of available bedspace
- preparation of suitable bedding
- advice to health services so that medication is delivered to the new location
- redirection of mail and telephone calls
- preparation for transfer of personal belongings (eg providing containers and assigning responsibility for packing to the detainee or the DSP Detention Services Officer) and
- possible rescheduling of educational and recreational activities.

4.1.24 It may be more appropriate to transfer a detainee into the same level of place of accommodation rather than a less or more restrictive one. For example, in the case of two detainees in a singles general compound, neither of whom display violent behaviour to any other person but do so to each other, it may be more appropriate to place one of the detainees in a different singles general compound at the same level of restriction.

4.1.25 The notice to transfer must be placed on the detainee's file. If the detainee refuses to sign the notice, the reasons for this (if any are given) should be noted on the file. If the detainee was not given the opportunity to see the notice prior to transfer the reasons for this should be noted on the file. A refusal by the detainee to sign the form does not mean that the transfer cannot occur.

4.1.26 The DSP Detention Services Officer must ensure all property of the detainee is either moved with the detainee upon transfer or appropriately secured to prevent the possibility of theft. A record must be made of the action taken in relation to the property and the location of the property following transfer. Where possible, the detainee will be provided with the opportunity to pack and remove their own belongings.

### **Transfer of family members**

4.1.27 In the case where an adult member of a family group is transferred to another place of accommodation within the IDF, consideration should be given to whether it is appropriate to also transfer other family members to that same place of accommodation.

4.1.28 Other family members may be given the option to transfer to the same place of accommodation as their relative who was transferred if there is appropriate accommodation and such a transfer will have no adverse impact on the safe and secure management of the IDF or the safety of the family members.

4.1.29 IDS 2.2.3.2.1 states that “the safety, care, welfare and well-being of detainee children, in particular unaccompanied minors, are managed effectively and appropriately in accordance with:

- their age, family circumstances, gender, background (cultural, linguistic, religious), personal history and physical/mental health
- the law
- relevant Memoranda of Understanding and other agreements agreed between the Department and State/Territory agencies and
- relevant Departmental procedures or instructions”.

4.1.30 If consideration is being given to transferring a child with an adult family member to another place of accommodation within an IDF, relevant factors to consider in making such a decision include:

- whether the adult family member being transferred is the sole care giver for the child
- the age of the child
- facilities available in the place of accommodation and
- characteristics of the residents of that place of accommodation.

4.1.31 The parents or guardian of the child must always be consulted on their views in relation to the possible transfer of the child to another place of accommodation within the IDF.

4.1.32 A crucial factor when considering the transfer of a child with an adult family member is whether the transfer is in the best interests of the child.

4.1.33 It may be more appropriate for a child whose sole care giver parent is being transferred to a more restrictive place of accommodation to remain in the care of another family in the IDF. If this occurs, visits to the parent must be facilitated on a regular basis. If the child is separated from a sole care giver parent, the relevant child welfare authority must be notified.

4.1.34 Refer to MSI [Alternative Places of Detention](#) for factors to be taken into account in considering transfer of a child to an alternative place of detention and MSI [Bridging E visa \(Subclass 051\) - Legislation and guidelines](#) for factors to be taken into account in considering release of a child on a bridging visa.

#### **Review of transfer decisions**

4.1.35 Every decision (except those made for medical reasons – see paragraph 3.1.21) to transfer a detainee to a more restrictive place of accommodation must be regularly reviewed by the DSP and recorded on the “Review of decision to transfer detainee to a more restrictive place of accommodation” form prepared by the DSP Detention Services Officer (see [Attachment 4](#)).

4.1.36 The review must be conducted on a daily basis if the detainee is in a management support unit or self harm prevention unit and on a weekly basis if the detainee is in a more restrictive place of accommodation (apart from a management unit or a self-harm prevention unit).

#### **Non-exhaustive list of factors to consider when recommending a review of decision to transfer to a more restrictive place of accommodation in an IDF**

4.1.37 The DSP Detention Services Officer must consider the following factors when forming a recommendation to review a decision to transfer a detainee to a more restrictive place of accommodation in an IDF. Note, this list does not prevent the DSP officer from taking account of any other factors he/she considers relevant:

- the seriousness of behaviour which initiated the transfer
- compliance with milestones in any behaviour management agreement
- the risk of harm to the detainee or others if the detainee is moved back to the place of accommodation from which they were transferred
- the behaviour of the detainee in the place of accommodation to which moved
- whether the detainee is separated from support networks
- the effect a transfer back to a less restrictive place of accommodation may have on other detainees
- whether the detainee is likely to resume disruptive behaviour/refuse to comply with lawful orders/directions if moved back to a less restrictive place of accommodation
- the detainee’s wishes
- medical/mental health assessments
- logistical and infrastructure requirements and

- all relevant opinions in relation to the transfer of a detainee to another place of accommodation, including but not limited to, those of the DIMIA case coordinator (in those IDFs which employ a case coordinator).

4.1.38 The DSP Detention Services Officer may recommend the detainee:

- remain in the current place of accommodation or be moved to the same level of accommodation in another part of the IDF
- be moved to a more restrictive place of accommodation or
- be moved to a less restrictive place of accommodation.

4.1.39 Consideration of a transfer to a more restrictive place of accommodation may include moving the detainee to another IDF or to a correctional facility. See the MSI on [\*Transfers of detainees to state prisons\*](#).

4.1.40 The DSP General Manager, or his or her delegate, may either approve or reject the recommendation of the DSP Detention Services Officer by a written notation on the “Review of decision to transfer detainee to a more restrictive place of accommodation” form ([Attachment 4](#)).

4.1.41 The DSP General Manager, or his or her delegate, is to consult with the DIMIA Manager or Deputy Manager in making his or her decision regarding the review of the place of accommodation and is to take account of any additional information provided by the DIMIA Manager or Deputy Manager in making the decision.

4.1.42 The detainee must be informed of the outcome of the decision, in a language and terms he or she understands, on the day it is decided. This notification must be in writing on the “Notice to detainee of outcome of review of decision to transfer to a more restrictive place of accommodation” prepared by the DSP Detention Services Officer (see [Attachment 5](#)). This notice will also advise the detainee when the next review is to take place. The detainee will be given the opportunity to make comments regarding this decision on the form and to sign it. The detainee will also be informed in writing of the complaints mechanism and provided with access to any relevant detainee request form if they indicate that they wish to make a complaint about the process.

4.1.43 If a decision is taken to transfer the detainee to another place of accommodation, the transfer must be effected as soon as practicable after the decision is made.

4.1.44 All information regarding the review of the place of accommodation within the IDF, including relevant factors in making the decision as to whether the detainee is to remain in the current place of accommodation or to be transferred, must be recorded on the detainee’s file.

4.1.45 A request for a review of the decision to transfer for behaviour management reasons may not ordinarily be made by the detainee. This guideline may be waived in emergency situations such as the death or serious illness of a family member of the detainee who is held in another place of accommodation. Any such request, and the response, must be noted on the detainee's file. However, detainees do have the right to lodge complaints about the review process and officers must ensure that such complaints are investigated and resolved as soon as possible.

4.1.46 A checklist for officers in relation to procedures to follow to transfer a detainee within an IDF for behaviour management reasons is at [Attachment 6](#).

## **4.2 Procedures for transfers within an IDF for other reasons**

4.2.1 Transfer of detainees to less restrictive or more restrictive places of accommodation within an IDF may occur for reasons other than for behaviour management reasons. These reasons include, but are not limited to:

- logistical purposes
- infrastructure purposes
- the prevention/containment of contagious diseases
- management of other medical emergencies
- a detainee is being threatened by another detainee and is moved for their own protection and
- at the detainee's request.

4.2.2 The list of factors referred to at [3.2.10](#) should be considered in relation to the transfer of detainees within an IDF for reasons other than for behaviour management reasons.

4.2.3 The procedures set out at [4.1.13 - 4.1.46](#) must be followed in relation to transfer of detainees for reasons other than for behaviour management reasons.

4.2.4 The appropriate DIMIA officer must ensure that where a detainee is transferred to a more restrictive place of accommodation within an IDF for reasons other than for behaviour management reasons, the place of accommodation is suitable for the specific needs of the detainee. This applies in particular to the transfer of detainees for medical reasons.

4.2.5 The appropriate period of notice of the proposed transfer referred to at [4.1.13 - 4.1.16](#) will vary on a case by case basis. For example, a detainee may be transferred to a medical facility in an emergency situation, in which case no notice will be required. A detainee who has requested their own transfer may be able to be moved on short notice.

4.2.6 A checklist for officers in relation to procedures to follow to transfer a detainee within an IDF for reasons other than behaviour management reasons is at [Attachment 7](#).

### **4.3 Record management**

4.3.1 Record keeping is an integral and critical component in both managing the behaviour of detainees and transferring detainees to other places of accommodation within an IDF. All records and relevant information in relation to a transfer to another place of accommodation must be placed on a detainee's file within 24 hours of making the notation, unless another time frame is imposed by the IDS. Such documents include, but are not limited to:

- minutes of counselling
- incident reports
- DSP security intelligence reports
- file notes on any telephone or other conversations in relation to the transfer
- video recordings
- whether a warning of possible transfer is given to a detainee
- any notices in relation to transfer
- a list of any personal property that is transferred with the detainee
- comments by the detainee
- any medical, psychological or psychiatric reports
- detainee care plan
- behaviour management agreement (if any) and
- any other document referred to in this MSI.

4.3.2 As far as practical, all records in relation to the transfer should be kept on one file. If it is not possible to place relevant records on a consolidated file, cross-referencing should be made to the file on which the relevant record is placed.

4.3.3 Files should be kept in good order and in accordance with departmental policy and best practice in record management.

4.3.4 All records in relation to the transfer of a detainee within an IDF must be relocated with that detainee if he or she is transferred to another IDF.

## **5 USE OF REASONABLE FORCE AND ALLEGATIONS OF UNLAWFUL DETAINEE BEHAVIOUR**



## 5.1 Use of reasonable force

- 5.1.1 If the use of force or an instrument of restraint is required to effect a transfer of a detainee to a more restrictive place of accommodation within an IDF, due to non-compliance with a lawful order or direction, this must be reasonably necessary and proportionate in the particular circumstances. It must only be used as a last resort and employed for the minimum time necessary to achieve its objective – that is, to restore the safety and good order of the IDF or prevent the detainee from harming himself or herself or others.
- 5.1.2 Use of force may be utilised in such circumstances as self-protection, to protect detainees or other people from harm, to prevent detainees harming themselves or to prevent malicious damage to property. The level of force applied must be reasonable. The question of what constitutes “reasonable force” will depend on all the circumstances of the case. If the court considers the force used to be unreasonable, the person who applied the force could be liable to civil and criminal proceedings for trespass to the person.
- 5.1.3 The DSP must ensure that, where force has been used, an appropriate medical professional examines the detainee(s) on whom the force has been used as soon as reasonably practicable, preferably within 2 hours of the incident.

## 5.2 Allegations of unlawful behaviour involving detainees

- 5.2.1 IDS 6.4.4 states “detainees are informed that, if they commit a criminal act, they can expect to be charged according to State/Territory/Commonwealth law and, if convicted, may be transferred to a correctional facility”.
- 5.2.2 IDS 6.4.5 states “where a potential criminal act is suspected, the Detention Services Provider takes appropriate action”.
- 5.2.3 DIMIA officers are limited to responding to criminal behaviour specifically covered by either the Migration Act or the *Migration Regulations 1994*. For example, DIMIA officers are able to respond to cases of escape from lawful immigration detention, which is an offence under [s 197A](#) of the Migration Act. However in the case of criminal acts not included in the Migration Act, such as theft or assault, DIMIA officers have no authority to act in relation to prosecutions except to call upon the appropriate law enforcement agency, namely the State or Federal Police.
- 5.2.4 Factors taken into consideration in deciding whether to call upon the State or Federal Police include:
- the seriousness of any act
  - the intention and maliciousness of the act

- any physical harm inflicted on other persons in the IDF
- any damage to property in the IDF
- the likely impact on the daily operations of the IDF if no referral is made
- whether there has been any previous police involvement with the same detainee in relation to similar matters and
- the wishes of any victim.

5.2.5 If there is any doubt it is preferable to refer such matters to the State or Federal Police in accordance with arrangements applying locally, including memoranda of understanding.

5.2.6 In dealing with allegations of a criminal nature, every care must be taken to protect the rights of the parties involved, and also to ensure that there are no further possible infringements of the law in trying to deal with the alleged matter.

5.2.7 Once the State or Federal Police have been called upon, it is then up to the police to make a recommendation to the Director of Public Prosecutions (DPP) concerning prosecution. The decision to initiate prosecution action always lies with the DPP.

5.2.8 DIMIA officers have a role in the investigation and the submission of a brief of evidence to the DPP on offences under the Migration Act, but not in respect of incidents constituting criminal offences under other legislation. DIMIA and DSP officers should cooperate with any police investigation into an incident at an IDF.

*(signed)*

S D Davis

First Assistant Secretary

Unauthorised Arrivals and Detention Division

## **ATTACHMENT 1 - BEHAVIOUR MANAGEMENT AGREEMENT**

**Detainee Biodata:**

**Name:**

**Detainee ID Number:**

**Date of Birth:**

**DSP Case Officer:**

**Is an interpreter required? (circle one)    Yes    No**

**Language in which detainee communicates:**

**Names, ID numbers, ages and location of any family members held in immigration detention:**

**Details of incident(s) leading to transfer to another place of accommodation:**

[Detention officers should ensure that file notes on any warning of a transfer to another place of accommodation, the detainee's response, the "Request for approval for transfer of detainee to a more restrictive place of accommodation within an immigration detention facility" and the "Notice to detainee of transfer to another place of accommodation within an immigration detention facility" are attached to the detainee's file].

**Details of medical/mental health assessment(s) and by whom conducted (if any):**

**Undertaking by Detention Services Provider:**

Detention Services Provider (DSP) staff will treat you politely, fairly and impartially in accordance with the immigration detention standards contained in the contract between the Commonwealth and the DSP for the provision of detention services, relevant Commonwealth, State and Territory legislation and in accordance with Australia's international obligations.

### **Behaviour Management Agreement**

#### **Undertaking by Detainee:**

I, .....(insert name of detainee)  
.....undertake that I will:

(Insert specific undertakings tailored for the individual detainee)

- 
- 
- 
- 

I am aware of my rights in relation to access to the Commonwealth Ombudsman and the Human Rights and Equal Opportunity Commission.

#### **Milestones:**

(Insert details of event or time period at which an assessment of detainee's adherence with the undertakings are made.)

#### **Access to amenities:**

(Insert any restrictions on amenities)

**Access to visitors:**

(Insert names and occupation of permitted visitors and how often permitted to visit)

**Signature of DSP case officer:**

.....

Date signed:

Signature of detainee:

.....

Date signed:

If this form has not been signed by detainee, record the reason(s) why below:

**ATTACHMENT 2 – REQUEST FOR APPROVAL FOR TRANSFER OF  
DETAINEE TO A RESTRICTIVE PLACE OF ACCOMMODATION  
WITHIN AN IMMIGRATION DETENTION FACILITY**

This notice has been prepared by Detention Services Officer (insert name):

.....

**Detainee Name:**

**Detainee ID Number:**

**Date of Birth:**

**Reasons for transfer:**

(Insert detailed reasons for transfer. General wording that it is “for the good order and security of the Centre” is not sufficient).

**Other relevant factors:**

**Location to which it is proposed that the detainee be transferred:**

**If the transfer is for behaviour management reasons, has a medical assessment by a qualified medical practitioner been undertaken? (*circle one*)**

Yes      No

*If yes, on what date was the assessment undertaken?*

*If yes, list any particular mental and/or physical health needs of the detainee which have been identified:*

*If no, why has an assessment not been undertaken?*

**Was this notice translated into a language that the detainee understands?** (*circle one*)

Yes      No

*If yes, please attach the translation to this notice.*

**Request for approval for transfer of detainee to a more restrictive place  
of accommodation within an immigration detention facility**

*If no, what further steps are being taken to ensure the detainee understands the nature  
of the transfer?*

**Has DIMIA Manager/Deputy Manager been consulted?** (*circle one*)

Yes      No

**Decision of DSP Manager or delegate at a managerial level** (*circle one*)

Approved      Not approved

**Signature of DSP Manager or delegate at a managerial level:**

.....

**Name of DSP Manager or delegate at a managerial level:**

.....

Date signed:

**ATTACHMENT 3 - NOTICE TO DETAINEE OF TRANSFER TO  
ANOTHER PLACE OF ACCOMMODATION WITHIN AN  
IMMIGRATION DETENTION FACILITY**

This notice has been prepared by Detention Services Officer (*insert name*):

.....

**Detainee Name:**

**Detainee ID Number:**

**Date of Birth:**

The DSP..... (insert appropriate level) Manager,  
.....(insert name of DSP Manager) has approved your  
transfer to .....(insert name of place of  
accommodation to which detainee is to be transferred)  
within.....(insert name of immigration detention facility).



**Reasons for transfer:**

(Insert detailed reasons for transfer. General wording that it is “for the good order and security of the Centre” is not sufficient).

**Outcome of medical assessment (if undertaken):**

**Date review of decision to transfer will be undertaken:**

**Name of officer who will undertake this review:**

.....

**Has the detainee been informed of his/her rights in relation to visits?**

Yes No

**Notice to detainee of transfer to another place of accommodation  
within an immigration detention facility**

**Was this notice translated into a language which the detainee understands?**  
*(circle one).*

*If yes, please attach the translation to this notice.*

Yes No

*If no, what further steps are being taken to ensure the detainee understands the nature of the transfer?*

**Detainee comments (if any):**

**Signature of detainee:**

.....

Date signed:

**Reason detainee did not sign notice (if applicable):**

**Additional comments by DSP Manager:**

**ATTACHMENT 4 - REVIEW OF DECISION TO TRANSFER TO  
DETAINEE TO A MORE RESTRICTIVE PLACE OF  
ACCOMMODATION**

This notice has been prepared by Detention Services Officer (*insert name*):.....

**Detainee Name:**

**Detainee ID Number:**

**Date of Birth:**

**Recommendation following review:**

**Reasons supporting recommendation:**

**Has DIMIA Manager/Deputy Manager been consulted? (*circle one*)**

Yes No

**Date that next review will be undertaken:**

**Was this notice translated into a language which the detainee understands?  
(*circle one*)**

*If yes, please attach the translation to this notice.*

Yes No

**Decision of DSP Manager or delegate at a managerial level: (*circle one*)**

Approved Not Approved

**Signature of DSP Manager:**

.....

**Name of DSP Manager or delegate at a managerial level:**

.....

Date signed:

**ATTACHMENT 5 - NOTICE TO DETAINEE OF OUTCOME OF  
REVIEW OF DECISION TO TRANSFER TO A MORE RESTRICTIVE  
PLACE OF ACCOMMODATION**

This notice has been prepared by Detention Services Officer (*insert name*):.....

**Detainee Name:**

**Detainee ID Number:**

**Date of Birth:**

The DSP.....(insert appropriate level)  
Manager,.....(insert name of DSP Manager) has reviewed  
the decision to transfer you to .....(insert name of place of  
accommodation to which detainee is to be transferred)  
within.....(insert name of immigration detention facility).

**Outcome of review:**

**Reasons for decision:**

**If the decision is to remain in existing place of accommodation, date that next  
review will be undertaken:**

**Was this notice translated into a language that the detainee understands? (*circle  
one*)**

*If yes, please attach the translation to this notice.*

Yes No

**Detainee comments (*if any*):**

**Signature of detainee:**

.....  
Date signed:

*If this form has not been signed by detainee, record the reason(s) why below:*

**ATTACHMENT 6 - CHECKLIST FOR TRANSFER OF A DETAINEE  
WITHIN AN IDF FOR BEHAVIOUR MANAGEMENT REASONS**

**Prior to transfer**

*Detention Services Officer*

- r I have considered whether other behaviour management strategies would be more effective in managing the behaviour of the detainee than transferring the detainee to a more restrictive place of accommodation.
  
- r restrictive place of accommodation will occur unless there is a cessation of non-compliant behaviour.
  
- r I gave the detainee sufficient opportunity to improve the non-compliant behaviour.
  
- r I have recorded the details of this warning on the detainee's file.
  
- r I have considered all relevant factors in deciding whether to recommend a transfer, including, but not limited to:
  - the capacity of each place of accommodation within the IDF
  - the overall logistical requirements of the IDF
  - the population and configuration of the place of accommodation to which transfer is being considered
  - the risk profile of the detainee including both the risk of escaping from immigration detention and the risk to the security and safety of

others in the level of accommodation (taking into account any previous history of escapes or violence)

- the gender mix in the place of accommodation to which transfer is being considered
  - the age of the detainee
  - the immigration processing status of the detainee
  - family composition (taking into account whether separation from the detainee's family or other support networks will occur)
  - health needs (taking into account special needs due, but not limited to, illness, disability, immobility and psychological or psychiatric conditions)
  - behaviour management issues, including
    - seriousness of behaviour (taking into account factors such as previous escapes, rioting, arson, destruction of property, sexual offences, attacks on staff, self-harm and bullying/standover tactics). See paragraph 5.2 of MSI Transfer of detainees within Immigration Detention Facilities in relation to referral of unlawful behaviour to policing authorities.
    - whether violence is involved
    - intention or malice
    - frequency
    - effect of behaviour on other detainees
  - all relevant views in relation to the transfer of a detainee to another place of accommodation, including but not limited to, those of medical staff and the DIMIA case coordinator (in those IDFs which employ a case coordinator)
  - wishes of the detainee to be transferred and of any other detainee who may be affected by the transfer
  - the likelihood of imminent release from immigration detention or removal from Australia
  - operational needs in regard to a particular detainee or other detainees within an IDF and
  - any relevant factors as specified in MSIs General detention procedures, Transfer of detainees to state prisons, Procedures for unaccompanied wards in Immigration Detention Facilities and Alternative places of detention.
- r If practicable, I have obtained the expert opinion of a qualified medical professional regarding the mental and physical health of the detainee.
- r I have prepared a Request for approval for transfer of detainee to a more restrictive place of accommodation within an immigration detention facility form for consideration by the DSP General Manager or delegate at a managerial level stating clear reasons for the transfer.

- r Where the Detention Services Provider (DSP) General Manager or delegate at a managerial level has approved the transfer, I have prepared a Notice to detainee of transfer to another place of accommodation within an immigration detention facility detailing the reasons for the transfer and by whom a review of this decision will be conducted.
- r All notices have been translated into a language and terms the detainee understands and the detainee has been given the opportunity to read and sign the notices.
- r The detainee has been given the opportunity to provide any additional information he or she believes is relevant, and to indicate his or her intention to comply or not comply with all lawful orders or directions.
- r I have considered whether other family members should be transferred with the detainee.
- r I have placed all documentation in relation to the proposed transfer on the detainee's file, including reasons why a strict adherence to procedures may not have taken place, if applicable.
- r I have not been involved in any incident leading to the transfer.

*DSP General Manager*

- r I have signified approval or refusal for a transfer on an Approval of transfer of detainee to another place of accommodation within an immigration detention facility form.
- r I have reviewed the response of the detainee as to whether he or she:
  - (i) has signified an intention to comply with all lawful orders and directions
  - (ii) has produced additional information that may warrant a reassessment of the transfer decision (for example, that the detainee is not the person who was involved in a particular incident) or
  - (iii) has signified an intention to remain non-compliant.
- r I have consulted with the DIMIA Manager or Deputy Manager regarding the transfer.
- r Where I have deemed it necessary, I have reviewed appropriate documentation such as incident reports and video records and/or met with the detainee.



- r I have ensured the detainee has been provided with an appropriate period of notice of the transfer depending on the particular circumstances.

## **Transfer**

### *Detention Services Officer*

- r I have ensured the detainee has been advised of the routine of the place of accommodation to which he/she has been transferred.
- r I have ensured a detainee care plan is in effect.
- r I have ensured a behaviour management agreement is in effect.
- r I have ensured the case manager has contact with the detainee daily if the detainee is in a management unit or self harm prevention unit.
- r I have ensured the case manager has contact with the detainee weekly if the detainee is in a more restrictive place of accommodation apart from a management unit or self harm prevention unit
- r I have ensured where the detainee's movements are restricted, he or she has access as much exercise as possible, but at least two 1 hour periods of supervised exercise per day (at least one of which is in daylight hours where practicable).
- r I have ensured the detainee has reasonable access to open air.
- r I have ensured a detainee placed in a management or self-harm unit is seen daily by a qualified medical practitioner and this contact is noted on the detainee's file.
- r I have considered the cultural and implications of the transfer for the individual detainee.
- r I have ensured the detainee's property has been moved with him/her or otherwise appropriately secured.
- r I have ensured that if force was used to effect the transfer, a qualified medical professional has examined the detainee(s) as soon as practicable after the transfer took place.

## **Review of decision to transfer**

### *Detention Services Officer*

- r I have undertaken a review of the decision to transfer each day if the detainee is in a management unit or self harm prevention unit.
- r I have undertaken a review of the decision to transfer each week if the detainee is in a more restrictive compound (other than a management support unit or a self-harm prevention unit).
- r I have considered all relevant factors in reviewing the decision to transfer, including, but not limited to:
  - the seriousness of behaviour which initiated the transfer
  - compliance with milestones in any behaviour management agreement
  - the risk of harm to the detainee or others
  - the behaviour of the detainee in the place of accommodation to which moved
  - whether the detainee is separated from support networks
  - the effect a transfer back to a less restrictive place of accommodation may have on other detainees
  - whether the detainee is likely to again behave in a disruptive manner if transferred back to a less restrictive place of accommodation
  - the detainee's wishes
  - medical/mental health assessments
  - logistical and infrastructure requirements and
  - all relevant opinions in relation to the transfer of a detainee to another place of accommodation, including but not limited to, the DIMIA case coordinator (in those IDFs which employ a case coordinator).
- r I have prepared a Review of decision to transfer detainee to a more restrictive place of accommodation form for consideration by the DSP General Manager or delegate at a managerial level stating clear reasons for the recommendation made.
- r I have informed the detainee of the outcome of the decision and I also informed the detainee of the date of the next review. I informed the detainee of these matters in a language and terms he or she understands, by way of a

Notice to detainee of outcome of review of decision to transfer to a more restrictive place of accommodation.

- r I have given the detainee an opportunity to make comments regarding this decision on this form and to sign it.
- r I have placed all documentation in relation to the review of the transfer decision on the detainee's file.

*DSP General Manager*

- r I have consulted with the DIMIA Manager or Deputy Manager and taken into account any additional information provided by him or her in relation to review of the transfer.
- r I have made a written notation of my decision on the Review of decision to transfer detainee to a more restrictive place of accommodation form.

**ATTACHMENT 7 - CHECKLIST FOR TRANSFER OF A DETAINEE  
WITHIN AN IDF FOR REASONS OTHER THAN BEHAVIOUR  
MANAGEMENT**

**Prior to transfer**

*Detention Services Officer*

- r I have considered all relevant factors in deciding whether to recommend a transfer of a detainee to another place of accommodation within the IDF, including, but not limited to:
  - the capacity of each place of accommodation within the IDF
  - the overall logistical requirements of the IDF
  - the population and configuration of the place of accommodation to which transfer is being considered
  - the risk profile of the detainee including both the risk of escaping from immigration detention and the risk to the security and safety of others in the level of accommodation (taking into account any previous history of escapes or violence)
  - the gender mix in the place of accommodation to which transfer is being considered
  - the age of the detainee

- the immigration processing status of the detainee
  - family composition (taking into account whether separation from the detainee’s family or other support networks will occur)
  - health needs (taking into account special needs due, but not limited to, illness, disability, immobility and psychological or psychiatric conditions)
  - behaviour management issues, including
    - seriousness of behaviour (taking into account factors such as previous escapes, rioting, arson, destruction of property, sexual offences, attacks on staff, self-harm and bullying/standover tactics). See paragraph 5.2 of MSI “Transfer of Detainees within Immigration Detention Facilities” in relation to referral of unlawful behaviour to policing authorities.
    - whether violence is involved
    - intention or malice
    - frequency
    - effect of behaviour on other detainees
  - all relevant views in relation to the transfer of a detainee to another place of accommodation, including but not limited to, medical staff and the DIMIA case coordinator (in those IDFs which employ a case coordinator)
  - wishes of the detainee to be transferred and of any other detainee who may be affected by the transfer
  - the likelihood of imminent release or removal
  - operational needs in regard to a particular detainee or other detainees within an IDF and
  - any relevant factors as specified in MSIs General detention procedures, Transfer of detainees to state prisons, Procedures for unaccompanied wards in Immigration Detention Facilities and Alternative places of detention.
- r Where practicable, I have obtained the expert opinion of a qualified medical professional regarding the mental and physical health of the detainee.
- r I have prepared a Request for approval for transfer of detainee to a more restrictive place of accommodation within an immigration detention facility form for consideration by the DSP General Manager or delegate at a managerial level stating clear reasons for the transfer.
- r Where the Detention Services Provider (DSP) General Manager or delegate at a managerial level has approved the transfer, I have prepared a Notice to detainee of transfer to another place of accommodation within an immigration detention facility detailing the reasons for the transfer and by whom a review of this decision will be conducted.

- r All notices have been translated into a language and terms the detainee understands and the detainee has been given the opportunity to read and sign the notices.
- r The detainee has been given the opportunity to provide any additional information he or she believes is relevant, and to indicate his or her intention to comply or not comply with all lawful orders or directions.
- r I have considered whether other family members should be transferred with the detainee.
- r I have placed all documentation in relation to the proposed transfer on the detainee's file, including reasons why a strict adherence to procedures may not have taken place, if applicable.
- r I have not been involved in any incident leading to the transfer.

*DSP General Manager*

- r I have signified approval or refusal for a transfer on a Request for approval for transfer of detainee to a more restrictive place of accommodation within an immigration detention facility form.
- r Where I have deemed it necessary, I have reviewed appropriate documentation such as incident reports and video records and/or met with the detainee.
- r I have ensured the detainee has been provided with an appropriate period of notice of the transfer depending on the particular circumstances.

**Transfer**

*Detention Services Officer*

- r I have ensured the detainee has been advised of the routine of the place of accommodation to which he/she has been transferred.
- r I have ensured a detainee care plan is in effect.
- r I have ensured the case manager has contact with the detainee daily if the detainee is in a management unit or self harm prevention unit.

- r I have ensured the case manager has contact with the detainee weekly if the detainee is in a more restrictive place of accommodation apart from a management unit or self harm prevention unit.
- r I have ensured where the detainee's movements are restricted, he or she has access to as much exercise as possible, but at least two 1 hour periods of supervised exercise per day (at least one of which is in daylight hours where practicable).
- r I have ensured the detainee has reasonable access to open air.
- r I have ensured a detainee placed in a management or self-harm unit is seen daily by a qualified medical practitioner and this contact is noted on the detainee's file.
- r I have considered the cultural implications of the transfer on the individual detainee.
- r I have ensured the detainee's property has been moved with him/her or otherwise appropriately secured.
- r I have ensured that if force was used to effect the transfer, a qualified medical professional has examined the detainee(s) as soon as practicable after the transfer took place.

### **Review of decision to transfer**

#### *Detention Services Officer*

- r I have undertaken a review of the decision to transfer each day if the detainee is in a management unit or self harm prevention unit.
- r I have undertaken a review of the decision to transfer each week if the detainee is in a more restrictive compound (other than a management unit or a self-harm prevention unit).
- r I have considered all relevant factors in reviewing the decision to transfer, including, but not limited to:
  - whether the detainee is separated from support networks
  - the effect a transfer back to a less restrictive place of accommodation may have on other detainees
  - the detainee's wishes

- medical/mental health assessments
  - logistical and infrastructure requirements and
  - all relevant opinions in relation to the transfer of a detainee to another place of accommodation, including but not limited to, the DIMIA case coordinator (in those IDFs which employ a case coordinator).
- r I have prepared a Review of decision to transfer detainee to a more restrictive place of accommodation form for consideration by the DSP General Manager or delegate at a managerial level stating clear reasons for the recommendation made.
- r I have informed the detainee of the outcome of the decision and I also informed the detainee of the date of the next review. I informed the detainee of these matters in a language and terms he or she understands, by way of a Notice to detainee of outcome of review of decision to transfer to a more restrictive place of accommodation.
- r I have given the detainee an opportunity to make comments regarding this decision on the relevant form and to sign the form.
- r I have placed all documentation in relation to the review of the transfer decision on the detainee's file.

*DSP General Manager*

- r I have consulted with the DIMIA Manager or Deputy Manager and taken into account any additional information provided by him or her in relation to review of the transfer.
- r I have made a written notation of my decision on the Review of decision to transfer detainee to a more restrictive place of accommodation form.
- r I have made the detainee aware of the complaints mechanisms

**QUESTION TAKEN ON NOTICE**

**BUDGET ESTIMATES HEARING: 26 May 2005**

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

**(149) Output 1.3: Enforcement of Immigration Law**

Senator Nettle (L&C 81) asked:

Provide a copy of the guidelines for managing people in the more restrictive places of detention within Baxter once they are finalised.

*Answer:*

The Immigration Detention Standards (IDS) and Migration Series Instruction (MSI) 403: *Transfer of Detainees within Immigration Detention Facilities* recognise that from time to time, some groups, or individuals will need to be separated from the larger community of people within detention centres and have a more restrictive management approach. This is to ensure that their welfare and/or the welfare of the community as a whole and staff is maintained. The Immigration Detention Standards can be accessed online at [http://www.immi.gov.au/detention/standards\\_index.htm](http://www.immi.gov.au/detention/standards_index.htm). A copy of MSI 403 is attached.

The local operational procedures for the management support unit and Red I compound at Baxter, consistent with the MSI and IDS', are in the process of finalisation.



# **MSI 403: TRANSFER OF DETAINEES WITHIN IMMIGRATION DETENTION FACILITIES**

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### **ATTACHMENT 7 - CHECKLIST FOR TRANSFER OF A DETAINEE WITHIN AN IDF FOR REASONS OTHER THAN BEHAVIOUR MANAGEMENT**

## **1 INTRODUCTION AND SCOPE**

1.0.1 This Migration Series Instruction (MSI) provides a framework for the transfer of detainees within an immigration detention facility (IDF).

1.0.2 It may be necessary to transfer a detainee to another place of accommodation within an IDF to:

- restrict a detainee's movements for behaviour management reasons or
- manage the behaviour of detainees (when other strategies to manage detainees who are non-compliant with orders and directions which impact on security and safety are unsuccessful) or
- recognise compliant detainee behaviour or
- improve the welfare and care arrangements for the detainee and/or his or her family or
- protect the physical and mental health of the detainee and/or his or her family or
- protect the physical safety of other detainees and staff or
- prevent the probable occurrence of a serious incident (where there is intelligence that the transfer of the detainee is likely to assist in preventing such an incident).

1.0.3 Transfer of a detainee to another place of accommodation within the IDF may also be considered necessary for:

- logistical purposes (such as to enable a detainee to be closer to internal medical facilities)
- infrastructure purposes (such as the reorganisation of compounds as a consequence of changes to detainee numbers, where appropriate facilities are not available in the existing place of accommodation for an individual detainee or structural problems such as a roof collapse) or
- facilitating a detainee's request that he/she be transferred.

Note, this list is not exhaustive and the transfer of a detainee to another place of accommodation within an IDF may be considered necessary for other purposes.

1.0.4 This MSI provides procedural guidance for effecting the transfer of detainees within an IDF in a fair and equitable manner, while maintaining the rights of detainees.

1.0.5 This MSI contains strategies and procedures to:

- manage detainees who are non-compliant with lawful and reasonable orders and directions which impact on security and safety of the IDF and

- recognise detainees who behave in a compliant manner.

1.0.6 Detainees may be transferred between places of accommodation within an IDF on a scale ranging from less restrictive to more restrictive. Transfers may also be made to other IDFs, alternative places of detention and correctional facilities although these types of transfers are not detailed in this MSI.

1.0.7 This MSI should be read in conjunction with the MSIs on

- *General detention procedures*
- *Transfers of detainees to state prisons*
- *Procedures for unaccompanied wards in Immigration Detention Facilities*
- *Alternative places of detention* and
- *Bridging E visa (Subclass 051) - Legislation and guidelines*

which detail the procedures for the transfer of detainees from IDFs. DIMIA officers should also refer to the relevant Detention Services Provider (DSP) operational procedures.

## **2 SCALE OF PLACES OF ACCOMMODATION WITHIN IMMIGRATION DETENTION**

2.0.1 Places of immigration detention range from the less restrictive to more restrictive encompassing:

- alternative places of detention external to IDFs (these are not discussed in this MSI)
- different types of accommodation in the IDFs ranging from
  - self-contained family units
  - family and/or singles general compounds
  - more restrictive compounds
  - behavioural management units
  - observation rooms (medical observation rooms or other observation rooms not located within a management support unit) and
- correctional facilities (these are not discussed in this MSI).

2.0.2 There are additional places of accommodation in which detainees may be lodged due to operational or medical reasons such as a self-harm prevention unit or a medical unit within an IDF or a motel or hospital external to the IDF.

2.0.3 Within some places of accommodation there may be further means of restricting movement such as fencing in particular sections of a compound, closure of facilities within the compound (eg the recreation room), the

‘lockdown’ of separate accommodation areas or by restricting detainees to individual rooms.

2.0.4 It is important to note that the list of places of accommodation is not exhaustive and that other places may be developed as IDFs are expanded, remodelled or constructed. The use of individual areas of an IDF for a specific purpose may differ over a time as operational needs of the IDF change.

2.0.5 Each IDF may differ as to the range of places of accommodation that is available. Further, each place of accommodation within an IDF can hold a limited number of people. These logistical limitations may impact on the ability to transfer detainees within IDFs. The development of a national network of IDFs provides greater flexibility in the management of detainees through transfers between IDFs.

### **3 LOCATION OF INDIVIDUAL DETAINEES-GENERAL PRINCIPLES**

#### **3.1 General principles regarding transfer of detainees within an IDF**

##### **Transfer of detainees to a more restrictive place of accommodation**

3.1.1 The transfer of detainees to a more restrictive places of accommodation within an IDF may be appropriate where detainees are engaging in disruptive behaviour and/or have refused to comply with lawful orders/directions of Detention Services Provider (DSP) staff or DIMIA officers and other behaviour management strategies have proved ineffective. See [3.4.24](#) for examples of such strategies.

3.1.2 Transfer of detainees to more restrictive places of accommodation for behaviour management reasons are to be made only where behaviour cannot be effectively managed within the existing level of accommodation. Such a transfer may be appropriate where:

- a detainee exhibits violent and/or unlawful behaviour and refuses an order or direction to cease such behaviour
- a detainee is a continuing risk to themselves or others in the IDF
- a detainee wilfully damages property
- there is valid intelligence of an impending serious incident instigated (solely or partly) by the detainee
- there is valid intelligence of a risk of the detainee escaping from immigration detention
- the detainee is highly likely to respond in a violent/disruptive manner to a decision refusing to grant him/her a visa, or a decision by a Court/Tribunal to affirm such a decision of the Department or
- other behaviour management strategies have not been successful.

- 3.1.3 Where practicable, an expert medical opinion on the mental and physical health of a detainee should be obtained from a qualified professional prior to any transfer to a more restrictive place of accommodation for behaviour management reasons. This opinion will inform a decision on whether a transfer is necessary or desirable, and if so, to which particular place of accommodation. Transfer to an internal medical facility may be more appropriate than transfer to a more restrictive place of accommodation if a medical or mental condition is determined to be a cause of non-compliant behaviour.
- 3.1.4 Where no expert medical opinion has been obtained prior to transfer, a medical examination of the detainee must be undertaken no later than 24 hours following the transfer.
- 3.1.5 The Immigration Detention Standards (IDS), which form part of the Detention Services Contract between the Commonwealth and the DSP for the provision of detention services, states at Performance measure (c) of IDS 6.4.6 that there must be “no substantiated instance of a detainee whose movements are restricted not being seen daily by qualified medical staff”. This necessarily refers to a greater level of restriction than at the compound level eg placement in a management support unit.
- 3.1.6 Where it is deemed necessary to place a minor in a more restrictive place of accommodation, particular attention must be given to the development of a detainee care plan and behaviour management agreement [see [3.4.29 – 3.4.36](#) and [3.4.37 – 3.4.43](#)]. Minors should be held in a more restrictive place of accommodation for the shortest period possible.
- 3.1.7 A detainee may also be transferred to a more restrictive place of accommodation for reasons other than behaviour management. See [4.2](#) for procedures in relation to such transfers.
- 3.1.8 The DSP must be responsive to changes in the number of available places for detainees at IDFs and must be aware of the capacity to place detainees in particular areas of the IDF.
- 3.1.9 Where a part of an IDF is to be used as a place where detainee movements are restricted, the DSP General Manager, or his or her delegate, is to ensure that approval for such use has been obtained from the DIMIA Manager or Deputy Manager, prior to a detainee being transferred.

### **Management support unit**

- 3.1.10 The transfer of a detainee to a management support unit must not be used as a form of punishment. Legitimate purposes for such a transfer include where a detainee exhibits violent and unlawful behaviour and refuses an order

to cease such behaviour. It is ordinarily appropriate to transfer a detainee to a management support unit on a short term basis only.

- 3.1.11 It may be necessary to place a detainee who is at risk of self-harm in an observation room with appropriate supervision. Such a unit would allow for an appropriate level of care through regular observation and interaction as appropriate.
- 3.1.12 If it is considered that security at the IDF can only be maintained by ongoing accommodation of an individual in a management support unit, alternative measures must be investigated (such as transfer to another IDF or another place of detention). It is not appropriate to allow a detainee to remain in a behaviour management support unit for an extended period of time and alternative measures must be considered after placement of a detainee in a management support unit for a period in excess of 48 hours. Relevant procedures for transferring a detainee within an IDF for behaviour management reasons outlined at [4.1](#) must be followed.

#### **Transfers to another IDF or a correctional facility**

- 3.1.13 It may be necessary to transfer a detainee to another facility or to another place of detention, such as a correctional facility. The MSI on [Transfers of detainees to state prisons](#) should be consulted for procedural guidance on this matter.

#### **Transfers to a less restrictive place of accommodation**

- 3.1.14 Transfers to a less restrictive place of accommodation may be appropriate to recognise compliant behaviour by the detainee or for reasons outlined at [4.2.1](#). This may be considered as a result of regular review of the place of detention at the request of the detainee, or it may be an outcome of adherence to a behaviour management agreement detailed at [3.4.37 - 3.4.43](#).
- 3.1.15 Detainees may also be transferred between places of accommodation at the same level of restriction.

#### **Circumstances in which assessment procedures need not be followed**

- 3.1.16 It will not be possible to implement all assessment procedures for transfers set out at [4.1](#) in every situation which arises in an IDF. For example, in situations where the health and safety of any person in an IDF is at serious risk, a transfer to another place of accommodation may be instituted without strict adherence to the assessment procedures.
- 3.1.17 Where a transfer occurs and the assessment procedures set out at [4.1](#) have not been followed, the DSP must ensure it notifies the appropriate

DIMIA officer of the transfer as soon as practicable, but no later than 2 hours following completion of the transfer. The DIMIA officer must make a record of the advice provided by the DSP regarding the transfer.

- 3.1.18 The reasons for not following the assessment procedure set out in this MSI must be detailed in writing within 6 hours of the transfer and provided to DIMIA. A copy must be placed on the detainee's file.
- 3.1.19 The detainee should be advised, in a language and terms he or she understands, of the reason for the transfer and the date on which a review of the decision to transfer will take place. A notation that this has occurred must be placed on the detainee's file.
- 3.1.20 The review procedures set out at [4.1.35 - 4.1.46](#) must be followed, including in circumstances where a transfer is made in an emergency situation and the assessment procedures have not been followed.
- 3.1.21 The review procedures in this MSI need not be followed where the transfer is made so that the detainee can receive medical treatment. In this situation, a medical review should be undertaken by qualified medical staff and the outcome noted on the detainee's file.

## **3.2 Considerations influencing placement in places of accommodation within an IDF**

### **Allocation of accommodation on arrival at an IDF**

- 3.2.1 During the initial reception of a detainee into an IDF, assessments are made by the DSP of detainee needs and operational requirements to enable allocation of appropriate accommodation.
- 3.2.2 Unauthorised arrivals (that is, persons who arrive in Australia without a visa that is in effect and are not taken to hold a visa by operation of law on arrival in Australia) are usually accommodated in separation detention until after initial entry interviews take place. If a detainee has not invoked Australia's protection obligations by applying for a protection visa or has not applied for a visa of any other class, he or she must be removed from Australia as soon as reasonably practicable. Once a detainee leaves separation detention for detention in the general population, a further accommodation allocation is made.
- 3.2.3 IDS 2.1.4.2 states that "to the extent practicable and subject to the good order and security of the detention facility and the safety of all those within it, detainees have access to accommodation which recognises the special needs of particular groups, including but not limited to families, unaccompanied minors/women/men and persons who are ill and/or have a disability".



3.2.4 The various characteristics of individuals and groups need to be addressed by the DSP when allocating accommodation, within the parameters of the available capacity. Such detainee characteristics include, but are not limited to:

- gender
- age
- health needs
- cultural and religious requirements
- language skills
- anticipated length of time in the IDF
- the risk profile of the detainee including the risk of escaping from immigration detention, any history of threatening/violent behaviour towards other detainees and the risk to the security and safety of others in the level of accommodation and
- family circumstances, including if the detainee is an unaccompanied minor.

3.2.5 Family groups and women and children, including unaccompanied minors, should be accommodated separately from adult males without dependents in the facility, to the extent that this is possible.

3.2.6 The overall requirements of the IDF and the capacity of each place of accommodation within the IDF are important factors in assessing initial placement.

3.2.7 New arrivals who are transferred from another IDF or other place of detention will usually be placed in general compounds in the first instance. If the appropriate DSP officer has a reasonable suspicion that the detainee will be non-compliant with orders and directions which impact on security and safety within the IDF, based on previous behavioural history, the detainee may be placed in a more restrictive compound. The basis for this reasonable suspicion must be documented.

3.2.8 The DSP must take account of all relevant views in relation to the initial placement of a detainee in accommodation, including but not limited to, those of medical staff, the DIMIA Manager or Deputy Manager and the DIMIA case coordinator (in those IDFs which employ a case coordinator).

3.2.9 Regular ongoing monitoring and assessment by the DSP may result in transfer of a particular detainee to a more restrictive place of accommodation based on non-compliance with other behaviour management strategies (listed at [3.4.24](#)).

**Non-exhaustive list of factors to consider when deciding whether to transfer a detainee within an IDF**

3.2.10 A DSP Detention Services Officer must consider the following factors in deciding whether to recommend to transfer a detainee to another place of accommodation within an IDF (note, this list does not preclude the DSP Detention Services Officer from taking account of other factors he/she considers relevant in making a recommendation to transfer a detainee):

- the capacity of each place of accommodation within the IDF
- the overall logistical requirements of the IDF
- the population of the place of accommodation to which transfer is being considered (eg gender mix)
- the configuration of the place of accommodation to which transfer is being considered (eg availability of family units)
- the risk profile of the detainee including both the risk of escaping from immigration detention and the risk to the security and safety of others in the level of accommodation (taking into account any previous history of escapes or violence)
- the gender mix in the place of accommodation to which transfer is being considered
- the age of the detainee
- the religion of the detainee
- the immigration processing status of the detainee (that is, whether the detainee has made a visa application, an application for merits review, an application for judicial review, or is about to be removed from Australia)
- family composition (taking into account whether separation from the detainee's family or other support networks within or outside the IDF will occur)
- health needs (taking into account special needs due, but not limited to, illness, disability, immobility and psychological or psychiatric conditions)
- behaviour management issues, including:
  - seriousness of behaviour (taking into account factors such as previous escapes, rioting, arson, destruction of property, sexual offences, attacks on staff, self-harm and bullying/standover tactics and any previous difficulties with other detainees within the IDF). See [5.2](#) in relation to referral of unlawful behaviour to policing authorities
  - whether violence is involved
  - intention or malice
  - frequency of any of the behaviour referred to above
  - effect of behaviour on other detainees
- all relevant views in relation to the transfer of a detainee to another place of accommodation, including but not limited to, those of medical

staff and the DIMIA Manager or Deputy Manager and the DIMIA case coordinator (in those IDFs which employ a case coordinator)

- wishes of the detainee to be transferred and of any other detainee who may be affected by the transfer
- the likelihood of imminent release from immigration detention or removal from Australia
- operational needs in regard to a particular detainee or other detainees within an IDF and
- any relevant factors as specified in the MSIs on *[General detention procedures](#)*, *[Transfer of detainees to state prisons](#)*, *[Procedures for unaccompanied wards in Immigration Detention Facilities](#)* and *[Alternative places of detention](#)*.

3.2.11 The DSP must take reasonable steps to ensure a medical, psychological or psychiatric condition is not responsible for the non-compliant behaviour as outlined at [3.1.3](#). Transfer to an internal medical facility may be more appropriate than transfer to a more restrictive place of accommodation if such a condition is determined to be a cause of non-compliant behaviour.

### **3.3 Decision making responsibilities**

#### **Responsibilities of the Detention Services Provider**

3.3.1 IDS 6.4.6 provides that as a result of non-compliance with lawful and reasonable orders and directions detainees may:

- be transferred to another part of the facility
- have their movements within the facility restricted or
- be transferred to another place of immigration detention.

3.3.2 The DSP is responsible for deciding and effecting all transfers and restrictions of movement within IDFs. DSP staff, however, must consult with the DIMIA Manager or Deputy Manager in the IDF in relation to any such decision prior to taking action, unless the situation is so urgent that to take the time to do so would impact on the good order and security of the IDF or the safety of any individual in it.

3.3.3 Any decision to transfer detainees within an IDF must take into account all relevant considerations listed at [3.2.10](#) and must not be made on an arbitrary basis.

3.3.4 If there is any suspicion that a medical, psychological or psychiatric condition may be causing or contributing to non-compliant behaviour and it is practicable to do so, expert medical opinion from a qualified professional should be sought before behaviour management strategies, including a transfer to a more restrictive place of accommodation, are put in place.

- 3.3.5 The appropriate DSP officer to make a recommendation to transfer a detainee within an IDF is normally a Detention Services Officer. The appropriate officer to approve such a decision is normally the DSP General Manager, or delegate at a managerial level, of the relevant IDF.
- 3.3.6 IDS 2.1.3.1 provides that “a permanent, current and comprehensive record of each detainee is created and maintained in each facility...”. The DSP must ensure that all information in relation to transfers within IDFs is recorded in a timely, accurate and comprehensive manner. See [4.3](#) for further details on record management.

### **Responsibilities of DIMIA officers**

- 3.3.7 DIMIA officers are responsible for decisions to transfer detainees to another place of detention such as other IDFs, an alternative place of detention or a correctional facility. In making such a decision, the appropriate DIMIA officer must consider any assessments made by the DSP and the resources provided through the national network of IDFs. See the MSI on [Transfer of detainees to state prisons](#) for procedures on transfers to another place of detention.
- 3.3.8 While the decision to transfer a detainee within an IDF rests with the DSP, the DSP should consult the appropriate DIMIA officer regarding a transfer within an IDF to give DIMIA the opportunity to input into ongoing detainee management strategies. Preferably this will happen before a transfer but in all cases should occur after the transfer.
- 3.3.9 The appropriate officer with whom the DSP officer should consult is normally the DIMIA Manager or the Deputy Manager.
- 3.3.10 In those IDFs which employ a DIMIA case coordinator, the case coordinator should be consulted to provide input.
- 3.3.11 The appropriate DIMIA officer should provide any relevant information for consideration by the DSP (eg knowledge of the detainee’s behaviour and attitude during interactions with DIMIA officers and notification of an upcoming adverse decision on a visa application, an application for merits review, an application for judicial review, or a request for Ministerial Intervention).
- 3.3.12 DIMIA officers must ensure that the DSP maintain timely, accurate and comprehensive records in relation to the transfer of detainees within IDFs. See [4.3](#) for further details on record management.

3.3.13 Both DIMIA officers at IDFs and the Detention Contract Management Section in Central Office have a role in monitoring service provision by the DSP to ensure that the DSP fulfils its contractual obligations.

3.3.14 The responsibilities of Detention Contract Management Section include monitoring performance of the DSP against the IDS and relevant operational procedures through the review of written and audiovisual records of incidents and regular visits to IDFs.

3.3.15 The DIMIA Manager or Deputy Manager must be satisfied that detainees have access to the complaints mechanism before, during and after any transfer within an IDF.

### **3.4 Behaviour management strategies**

#### **Structured communication with detainee**

3.4.1 IDS 4.1.1 states that “detainees are informed of:

- the services available to them in detention
- their rights and obligations during their residence at the IDF
- complaints mechanism
- life in multicultural Australia
- the rule of law in Australia and
- any other pertinent matters

through the use of effective information, communication and consultative strategies and mechanisms which are responsive to the changing profile and needs of the detainee population”.

3.4.2 IDS 4.4.1 states that “detainees and the Detention Services Provider effectively communicate with each other through the application by the Services Provider of appropriate communication strategies, taking into account:

- the languages detainees understand
- the particular circumstances in which the communication is taking place and
- the special needs of illiterate or hearing and/or visually impaired detainees”.

3.4.3 IDS 4.4.2 states “where the use of an interpreter or translator is assessed as necessary, that interpreter or translator is appropriately trained, qualified and accessible”.

- 3.4.4 Strategies must be put in place by the DSP to advise detainees of the consequences of non-compliance with reasonable and lawful orders and directions.
- 3.4.5 IDS 2.1.1.1 states that “detainees are made aware, in a language and in terms they understand, of:
- the operations of the detention facility including but not limited to:
    - the guidelines for residing at the facility
    - the facilities available
    - complaints mechanisms
    - procedures for the management of personal property and
    - respective roles and responsibilities of the Detention Services Provider and the Department and
  - the expectations of their behaviour as set out in the Detainee Code of Conduct, including but not limited to:
    - understanding and complying with Australian law, in particular in relation to their actions while in detention and
  - their obligations to respect the diversity of culture and beliefs among persons (such as other detainees and staff) at the facility, to treat them with dignity, and accord them respect”.
- 3.4.6 It is critical that detainees understand how to request the assistance of an interpreter for the purpose of effectively communicating with staff of the DSP and DIMIA staff.
- 3.4.7 Detainees are briefed by the DSP about behavioural expectations during the reception interview and the induction period undertaken within 5 days of a detainee’s arrival at an IDF. The DSP is responsible for making lawful and reasonable orders and directions and for ensuring detainees are made aware of these.
- 3.4.8 This includes the development of a Code of Conduct, approved by DIMIA, setting out the responsibilities of detainees including respect for diversity of cultures and beliefs, the need for compliance with Australian law and the rules of the IDF and the consequences of not adhering to these.
- 3.4.9 Detainees are requested and encouraged to read and sign the Code of Conduct or have it signed on his or her behalf by an appropriate person, during the induction. The DSP must ensure the Code of Conduct has been effectively communicated to detainees in a language and terms that the detainee understands, using translation where reasonable. Detainees should be provided with a copy of the document for their ongoing reference.
- 3.4.10 Detainees should be counselled regarding their non-compliant behaviour and advised that unless there is an improvement in conduct, transfer to a more

restrictive place of accommodation may result. Counselling can also be used to assist in assessing the likelihood of any further incidents or disturbances.

- 3.4.11 It is important that detainees are informed of the possible outcomes of their behaviour and accept their share of responsibility in resolving the issue of non-compliant behaviour. Minutes of counselling should be placed on the detainee's file.
- 3.4.12 In most instances, detainees should be informed of all stages of the assessment and review process for transfers and be given the opportunity to improve any non-compliant behaviour.
- 3.4.13 Detainees are more likely to cooperate in any ongoing behaviour management process when they have been able to participate in it. This requirement can be dispensed with when the situation is so urgent that to take the time to do so would impact on the good order and security of the IDF or the safety of any individual in it.
- 3.4.14 Detainees must be made aware of all incidents or behaviour that lead to any decision to transfer, be given the opportunity to comment on these, and be informed of the procedures for a review of the decision to transfer.
- 3.4.15 Evidence that this has occurred must be provided in writing, prior to the transfer being effected. This may not be possible in particular circumstances such as emergency medical transfers or riots.
- 3.4.16 Detainees must be informed by the DSP of all avenues for complaint regarding the transfer, including to the DSP, DIMIA, the Human Rights and Equal Opportunity Commission (HREOC) and the Commonwealth Ombudsman.
- 3.4.17 If a transfer to a more restrictive place of accommodation occurs for behaviour management reasons, a behaviour management agreement should be entered into by the DSP and the detainee, as outlined at [3.4.37 - 3.4.43](#). Such agreements may also be appropriate as a behaviour management strategy prior to any transfer.

### **Behaviour management strategies**

- 3.4.18 IDFs accommodate a diverse population including unauthorised arrivals and compliance cases (persons whose visas have ceased/been cancelled), family units and single persons and children and the elderly. Unlike a correctional setting, immigration detention is usually communal with families able to remain together and men, women and children able to mix. The variety of needs of the detainees and the stresses and strains within a detention facility will impact on the behaviour of detainees.

- 3.4.19 The DSP must provide a safe and secure detention environment whilst taking into account its holistic duty of care to detainees. Under IDS 6.4.2, non-compliant, uncooperative behaviour or conflict is to be addressed, as far as practicable through communication, counselling, negotiation and conflict resolution.
- 3.4.20 In the first instance, attempts should be made to identify the underlying cause of a detainee's behaviour to fully inform behaviour management decisions. See [3.1.3](#).
- 3.4.21 The DSP is expected to use flexible and innovative management strategies and techniques aimed at defusing any tensions and resolving conflicts before they become serious or violent.
- 3.4.22 IDS 6.4.7 states that “force is used as a measure of last resort and only where all other control methods have failed or have been assessed as inadequate. Only such force as is reasonably necessary and proportionate in the particular circumstances to resolve the situation is used”.
- 3.4.23 Reasonable force to transfer a detainee to a more restrictive place of accommodation within an IDF may only be used as a last resort after all other avenues of moral persuasion and negotiation have failed. See [5.1](#) on the use of reasonable force.
- 3.4.24 Transfers of detainees to more restrictive places of accommodation within IDFs are one aspect of a broader detainee management strategy which aims to achieve constructive participation by detainees in the daily life of the IDF. A multi-faceted approach to addressing behaviour management is utilised by the DSP which is incentive and progress based. Such strategies include, but are not limited to:
- recreational and educational programs
  - praise and positive feedback
  - counselling
  - regular medical/mental health assessment
  - mediation by residents' committees, friends of the detainee or professional mediators
  - an effective complaints mechanism
  - timely resolution of complaints
  - facilitation of access to DIMIA officers
  - referral to external agencies for assistance or investigation
  - formulation of behaviour management agreements



- withdrawal of access to amenities (eg telephones { apart for the purposes of contacting HREOC or the Commonwealth Ombudsman and legal representatives }, gym, TV)
- curfews
- restriction of movement to specific areas within compounds
- restriction of movement to individual rooms and
- restriction on the periods of access to specific areas of the IDF.

3.4.25 Consideration should be given to whether other behaviour management strategies, such as those listed at 3.4.24, should be utilised prior to transfer of a detainee to a more restrictive place of accommodation.

3.4.26 Transfer of detainees to more restrictive places of accommodation enable non-compliant detainee behaviour to be managed effectively to ensure the good order and security of an IDF and the safety and welfare of detainees, staff and other visitors to the IDF.

3.4.27 Compliant detainee behaviour can also be recognised. If a detainee who has been placed in a more restrictive place of accommodation complies with agreed behaviour management strategies (contained in a behaviour management agreement), he or she may be moved to a less restrictive place of accommodation as an incentive for continuing compliant behaviour.

3.4.28 Action to be taken by DSP and DIMIA officers in relation to allegations of unlawful behaviour by detainees is outlined at [5.2](#)

### **Detainee care plan**

3.4.29 Performance measure (c) of IDS 6.4.6 states there must be “no substantiated instance of a detainee whose movements within the facility are restricted not having a comprehensive Detainee Care Plan formulated and implemented”.

3.4.30 The DSP must develop a detainee care plan for all detainees who have been transferred to a more restrictive place of accommodation within an IDF. This plan will be developed on the basis of continuing, regular assessment, data gathering and structured communication with the detainee and must be placed on the detainee’s file.

3.4.31 The plan must include, but is not limited to the following:

- background history of detainee in immigration detention
- immigration processing status of detainee (that is, whether the detainee has applied for a visa, has had a visa application refused and/or made an application for merits review or judicial review or a request for Ministerial Intervention)

- health assessment of detainee
- behaviour management strategies utilised
- any participation in recreational and educational programs
- any detainee contact with, or advice on detainee received from, community or welfare organisations and
- any behaviour management agreements in place.

3.4.32 The DSP case manager must have regular contact with the detainee whether as an individual or through the case management team.

3.4.33 If the detainee is transferred to a management support unit or self harm prevention unit, contact must be made by the DSP case manager each day. If the detainee is transferred to a more restrictive place of accommodation (apart from a management support unit or a self-harm prevention unit), contact must be made by the DSP case manager with the detainee on at least a weekly basis. A notation of this contact must be made on the detainee's file.

3.4.34 If the detainee is placed in a management unit or a self-harm prevention unit, personal contact must be made daily by medically qualified staff employed by the DSP. A notation of this contact must be made on the detainee's file.

3.4.35 Both the DSP case manager and the DIMIA case coordinator (in those IDFs which employ a case coordinator) must respond to reasonable requests from a detainee for personal contact.

3.4.36 The DSP case manager must ensure that the detainee is aware of their rights to contact HREOC, the Commonwealth Ombudsman, the Australian Red Cross (ARC), interpreting services and any other organisation or group as determined by DIMIA at all times during the transfer process. See [3.5.6 - 3.5.8](#) on visits to detainees.

### **Behaviour management agreement**

3.4.37 In addition to the detainee care plan, the DSP may enter into a behaviour management agreement with an individual detainee (see [Attachment 1](#)). Such an agreement should always be entered into where a detainee has been transferred to a more restrictive place of accommodation for behaviour management reasons.

3.4.38 The purpose of the behaviour management agreement is to provide incentives for detainees to improve their behaviour. If a detainee behaves in a responsible and compliant manner he or she may have the opportunity to move to a less restrictive level of accommodation.

3.4.39 The behaviour management agreement should be entered into as soon as possible after the transfer of the detainee to a more restrictive place of accommodation. A translation of the behaviour management agreement must be given, either in writing or orally, into a language and terms the detainee understands if this is required.

3.4.40 The behaviour management agreement should be specific to the individual and include the following:

- background history of behaviour management difficulties
- action that was taken which resulted in the transfer of the detainee to the particular place of accommodation
- an undertaking by the DSP to treat the detainee in a dignified and impartial manner
- an undertaking by the detainee to behave in a specified manner
- milestones at which time or event behavioural improvement is assessed
- any medical, psychological or psychiatric assessment and recommended treatment
- access to amenities and visitors and
- signature(s) of the relevant DSP officer(s) and detainee.

3.4.41 The milestones must not simply be standard behavioural objectives and must be specifically tailored for the individual detainee.

3.4.42 The behaviour management agreement should include additional pages on which it is noted whether the milestones have been met and the outcome of the review of a decision to transfer the detainee to a more restrictive place of accommodation (see [4.1.39](#)).

3.4.43 The behaviour management agreement must be placed on the detainee's file. The fact that a detainee refuses to sign the behaviour management agreement does not render it void. Failure to sign the behaviour management agreement would not prevent the transfer of the detainee back to a less restrictive environment.

## **3.5 Access to amenities**

### **Communication**

3.5.1 Detainees must be provided with current, accurate and comprehensive information relevant to them in a language and terms they understand. All communication with detainees must be clear and unambiguous. The DSP is required to take into account factors such as the particular circumstances in which the communication is taking place and the special needs of illiterate or hearing and/or visually impaired detainees. See [3.4.1 - 3.4.3](#).

3.5.2 Whenever the detainee has difficulty understanding and/or speaking English, DSP officers should seek the assistance of an appropriately trained and qualified interpreter, such as an interpreter from DIMIA's Translating and Interpreting Service. Other methods of communication may include printed material, telephones, video and audio-visual aids. The assessment of language skills provided by DIMIA on arrival at an IDF should be used as a guide to the interpreting needs of the detainee.

3.5.3 The routine of any place of accommodation to which a detainee has been transferred must be effectively communicated to him or her, preferably by way of written explanation in a language and terms the detainee understands. The routine of the place of accommodation includes, but is not limited to:

- meal times
- access to health services
- when medication is dispensed
- mail and property deliveries
- arrangements for visitors
- arrangements for smokers and
- any curfews.

### **Counselling**

3.5.4 IDS 2.2.1.1.1 states that detainees are able to access timely and effective primary health care, including psychological / psychiatric services (including counselling):

- in a culturally responsive framework and
- where a condition cannot be managed within the facility, by referral to external advice and/or treatment.

3.5.5 The DSP must consider the cultural and social implications for individual detainees who have been transferred within an IDF. Counselling services must be made available to detainees where this is recommended by a qualified medical professional.

### **Visits**

3.5.6 IDS 4.2.2 and 4.2.3 relate to personal and other visits. Detainees are able to receive visits from relatives, friends, community contacts or diplomatic or consular representatives subject to restrictions on the detainee's movements for management reasons. Access by detainees to HREOC, the Commonwealth Ombudsman, ARC, legal representatives and other organisations or groups as determined by DIMIA should always be facilitated.

3.5.7 If a detainee is denied access to a visitor for management reasons a record must be kept of the reason for refusal.

3.5.8 If the transfer of the detainee will limit access to visits, arrangements should be made to inform any regular visitors of the restriction whether by the detainee or the DSP. It is particularly important that if a decision is made to cancel a pre-approved visit, the visitor be informed in a timely manner.

### **Access to services, amenities and open air**

3.5.9 Detainees who have been transferred to more restrictive places of accommodation will continue to receive services such as medication, access to daily nursing clinics, regular meals and laundry facilities.

3.5.10 Detainees whose movements are restricted will continue to have access to the telephone and mail, subject to the good order and security of the IDF and the welfare of those within it. The DSP must ensure that the detainee has reasonable access to facilities (such as mail and telephone) for obtaining legal advice or taking legal action in relation to his/her immigration detention ([s 256](#) of the *Migration Act 1958* (Migration Act)).

3.5.11 IDS 3.2.4 requires that detainees whose movements are restricted for management reasons must be able to access services and amenities and open air subject to the good order and security of the facility and safety of those in it. Detainees must be provided with reasonable access to open air, including for the purposes of smoking, as smoking is not permitted in Commonwealth buildings.

3.5.12 Detainees whose movements are restricted must not be subject to enclosed spaces which do not have sufficient ventilation.

3.5.13 Detainees must have access to supervised exercise periods as much as possible, but for not less than two 1 hour periods per day, at least one of which, where practicable, must be in daylight hours.

## **4 PROCEDURES AND RECORD KEEPING**

### **4.1 Compulsory components of decision to transfer a detainee to a more restrictive place of accommodation within an IDF**

4.1.1 There are two compulsory components of a decision to transfer a detainee to a more restrictive place of accommodation within an IDF for behaviour management reasons:

- initial assessment of the appropriateness or otherwise of transferring a detainee to a more restrictive place of accommodation and
- review of the decision to transfer a detainee to a more restrictive place of accommodation.

4.1.2 In making initial assessments and reviewing transfer decisions, it should be noted that the capacity of each place of accommodation within the IDF and the overall logistical requirements of the IDF are crucial considerations. See [3.2.10](#) for a non-exhaustive list of factors to consider when deciding whether to transfer a detainee to a more restrictive place of accommodation within an IDF.

### **Initial assessment**

#### *Warning of transfer*

4.1.3 A detainee ordinarily should be given a warning, in a language and terms he or she understands (including using interpreters as needed), that a transfer to a more restrictive place of accommodation within the IDF will occur on behaviour management grounds unless there is a cessation of specified non-compliant behaviour. A warning should be given unless the situation is so urgent that to take the time to do so would impact on the good order and security of the IDF or the safety of any individual in it. The warning should include advice to the detainee about how he or she could improve the non-compliant behaviour and the consequences of non-compliance with the warning.

4.1.4 The detainee should be given sufficient opportunity to improve the non-compliant behaviour. The period of time given within which to improve the behaviour will depend on the particular circumstances, such as the seriousness of the behaviour.

4.1.5 All details of a warning of possible transfer should be recorded on the detainee's file, including the date of the warning, the advice given to the detainee of the consequences of non-compliance with the warning, use of interpreters if applicable and the response of the detainee to the warning.

#### *Recommendation regarding transfer*

4.1.6 If the DSP Detention Services Officer considers that the detainee is compliant with the order or direction to improve the non-compliant behaviour the detainee will remain in the existing place of accommodation.

4.1.7 If the DSP Detention Services Officer considers that the detainee is continuing the behaviour which prompted the warning, and having taken into

account the factors at [3.2.10](#), he or she may recommend that the detainee be transferred to a more restrictive place of accommodation.

4.1.8 If a DSP Detention Services Officer is involved in an incident which subsequently leads to the transfer of the detainee, it is ordinarily not appropriate for that officer to recommend the transfer.

4.1.9 The DSP Detention Services Officer must record a decision or recommendation under [4.1.6](#) or [4.1.7](#) above on the detainee's file.

#### *Format of approval*

4.1.10 The DSP Detention Services Officer must prepare a "Request for approval for transfer of detainee to a more restrictive place of accommodation within an immigration detention facility" form for consideration by the DSP General Manager, or delegate (see [Attachment 2](#)).

4.1.11 It is essential that a clear record of the decision making process is available. The reasons for the transfer should be clearly stated, and all relevant considerations that were addressed in the decision making process should also be documented. It is not sufficient to state the reason(s) in general terms, such as "for the good order and security of the IDF".

4.1.12 The DSP General Manager, or his or her delegate, must signify on the form either an approval or refusal of the transfer in writing.

#### *Notice to transfer*

4.1.13 Where a decision to transfer a detainee to another place of accommodation has been made in accordance with this MSI, the detainee is to be provided with a "Notice to detainee of transfer to another place of accommodation within an immigration detention facility" (see [Attachment 3](#)) prepared by the DSP Detention Services Officer. This notice documents the reasons for transfer and when and by whom a review of this decision will be conducted.

4.1.14 A detainee must be given the opportunity to read and to sign the notice of transfer detailing the reasons for transfer unless the situation is so urgent that to take the time to do so would impact on the good order and security of the IDF or the safety of any individual in it. A translation must be given, either in writing or orally, into a language and terms the detainee understands. It would be preferable for the notice to be translated for the detainee in writing.

4.1.15 The detainee may then:

- (i) Indicate an intention to comply with all lawful orders and directions

- (ii) Provide additional information (for example, that he or she is not the person who was involved in a particular incident). The detainee may request an interview to discuss the matter with the DSP General Manager, or his or her delegate, to pass on this additional information. The DSP may decide not to proceed with the transfer on the basis of this information or
- (iii) Signify an intention to remain non-compliant with all lawful orders/directions.

4.1.16 If the DSP General Manager, or his or her delegate, is satisfied that circumstances in 4.1.15 (i) or (ii) apply, he or she may decide that the detainee is to remain in the existing place of accommodation. This decision must be noted on the detainee's file and dated.

#### **Consultation with DIMIA officer**

4.1.17 Performance measure (d) of IDS 6.4.6 states that there must be "no substantiated instance of a facility or part of a facility being used as a place where detainee movements are restricted without the prior approval of the Department". Therefore the DSP must gain approval from the DIMIA Manager before part of a facility is used as a more restrictive place of accommodation.

4.1.18 If the DSP General Manager, or his or her delegate, is satisfied that a detainee intends to continue to refuse to comply with lawful/reasonable directions, he or she must consult with, the DIMIA Manager or Deputy Manager, prior to the detainee being transferred to a more restrictive place of accommodation in an IDF so that the DIMIA Manager or Deputy Manager is informed of the detainee's movement and has the opportunity to input into ongoing detainee management strategies..

#### **Appropriate period of notice of transfer to be given to detainee**

4.1.19 The DSP General Manager, or delegate at a managerial level, should ensure that the detainee has been provided with an appropriate period of notice of the transfer depending on the particular circumstances of a case.

4.1.20 The appropriate period of notice will vary on a case by case basis. For example, no formal notice is required where a detainee is transferred to a management support unit during a riot.

4.1.21 There may be operational reasons why a detainee cannot see the notice prior to transfer. For example, intelligence may be received as to an impending serious incident involving a detainee and it is considered that the security of the IDF would be put at risk if the detainee received prior notification of a



transfer. See [3.1.16 - 3.1.21](#) for the circumstances in which assessment procedures may not be followed.

### **Transfer of detainee**

4.1.22 If the DSP General Manager, or his or her delegate, decides to transfer the detainee to another place of accommodation, the transfer must be effected as soon as practicable after the decision is made and the DIMIA Manager or Deputy Manager has been consulted regarding the transfer.

4.1.23 The DIMIA Manager or Deputy Manager is to ensure that the DSP has made the appropriate arrangements prior to any transfer taking place. Such arrangements include, but are not limited to, the following:

- identification of available bedspace
- preparation of suitable bedding
- advice to health services so that medication is delivered to the new location
- redirection of mail and telephone calls
- preparation for transfer of personal belongings (eg providing containers and assigning responsibility for packing to the detainee or the DSP Detention Services Officer) and
- possible rescheduling of educational and recreational activities.

4.1.24 It may be more appropriate to transfer a detainee into the same level of place of accommodation rather than a less or more restrictive one. For example, in the case of two detainees in a singles general compound, neither of whom display violent behaviour to any other person but do so to each other, it may be more appropriate to place one of the detainees in a different singles general compound at the same level of restriction.

4.1.25 The notice to transfer must be placed on the detainee's file. If the detainee refuses to sign the notice, the reasons for this (if any are given) should be noted on the file. If the detainee was not given the opportunity to see the notice prior to transfer the reasons for this should be noted on the file. A refusal by the detainee to sign the form does not mean that the transfer cannot occur.

4.1.26 The DSP Detention Services Officer must ensure all property of the detainee is either moved with the detainee upon transfer or appropriately secured to prevent the possibility of theft. A record must be made of the action taken in relation to the property and the location of the property following transfer. Where possible, the detainee will be provided with the opportunity to pack and remove their own belongings.

### **Transfer of family members**

4.1.27 In the case where an adult member of a family group is transferred to another place of accommodation within the IDF, consideration should be given to whether it is appropriate to also transfer other family members to that same place of accommodation.

4.1.28 Other family members may be given the option to transfer to the same place of accommodation as their relative who was transferred if there is appropriate accommodation and such a transfer will have no adverse impact on the safe and secure management of the IDF or the safety of the family members.

4.1.29 IDS 2.2.3.2.1 states that “the safety, care, welfare and well-being of detainee children, in particular unaccompanied minors, are managed effectively and appropriately in accordance with:

- their age, family circumstances, gender, background (cultural, linguistic, religious), personal history and physical/mental health
- the law
- relevant Memoranda of Understanding and other agreements agreed between the Department and State/Territory agencies and
- relevant Departmental procedures or instructions”.

4.1.30 If consideration is being given to transferring a child with an adult family member to another place of accommodation within an IDF, relevant factors to consider in making such a decision include:

- whether the adult family member being transferred is the sole care giver for the child
- the age of the child
- facilities available in the place of accommodation and
- characteristics of the residents of that place of accommodation.

4.1.31 The parents or guardian of the child must always be consulted on their views in relation to the possible transfer of the child to another place of accommodation within the IDF.

4.1.32 A crucial factor when considering the transfer of a child with an adult family member is whether the transfer is in the best interests of the child.

4.1.33 It may be more appropriate for a child whose sole care giver parent is being transferred to a more restrictive place of accommodation to remain in the care of another family in the IDF. If this occurs, visits to the parent must be facilitated on a regular basis. If the child is separated from a sole care giver parent, the relevant child welfare authority must be notified.

4.1.34 Refer to MSI [Alternative Places of Detention](#) for factors to be taken into account in considering transfer of a child to an alternative place of detention and MSI [Bridging E visa \(Subclass 051\) - Legislation and guidelines](#) for factors to be taken into account in considering release of a child on a bridging visa.

#### **Review of transfer decisions**

4.1.35 Every decision (except those made for medical reasons – see paragraph 3.1.21) to transfer a detainee to a more restrictive place of accommodation must be regularly reviewed by the DSP and recorded on the “Review of decision to transfer detainee to a more restrictive place of accommodation” form prepared by the DSP Detention Services Officer (see [Attachment 4](#)).

4.1.36 The review must be conducted on a daily basis if the detainee is in a management support unit or self harm prevention unit and on a weekly basis if the detainee is in a more restrictive place of accommodation (apart from a management unit or a self-harm prevention unit).

#### **Non-exhaustive list of factors to consider when recommending a review of decision to transfer to a more restrictive place of accommodation in an IDF**

4.1.37 The DSP Detention Services Officer must consider the following factors when forming a recommendation to review a decision to transfer a detainee to a more restrictive place of accommodation in an IDF. Note, this list does not prevent the DSP officer from taking account of any other factors he/she considers relevant:

- the seriousness of behaviour which initiated the transfer
- compliance with milestones in any behaviour management agreement
- the risk of harm to the detainee or others if the detainee is moved back to the place of accommodation from which they were transferred
- the behaviour of the detainee in the place of accommodation to which moved
- whether the detainee is separated from support networks
- the effect a transfer back to a less restrictive place of accommodation may have on other detainees
- whether the detainee is likely to resume disruptive behaviour/refuse to comply with lawful orders/directions if moved back to a less restrictive place of accommodation
- the detainee’s wishes
- medical/mental health assessments
- logistical and infrastructure requirements and

- all relevant opinions in relation to the transfer of a detainee to another place of accommodation, including but not limited to, those of the DIMIA case coordinator (in those IDFs which employ a case coordinator).

4.1.38 The DSP Detention Services Officer may recommend the detainee:

- remain in the current place of accommodation or be moved to the same level of accommodation in another part of the IDF
- be moved to a more restrictive place of accommodation or
- be moved to a less restrictive place of accommodation.

4.1.39 Consideration of a transfer to a more restrictive place of accommodation may include moving the detainee to another IDF or to a correctional facility. See the MSI on [\*Transfers of detainees to state prisons\*](#).

4.1.40 The DSP General Manager, or his or her delegate, may either approve or reject the recommendation of the DSP Detention Services Officer by a written notation on the “Review of decision to transfer detainee to a more restrictive place of accommodation” form ([Attachment 4](#)).

4.1.41 The DSP General Manager, or his or her delegate, is to consult with the DIMIA Manager or Deputy Manager in making his or her decision regarding the review of the place of accommodation and is to take account of any additional information provided by the DIMIA Manager or Deputy Manager in making the decision.

4.1.42 The detainee must be informed of the outcome of the decision, in a language and terms he or she understands, on the day it is decided. This notification must be in writing on the “Notice to detainee of outcome of review of decision to transfer to a more restrictive place of accommodation” prepared by the DSP Detention Services Officer (see [Attachment 5](#)). This notice will also advise the detainee when the next review is to take place. The detainee will be given the opportunity to make comments regarding this decision on the form and to sign it. The detainee will also be informed in writing of the complaints mechanism and provided with access to any relevant detainee request form if they indicate that they wish to make a complaint about the process.

4.1.43 If a decision is taken to transfer the detainee to another place of accommodation, the transfer must be effected as soon as practicable after the decision is made.

4.1.44 All information regarding the review of the place of accommodation within the IDF, including relevant factors in making the decision as to whether the detainee is to remain in the current place of accommodation or to be transferred, must be recorded on the detainee’s file.

4.1.45 A request for a review of the decision to transfer for behaviour management reasons may not ordinarily be made by the detainee. This guideline may be waived in emergency situations such as the death or serious illness of a family member of the detainee who is held in another place of accommodation. Any such request, and the response, must be noted on the detainee's file. However, detainees do have the right to lodge complaints about the review process and officers must ensure that such complaints are investigated and resolved as soon as possible.

4.1.46 A checklist for officers in relation to procedures to follow to transfer a detainee within an IDF for behaviour management reasons is at [Attachment 6](#).

## 4.2 Procedures for transfers within an IDF for other reasons

4.2.1 Transfer of detainees to less restrictive or more restrictive places of accommodation within an IDF may occur for reasons other than for behaviour management reasons. These reasons include, but are not limited to:

- logistical purposes
- infrastructure purposes
- the prevention/containment of contagious diseases
- management of other medical emergencies
- a detainee is being threatened by another detainee and is moved for their own protection and
- at the detainee's request.

4.2.2 The list of factors referred to at [3.2.10](#) should be considered in relation to the transfer of detainees within an IDF for reasons other than for behaviour management reasons.

4.2.3 The procedures set out at [4.1.13 - 4.1.46](#) must be followed in relation to transfer of detainees for reasons other than for behaviour management reasons.

4.2.4 The appropriate DIMIA officer must ensure that where a detainee is transferred to a more restrictive place of accommodation within an IDF for reasons other than for behaviour management reasons, the place of accommodation is suitable for the specific needs of the detainee. This applies in particular to the transfer of detainees for medical reasons.

4.2.5 The appropriate period of notice of the proposed transfer referred to at [4.1.13 - 4.1.16](#) will vary on a case by case basis. For example, a detainee may be transferred to a medical facility in an emergency situation, in which case no notice will be required. A detainee who has requested their own transfer may be able to be moved on short notice.

4.2.6 A checklist for officers in relation to procedures to follow to transfer a detainee within an IDF for reasons other than behaviour management reasons is at [Attachment 7](#).

### **4.3 Record management**

4.3.1 Record keeping is an integral and critical component in both managing the behaviour of detainees and transferring detainees to other places of accommodation within an IDF. All records and relevant information in relation to a transfer to another place of accommodation must be placed on a detainee's file within 24 hours of making the notation, unless another time frame is imposed by the IDS. Such documents include, but are not limited to:

- minutes of counselling
- incident reports
- DSP security intelligence reports
- file notes on any telephone or other conversations in relation to the transfer
- video recordings
- whether a warning of possible transfer is given to a detainee
- any notices in relation to transfer
- a list of any personal property that is transferred with the detainee
- comments by the detainee
- any medical, psychological or psychiatric reports
- detainee care plan
- behaviour management agreement (if any) and
- any other document referred to in this MSI.

4.3.2 As far as practical, all records in relation to the transfer should be kept on one file. If it is not possible to place relevant records on a consolidated file, cross-referencing should be made to the file on which the relevant record is placed.

4.3.3 Files should be kept in good order and in accordance with departmental policy and best practice in record management.

4.3.4 All records in relation to the transfer of a detainee within an IDF must be relocated with that detainee if he or she is transferred to another IDF.

## **5 USE OF REASONABLE FORCE AND ALLEGATIONS OF UNLAWFUL DETAINEE BEHAVIOUR**

## 5.1 Use of reasonable force

- 5.1.1 If the use of force or an instrument of restraint is required to effect a transfer of a detainee to a more restrictive place of accommodation within an IDF, due to non-compliance with a lawful order or direction, this must be reasonably necessary and proportionate in the particular circumstances. It must only be used as a last resort and employed for the minimum time necessary to achieve its objective – that is, to restore the safety and good order of the IDF or prevent the detainee from harming himself or herself or others.
- 5.1.2 Use of force may be utilised in such circumstances as self-protection, to protect detainees or other people from harm, to prevent detainees harming themselves or to prevent malicious damage to property. The level of force applied must be reasonable. The question of what constitutes “reasonable force” will depend on all the circumstances of the case. If the court considers the force used to be unreasonable, the person who applied the force could be liable to civil and criminal proceedings for trespass to the person.
- 5.1.3 The DSP must ensure that, where force has been used, an appropriate medical professional examines the detainee(s) on whom the force has been used as soon as reasonably practicable, preferably within 2 hours of the incident.

## 5.2 Allegations of unlawful behaviour involving detainees

- 5.2.1 IDS 6.4.4 states “detainees are informed that, if they commit a criminal act, they can expect to be charged according to State/Territory/Commonwealth law and, if convicted, may be transferred to a correctional facility”.
- 5.2.2 IDS 6.4.5 states “where a potential criminal act is suspected, the Detention Services Provider takes appropriate action”.
- 5.2.3 DIMIA officers are limited to responding to criminal behaviour specifically covered by either the Migration Act or the *Migration Regulations 1994*. For example, DIMIA officers are able to respond to cases of escape from lawful immigration detention, which is an offence under [s 197A](#) of the Migration Act. However in the case of criminal acts not included in the Migration Act, such as theft or assault, DIMIA officers have no authority to act in relation to prosecutions except to call upon the appropriate law enforcement agency, namely the State or Federal Police.
- 5.2.4 Factors taken into consideration in deciding whether to call upon the State or Federal Police include:
- the seriousness of any act
  - the intention and maliciousness of the act

- any physical harm inflicted on other persons in the IDF
- any damage to property in the IDF
- the likely impact on the daily operations of the IDF if no referral is made
- whether there has been any previous police involvement with the same detainee in relation to similar matters and
- the wishes of any victim.

5.2.5 If there is any doubt it is preferable to refer such matters to the State or Federal Police in accordance with arrangements applying locally, including memoranda of understanding.

5.2.6 In dealing with allegations of a criminal nature, every care must be taken to protect the rights of the parties involved, and also to ensure that there are no further possible infringements of the law in trying to deal with the alleged matter.

5.2.7 Once the State or Federal Police have been called upon, it is then up to the police to make a recommendation to the Director of Public Prosecutions (DPP) concerning prosecution. The decision to initiate prosecution action always lies with the DPP.

5.2.8 DIMIA officers have a role in the investigation and the submission of a brief of evidence to the DPP on offences under the Migration Act, but not in respect of incidents constituting criminal offences under other legislation. DIMIA and DSP officers should cooperate with any police investigation into an incident at an IDF.

*(signed)*

S D Davis

First Assistant Secretary

Unauthorised Arrivals and Detention Division

## **ATTACHMENT 1 - BEHAVIOUR MANAGEMENT AGREEMENT**

**Detainee Biodata:**



**Name:**

**Detainee ID Number:**

**Date of Birth:**

**DSP Case Officer:**

**Is an interpreter required? (circle one)    Yes    No**

**Language in which detainee communicates:**

**Names, ID numbers, ages and location of any family members held in immigration detention:**

**Details of incident(s) leading to transfer to another place of accommodation:**

[Detention officers should ensure that file notes on any warning of a transfer to another place of accommodation, the detainee's response, the "Request for approval for transfer of detainee to a more restrictive place of accommodation within an immigration detention facility" and the "Notice to detainee of transfer to another place of accommodation within an immigration detention facility" are attached to the detainee's file].

**Details of medical/mental health assessment(s) and by whom conducted (if any):**

**Undertaking by Detention Services Provider:**

Detention Services Provider (DSP) staff will treat you politely, fairly and impartially in accordance with the immigration detention standards contained in the contract between the Commonwealth and the DSP for the provision of detention services, relevant Commonwealth, State and Territory legislation and in accordance with Australia's international obligations.

### **Behaviour Management Agreement**

#### **Undertaking by Detainee:**

I, .....(insert name of detainee)  
.....undertake that I will:

(Insert specific undertakings tailored for the individual detainee)

- 
- 
- 
- 

I am aware of my rights in relation to access to the Commonwealth Ombudsman and the Human Rights and Equal Opportunity Commission.

#### **Milestones:**

(Insert details of event or time period at which an assessment of detainee's adherence with the undertakings are made.)

#### **Access to amenities:**

(Insert any restrictions on amenities)

**Access to visitors:**

(Insert names and occupation of permitted visitors and how often permitted to visit)

**Signature of DSP case officer:**

.....

Date signed:

Signature of detainee:

.....

Date signed:

If this form has not been signed by detainee, record the reason(s) why below:

**ATTACHMENT 2 – REQUEST FOR APPROVAL FOR TRANSFER OF  
DETAINEE TO A RESTRICTIVE PLACE OF ACCOMMODATION  
WITHIN AN IMMIGRATION DETENTION FACILITY**

This notice has been prepared by Detention Services Officer (insert name):

.....

**Detainee Name:**

**Detainee ID Number:**

**Date of Birth:**

**Reasons for transfer:**

(Insert detailed reasons for transfer. General wording that it is “for the good order and security of the Centre” is not sufficient).

**Other relevant factors:**

**Location to which it is proposed that the detainee be transferred:**

**If the transfer is for behaviour management reasons, has a medical assessment by a qualified medical practitioner been undertaken? (*circle one*)**

Yes      No

*If yes, on what date was the assessment undertaken?*

*If yes, list any particular mental and/or physical health needs of the detainee which have been identified:*

*If no, why has an assessment not been undertaken?*

**Was this notice translated into a language that the detainee understands?** (*circle one*)

Yes      No

*If yes, please attach the translation to this notice.*

**Request for approval for transfer of detainee to a more restrictive place  
of accommodation within an immigration detention facility**

*If no, what further steps are being taken to ensure the detainee understands the nature  
of the transfer?*

**Has DIMIA Manager/Deputy Manager been consulted?** (*circle one*)

Yes      No

**Decision of DSP Manager or delegate at a managerial level** (*circle one*)

Approved      Not approved

**Signature of DSP Manager or delegate at a managerial level:**

.....

**Name of DSP Manager or delegate at a managerial level:**

.....

Date signed:

**ATTACHMENT 3 - NOTICE TO DETAINEE OF TRANSFER TO  
ANOTHER PLACE OF ACCOMMODATION WITHIN AN  
IMMIGRATION DETENTION FACILITY**

This notice has been prepared by Detention Services Officer (*insert name*):

.....

**Detainee Name:**

**Detainee ID Number:**

**Date of Birth:**

The DSP..... (insert appropriate level) Manager,  
.....(insert name of DSP Manager) has approved your  
transfer to .....(insert name of place of  
accommodation to which detainee is to be transferred)  
within.....(insert name of immigration detention facility).

**Reasons for transfer:**

(Insert detailed reasons for transfer. General wording that it is “for the good order and security of the Centre” is not sufficient).

**Outcome of medical assessment (if undertaken):**

**Date review of decision to transfer will be undertaken:**

**Name of officer who will undertake this review:**

.....

**Has the detainee been informed of his/her rights in relation to visits?**

Yes No

**Notice to detainee of transfer to another place of accommodation  
within an immigration detention facility**

**Was this notice translated into a language which the detainee understands?**  
(circle one).

*If yes, please attach the translation to this notice.*

Yes No

*If no, what further steps are being taken to ensure the detainee understands the nature of the transfer?*

**Detainee comments (if any):**

**Signature of detainee:**

.....

Date signed:

**Reason detainee did not sign notice (if applicable):**

**Additional comments by DSP Manager:**

**ATTACHMENT 4 - REVIEW OF DECISION TO TRANSFER TO  
DETAINEE TO A MORE RESTRICTIVE PLACE OF  
ACCOMMODATION**

This notice has been prepared by Detention Services Officer (*insert name*):.....



**Detainee Name:**

**Detainee ID Number:**

**Date of Birth:**

**Recommendation following review:**

**Reasons supporting recommendation:**

**Has DIMIA Manager/Deputy Manager been consulted? (*circle one*)**

Yes No

**Date that next review will be undertaken:**

**Was this notice translated into a language which the detainee understands?  
(*circle one*)**

*If yes, please attach the translation to this notice.*

Yes No

**Decision of DSP Manager or delegate at a managerial level: (*circle one*)**

Approved Not Approved

**Signature of DSP Manager:**

.....

**Name of DSP Manager or delegate at a managerial level:**

.....

Date signed:

**ATTACHMENT 5 - NOTICE TO DETAINEE OF OUTCOME OF  
REVIEW OF DECISION TO TRANSFER TO A MORE RESTRICTIVE  
PLACE OF ACCOMMODATION**

This notice has been prepared by Detention Services Officer (*insert name*):.....

**Detainee Name:**

**Detainee ID Number:**

**Date of Birth:**

The DSP.....(insert appropriate level)  
Manager,.....(insert name of DSP Manager) has reviewed  
the decision to transfer you to .....(insert name of place of  
accommodation to which detainee is to be transferred)  
within.....(insert name of immigration detention facility).

**Outcome of review:**

**Reasons for decision:**

**If the decision is to remain in existing place of accommodation, date that next  
review will be undertaken:**

**Was this notice translated into a language that the detainee understands? (*circle  
one*)**

*If yes, please attach the translation to this notice.*

Yes No

**Detainee comments (*if any*):**

**Signature of detainee:**

.....  
Date signed:

*If this form has not been signed by detainee, record the reason(s) why below:*

**ATTACHMENT 6 - CHECKLIST FOR TRANSFER OF A DETAINEE  
WITHIN AN IDF FOR BEHAVIOUR MANAGEMENT REASONS**

**Prior to transfer**

*Detention Services Officer*

- r I have considered whether other behaviour management strategies would be more effective in managing the behaviour of the detainee than transferring the detainee to a more restrictive place of accommodation.
- r restrictive place of accommodation will occur unless there is a cessation of non-compliant behaviour.
- r I gave the detainee sufficient opportunity to improve the non-compliant behaviour.
- r I have recorded the details of this warning on the detainee's file.
- r I have considered all relevant factors in deciding whether to recommend a transfer, including, but not limited to:
  - the capacity of each place of accommodation within the IDF
  - the overall logistical requirements of the IDF
  - the population and configuration of the place of accommodation to which transfer is being considered
  - the risk profile of the detainee including both the risk of escaping from immigration detention and the risk to the security and safety of

others in the level of accommodation (taking into account any previous history of escapes or violence)

- the gender mix in the place of accommodation to which transfer is being considered
  - the age of the detainee
  - the immigration processing status of the detainee
  - family composition (taking into account whether separation from the detainee's family or other support networks will occur)
  - health needs (taking into account special needs due, but not limited to, illness, disability, immobility and psychological or psychiatric conditions)
  - behaviour management issues, including
    - seriousness of behaviour (taking into account factors such as previous escapes, rioting, arson, destruction of property, sexual offences, attacks on staff, self-harm and bullying/standover tactics). See paragraph 5.2 of MSI Transfer of detainees within Immigration Detention Facilities in relation to referral of unlawful behaviour to policing authorities.
    - whether violence is involved
    - intention or malice
    - frequency
    - effect of behaviour on other detainees
  - all relevant views in relation to the transfer of a detainee to another place of accommodation, including but not limited to, those of medical staff and the DIMIA case coordinator (in those IDFs which employ a case coordinator)
  - wishes of the detainee to be transferred and of any other detainee who may be affected by the transfer
  - the likelihood of imminent release from immigration detention or removal from Australia
  - operational needs in regard to a particular detainee or other detainees within an IDF and
  - any relevant factors as specified in MSIs General detention procedures, Transfer of detainees to state prisons, Procedures for unaccompanied wards in Immigration Detention Facilities and Alternative places of detention.
- r If practicable, I have obtained the expert opinion of a qualified medical professional regarding the mental and physical health of the detainee.
- r I have prepared a Request for approval for transfer of detainee to a more restrictive place of accommodation within an immigration detention facility form for consideration by the DSP General Manager or delegate at a managerial level stating clear reasons for the transfer.

- r Where the Detention Services Provider (DSP) General Manager or delegate at a managerial level has approved the transfer, I have prepared a Notice to detainee of transfer to another place of accommodation within an immigration detention facility detailing the reasons for the transfer and by whom a review of this decision will be conducted.
- r All notices have been translated into a language and terms the detainee understands and the detainee has been given the opportunity to read and sign the notices.
- r The detainee has been given the opportunity to provide any additional information he or she believes is relevant, and to indicate his or her intention to comply or not comply with all lawful orders or directions.
- r I have considered whether other family members should be transferred with the detainee.
- r I have placed all documentation in relation to the proposed transfer on the detainee's file, including reasons why a strict adherence to procedures may not have taken place, if applicable.
- r I have not been involved in any incident leading to the transfer.

*DSP General Manager*

- r I have signified approval or refusal for a transfer on an Approval of transfer of detainee to another place of accommodation within an immigration detention facility form.
- r I have reviewed the response of the detainee as to whether he or she:
  - (i) has signified an intention to comply with all lawful orders and directions
  - (ii) has produced additional information that may warrant a reassessment of the transfer decision (for example, that the detainee is not the person who was involved in a particular incident) or
  - (iii) has signified an intention to remain non-compliant.
- r I have consulted with the DIMIA Manager or Deputy Manager regarding the transfer.
- r Where I have deemed it necessary, I have reviewed appropriate documentation such as incident reports and video records and/or met with the detainee.

- r I have ensured the detainee has been provided with an appropriate period of notice of the transfer depending on the particular circumstances.

## **Transfer**

### *Detention Services Officer*

- r I have ensured the detainee has been advised of the routine of the place of accommodation to which he/she has been transferred.
- r I have ensured a detainee care plan is in effect.
- r I have ensured a behaviour management agreement is in effect.
- r I have ensured the case manager has contact with the detainee daily if the detainee is in a management unit or self harm prevention unit.
- r I have ensured the case manager has contact with the detainee weekly if the detainee is in a more restrictive place of accommodation apart from a management unit or self harm prevention unit
- r I have ensured where the detainee's movements are restricted, he or she has access as much exercise as possible, but at least two 1 hour periods of supervised exercise per day (at least one of which is in daylight hours where practicable).
- r I have ensured the detainee has reasonable access to open air.
- r I have ensured a detainee placed in a management or self-harm unit is seen daily by a qualified medical practitioner and this contact is noted on the detainee's file.
- r I have considered the cultural and implications of the transfer for the individual detainee.
- r I have ensured the detainee's property has been moved with him/her or otherwise appropriately secured.
- r I have ensured that if force was used to effect the transfer, a qualified medical professional has examined the detainee(s) as soon as practicable after the transfer took place.

## **Review of decision to transfer**

### *Detention Services Officer*

- r I have undertaken a review of the decision to transfer each day if the detainee is in a management unit or self harm prevention unit.
- r I have undertaken a review of the decision to transfer each week if the detainee is in a more restrictive compound (other than a management support unit or a self-harm prevention unit).
- r I have considered all relevant factors in reviewing the decision to transfer, including, but not limited to:
  - the seriousness of behaviour which initiated the transfer
  - compliance with milestones in any behaviour management agreement
  - the risk of harm to the detainee or others
  - the behaviour of the detainee in the place of accommodation to which moved
  - whether the detainee is separated from support networks
  - the effect a transfer back to a less restrictive place of accommodation may have on other detainees
  - whether the detainee is likely to again behave in a disruptive manner if transferred back to a less restrictive place of accommodation
  - the detainee's wishes
  - medical/mental health assessments
  - logistical and infrastructure requirements and
  - all relevant opinions in relation to the transfer of a detainee to another place of accommodation, including but not limited to, the DIMIA case coordinator (in those IDFs which employ a case coordinator).
- r I have prepared a Review of decision to transfer detainee to a more restrictive place of accommodation form for consideration by the DSP General Manager or delegate at a managerial level stating clear reasons for the recommendation made.
- r I have informed the detainee of the outcome of the decision and I also informed the detainee of the date of the next review. I informed the detainee of these matters in a language and terms he or she understands, by way of a



Notice to detainee of outcome of review of decision to transfer to a more restrictive place of accommodation.

- r I have given the detainee an opportunity to make comments regarding this decision on this form and to sign it.
- r I have placed all documentation in relation to the review of the transfer decision on the detainee's file.

*DSP General Manager*

- r I have consulted with the DIMIA Manager or Deputy Manager and taken into account any additional information provided by him or her in relation to review of the transfer.
- r I have made a written notation of my decision on the Review of decision to transfer detainee to a more restrictive place of accommodation form.

**ATTACHMENT 7 - CHECKLIST FOR TRANSFER OF A DETAINEE  
WITHIN AN IDF FOR REASONS OTHER THAN BEHAVIOUR  
MANAGEMENT**

**Prior to transfer**

*Detention Services Officer*

- r I have considered all relevant factors in deciding whether to recommend a transfer of a detainee to another place of accommodation within the IDF, including, but not limited to:
  - the capacity of each place of accommodation within the IDF
  - the overall logistical requirements of the IDF
  - the population and configuration of the place of accommodation to which transfer is being considered
  - the risk profile of the detainee including both the risk of escaping from immigration detention and the risk to the security and safety of others in the level of accommodation (taking into account any previous history of escapes or violence)
  - the gender mix in the place of accommodation to which transfer is being considered
  - the age of the detainee

- the immigration processing status of the detainee
  - family composition (taking into account whether separation from the detainee’s family or other support networks will occur)
  - health needs (taking into account special needs due, but not limited to, illness, disability, immobility and psychological or psychiatric conditions)
  - behaviour management issues, including
    - seriousness of behaviour (taking into account factors such as previous escapes, rioting, arson, destruction of property, sexual offences, attacks on staff, self-harm and bullying/standover tactics). See paragraph 5.2 of MSI “Transfer of Detainees within Immigration Detention Facilities” in relation to referral of unlawful behaviour to policing authorities.
    - whether violence is involved
    - intention or malice
    - frequency
    - effect of behaviour on other detainees
  - all relevant views in relation to the transfer of a detainee to another place of accommodation, including but not limited to, medical staff and the DIMIA case coordinator (in those IDFs which employ a case coordinator)
  - wishes of the detainee to be transferred and of any other detainee who may be affected by the transfer
  - the likelihood of imminent release or removal
  - operational needs in regard to a particular detainee or other detainees within an IDF and
  - any relevant factors as specified in MSIs General detention procedures, Transfer of detainees to state prisons, Procedures for unaccompanied wards in Immigration Detention Facilities and Alternative places of detention.
- r Where practicable, I have obtained the expert opinion of a qualified medical professional regarding the mental and physical health of the detainee.
- r I have prepared a Request for approval for transfer of detainee to a more restrictive place of accommodation within an immigration detention facility form for consideration by the DSP General Manager or delegate at a managerial level stating clear reasons for the transfer.
- r Where the Detention Services Provider (DSP) General Manager or delegate at a managerial level has approved the transfer, I have prepared a Notice to detainee of transfer to another place of accommodation within an immigration detention facility detailing the reasons for the transfer and by whom a review of this decision will be conducted.

- r All notices have been translated into a language and terms the detainee understands and the detainee has been given the opportunity to read and sign the notices.
- r The detainee has been given the opportunity to provide any additional information he or she believes is relevant, and to indicate his or her intention to comply or not comply with all lawful orders or directions.
- r I have considered whether other family members should be transferred with the detainee.
- r I have placed all documentation in relation to the proposed transfer on the detainee's file, including reasons why a strict adherence to procedures may not have taken place, if applicable.
- r I have not been involved in any incident leading to the transfer.

*DSP General Manager*

- r I have signified approval or refusal for a transfer on a Request for approval for transfer of detainee to a more restrictive place of accommodation within an immigration detention facility form.
- r Where I have deemed it necessary, I have reviewed appropriate documentation such as incident reports and video records and/or met with the detainee.
- r I have ensured the detainee has been provided with an appropriate period of notice of the transfer depending on the particular circumstances.

**Transfer**

*Detention Services Officer*

- r I have ensured the detainee has been advised of the routine of the place of accommodation to which he/she has been transferred.
- r I have ensured a detainee care plan is in effect.
- r I have ensured the case manager has contact with the detainee daily if the detainee is in a management unit or self harm prevention unit.

- r I have ensured the case manager has contact with the detainee weekly if the detainee is in a more restrictive place of accommodation apart from a management unit or self harm prevention unit.
  
- r I have ensured where the detainee's movements are restricted, he or she has access to as much exercise as possible, but at least two 1 hour periods of supervised exercise per day (at least one of which is in daylight hours where practicable).
  
- r I have ensured the detainee has reasonable access to open air.
  
- r I have ensured a detainee placed in a management or self-harm unit is seen daily by a qualified medical practitioner and this contact is noted on the detainee's file.
  
- r I have considered the cultural implications of the transfer on the individual detainee.
  
- r I have ensured the detainee's property has been moved with him/her or otherwise appropriately secured.
  
- r I have ensured that if force was used to effect the transfer, a qualified medical professional has examined the detainee(s) as soon as practicable after the transfer took place.

### **Review of decision to transfer**

#### *Detention Services Officer*

- r I have undertaken a review of the decision to transfer each day if the detainee is in a management unit or self harm prevention unit.
  
- r I have undertaken a review of the decision to transfer each week if the detainee is in a more restrictive compound (other than a management unit or a self-harm prevention unit).
  
- r I have considered all relevant factors in reviewing the decision to transfer, including, but not limited to:
  - whether the detainee is separated from support networks
  - the effect a transfer back to a less restrictive place of accommodation may have on other detainees
  - the detainee's wishes

- medical/mental health assessments
  - logistical and infrastructure requirements and
  - all relevant opinions in relation to the transfer of a detainee to another place of accommodation, including but not limited to, the DIMIA case coordinator (in those IDFs which employ a case coordinator).
- r I have prepared a Review of decision to transfer detainee to a more restrictive place of accommodation form for consideration by the DSP General Manager or delegate at a managerial level stating clear reasons for the recommendation made.
- r I have informed the detainee of the outcome of the decision and I also informed the detainee of the date of the next review. I informed the detainee of these matters in a language and terms he or she understands, by way of a Notice to detainee of outcome of review of decision to transfer to a more restrictive place of accommodation.
- r I have given the detainee an opportunity to make comments regarding this decision on the relevant form and to sign the form.
- r I have placed all documentation in relation to the review of the transfer decision on the detainee's file.

*DSP General Manager*

- r I have consulted with the DIMIA Manager or Deputy Manager and taken into account any additional information provided by him or her in relation to review of the transfer.
- r I have made a written notation of my decision on the Review of decision to transfer detainee to a more restrictive place of accommodation form.
- r I have made the detainee aware of the complaints mechanisms

**QUESTION TAKEN ON NOTICE**

**BUDGET ESTIMATES HEARING: 26 May 2005**

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

**(150) Output 1.3: Enforcement of Immigration Law**

Senator Faulkner (L&C 82) asked: Was a disclosure of interests required by government from either Mr Palmer or Mr Comrie?

*Answer:*

Under contract both Mr Palmer and Mr Comrie are required to disclose any real or potential Conflicts of Interest. The Commonwealth did not require a disclosure of general interests.