

CHAPTER 2

Overview of Australia's immigration detention network

Introduction

2.1 This chapter provides an outline of Australia's Immigration Detention Network. A brief history of the network is provided, followed by a snapshot of the network today, and summaries of recent inquiries into the management of the network.

Background to mandatory detention

2.2 While it is beyond the scope of this inquiry to provide a substantial and detailed history of Australia's immigration detention policy, a brief background is provided here in order to provide context for the discussion later in the chapter.¹⁶

2.3 Prior to the introduction of mandatory detention, unauthorised arrivals were detained on a discretionary basis, as provided for under the *Migration Act 1958*. Up until 1989 immigration detention was used mostly for compliance cases – that is, for people who had breached the terms of a valid visa and were awaiting deportation.¹⁷

2.4 In 1989 the Australian Government introduced administrative detention for all people entering Australia without a valid visa and people who subsequently became unlawful.¹⁸ The *Migration Legislation Amendment Act 1989* contained significant changes, including:

- mandatory deportation of unlawful non-citizens after a grace period of 28 days;
- costs of detention and deportation becoming a debt to the Australian Government;
- increased penalties for becoming an illegal entrant—from a maximum fine of \$1000 and/or up to six months imprisonment, to a maximum fine of \$5000 and/or up to two years imprisonment; and
- increased bail for illegal entrants, from \$2000 to \$20 000.¹⁹

16 A detailed history is available in DIAC's submission to this inquiry and in background notes by the Parliamentary Library. See DIAC, *Submission 32*; Janet Phillips and Harriet Spinks, *Immigration detention in Australia*, Background Note, Parliamentary Library, 23 January 2012, pp 1–16,

http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/1311498/upload_binary/1311498.pdf;fileType=application/pdf (accessed 24 January 2012).

17 DIAC, *Submission 32, Supplementary*, p. 23.

18 DIAC, *Submission 32, Supplementary*, p. 197.

19 Sections 5, 8, 12 and 14, *Migration Legislation Amendment Act 1989* (Cth).

2.5 The new provisions applied to all unlawful non-citizens and were intended to help facilitate the processing of refugee claims, assist humanitarian programs and reduce the cost of locating people in the community. The focus was on preventing people who arrive without a valid visa from entering the Australian community until their identity and status had been established. The Act allowed persons entering without a valid visa to be detained and potentially deported. Legislation originally imposed a 273 day limit on detention, but was amended in 1994 to remove this limit, allowing for indefinite detention.²⁰

2.6 As it currently stands, the Migration Act requires people who are not Australian citizens and who are in Australia unlawfully to be detained. Unless a visa is granted, unlawful non-citizens must be removed from Australia as soon as reasonably practicable.²¹ Section 273 of the Migration Act gives the Minister for Immigration the power to establish and maintain IDCs, and to make regulations for their operation.²²

2.7 People who are not Australian citizens are 'unlawful' if they do not have a valid visa giving them permission to be in Australia. Usually, 'unlawful non-citizens' are people who have arrived in Australia without a visa, overstayed their visa, or had their visa cancelled.

2.8 Ever since 2001 a distinction has been made between people who are processed offshore and those who are processed on the Australian mainland.²³ Arrivals are treated as either Offshore Entry Persons (OEPs)—otherwise known as Irregular Maritime Arrivals (IMAs)—or they are processed as non-OEPs. The terms IMA and OEP refer to people who have been intercepted outside of Australia's migration zone at an excised offshore place.

2.9 Current government policy is that all IMAs are mandatorily detained for identity, health and character checks while their claims to stay in Australia are processed.²⁴ In contrast, unlawful non-citizens who arrive by plane to Australia are generally given bridging visas which permit them to live, and sometimes work, in the community.²⁵ Processing arrangements for both OEPs and non-OEPs in detention are detailed in Chapter 6.

2.10 In 2011, the processing of IMAs underwent its first significant change since the introduction of the *Migration Amendment (Excision from Migration Zone) Act 2001*. Precipitating this change was the Minister's declaration that Malaysia was a country to which asylum seekers who entered Australia at Christmas Island could be

20 DIAC, *Submission 32, Supplementary*, p. 23.

21 DIAC, *Submission 32*, p. 27.

22 DIAC, *Submission 32*, p. 192.

23 *Migration Amendment (Excision from Migration Zone) Act 2001* (Cth).

24 DIAC, *Submission 32, Supplementary*, p. 193.

25 DIAC, *Submission 32*, p. 46.

taken for processing. On 31 August 2011 the High Court ruled that the Minister's declaration was invalid under the *Migration Act 1958*.²⁶

2.11 Following this ruling, and due in part to overcrowding in detention facilities, the Australian Government announced an expansion of the community detention program and a move to allow suitable OEPs to be placed on bridging visas.²⁷ That avenue had previously been used predominantly for processing non-OEPs.

Reforms

2.12 A number of significant reforms have been made to the policy and conditions of mandatory detention since 2005. As a matter of policy, though not always practice, children are not detained in immigration detention centres.

Detention of children

2.13 The Human Rights and Equal Opportunity Commission (HREOC) stated in 1988 that the detention of children was a breach of international and Australian human rights standards. The report also called for children and other vulnerable people to only be detained in exceptional circumstances. HREOC stated in 2004 that the mandatory detention of unauthorised arrivals who are children is inconsistent with the Convention on the Rights of the Child.²⁸

2.14 HREOC's findings and recommendations were initially rejected by the Howard Government, which reaffirmed its commitment to mandatory detention of all unauthorised arrivals, including children. In 2005, however, the Howard Government announced a number of changes to immigration policy, including community detention, which resulted in some families with children being released into community detention.²⁹

The Palmer and Comrie Reports

2.15 The Palmer and Comrie Reports published in 2005 drew to public attention systemic problems within DIAC. The reports were the result of inquiries into the

26 *Plaintiff M70/2011 v Minister for Immigration and Citizenship; Plaintiff M106 of 2011 by his litigation guardian, Plaintiff M70/2011 v Minister for Immigration and Citizenship* [2011] HCA 32. A summary of the judgment prepared by the High Court is available online: <http://www.hcourt.gov.au/publications/judgment-summaries> (accessed 27 February 2012).

27 The Hon. Julia Gillard, MP, Prime Minister of Australia and the Hon. Chris Bowen, MP, Immigration Minister, *Media release*, 13 October 2011, <http://www.pm.gov.au/press-office/transcript-joint-press-conference-canberra-17> (accessed 6 March 2012).

28 Human Rights and Equal Opportunity Commission, *A last resort? National inquiry into children in immigration detention*, April 2004, http://www.hreoc.gov.au/human_rights/children_detention_report/index.html (accessed 10 December 2011). The Human Rights and Equal Opportunity Commission has since been renamed the Australian Human Rights Commission.

29 DIAC, *Submission 32, Supplementary*, pp 23–24; *Migration Amendment Regulations 2005 (No 2)*.

wrongful detention of an Australian citizen and a permanent Australian resident, and, in one case, wrongful deportation.

Palmer report

2.16 The Palmer Report, published in July 2005, was an inquiry by Mr Mick Palmer into the circumstances in which a permanent resident, Ms Cornelia Rau, was held in detention as a suspected unlawful non-citizen.³⁰

2.17 Mr Palmer's recommendations included the need to improve training, arrangements with State and Territory Governments (over, for example, the use of correctional services centres, police powers, etc), alternatives to detention, the need to develop identity techniques, mental health arrangements, the environment of immigration detention, data management, record keeping, and problems in DIAC State Offices (including Queensland, NSW and South Australia).

2.18 Mr Palmer also dealt with the issues which contributed to a malaise in DIAC, and to an apparent deafness to concerns voiced repeatedly by a wide range of stakeholders. Mr Palmer identified a culture within DIAC that ignored criticism, was too defensive, bureaucratic and unwilling to make improvements.

Comrie Report

2.19 The Comrie Report, published in September 2005, resulted from an inquiry undertaken by Mr Neil Comrie on behalf of the Commonwealth Ombudsman.³¹

2.20 Mr Comrie inquired into the circumstances in which an Australian citizen, Ms Vivian Alvarez Solon, was detained and deported. The Comrie Report supported a large number of the recommendations made by Mr Palmer. It highlighted problems in the Queensland Office of DIAC, made recommendations about the IT systems in the Department and focused on issues to do with the mental health of detainees. The report agreed with Mr Palmer on issues of culture within DIAC. It recommended that the cultural issues in the Queensland Office (from where the two cases had originated) be addressed as a matter of urgency, and that checks be made in all other offices to ensure that the problems in the Queensland Office were not widespread.³²

30 Mr Mick Palmer, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau: Report*, 2005, Australian Government, Canberra.

31 Commonwealth Ombudsman, *Inquiry into the Circumstances of the Vivian Alvarez Matter*, 2005, Australian Government, Canberra, http://www.immi.gov.au/media/publications/pdf/alvarez_report03.pdf (accessed 1 February 2012).

32 Commonwealth Ombudsman, *Inquiry into the Circumstances of the Vivian Alvarez Matter*, 2005, Australian Government, Canberra.

Implementation of recommendations in the Palmer and Comrie reports

2.21 Since 2005 DIAC has made significant efforts to implement the recommendations made in the Palmer and Comrie reports. The Commonwealth Ombudsman has also noted the efforts that DIAC has made to change policy and culture within DIAC.³³

2.22 The 2008 independent review of DIAC's implementation of the recommendations found that the recommendations had been 'substantially implemented'. Where implementation was incomplete, plans were in place to address this.³⁴

Detention Health Framework 2007

2.23 The Detention Health Framework was released in November 2007 in collaboration with the Detention Health Advisory Group (DeHAG). Its release was seen by DIAC as the culmination of cultural change within the Department following the systemic problems discussed above.³⁵

2.24 The Framework was developed at a time when the majority of people in detention were not IMAs, but rather people with visa cancellations or people who made asylum claims after entering Australia lawfully, usually by airplane. As a consequence, it addressed a different detention cohort, with lower rates of self harm, and who generally were not on a negative pathway.

2.25 Nonetheless, the Framework does discuss mental health and there have been signs that DIAC is responding to the changing health needs of the detainee population.³⁶ The Department completed the roll-out of new mental health policies in November 2010. Key among these policies is the Psychological Support Program (PSP), which is targeted at supporting detainees at risk of self harm or suicide.³⁷ DIAC is conducting a review of the implementation of these policies, and expects to finalise this shortly.³⁸

33 DIAC, *Submission 32, Supplementary*, p. 38.

34 Ms Elizabeth Proust, *Evaluation of the Palmer and Comrie Reform Agenda – including Related Ombudsman Reports*, 2008, <http://www.immi.gov.au/about/departments/perf-progress/evaluation-report/> (accessed 22 February 2012).

35 DIAC, *Submission 32, Supplementary*, p. 60; *Detention Health Framework: a policy framework for health care for people in immigration detention*, DIAC, November 2007, Foreword and pp 24–25.

36 *Detention Health Framework: a policy framework for health care for people in immigration detention*, DIAC, November 2007, Foreword and pp 24–25.

37 DIAC, *Submission 32, Supplementary*, p. 61.

38 DIAC, *Submission 32, Supplementary*, p. 63.

2.26 In late 2011, DIAC advised that it had recently developed a revised mental health awareness training program which had been piloted and now was being rolled out to Serco, DIAC and IHMS staff.³⁹

Reforms in 2008 and 2010

2.27 Reforms to immigration detention policy were introduced by the Rudd Government in 2008. The New Directions in Detention policy established seven key principals of immigration detention policy:

1. Mandatory detention is an essential component of strong border control.
2. To support the integrity of Australia's immigration program, three groups will be subject to mandatory detention:
 - (a) all unauthorised arrivals, for management of health, identity and security risks to the community;
 - (b) unlawful non-citizens who present unacceptable risks to the community; and
 - (c) unlawful non-citizens who have repeatedly refused to comply with their visa conditions.
3. Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre.
4. Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review.
5. Detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time.
6. People in detention will be treated fairly and reasonably within the law.
7. Conditions of detention will ensure the inherent dignity of the human person.⁴⁰

2.28 The reforms retained the original detention system, overlaid with an increased emphasis on processing and releasing asylum seekers more quickly. Asylum seekers who are irregular maritime arrivals are still subject to mandatory detention but can now access legal advice to assist them to make their initial claim, and apply for an independent review of adverse findings.

39 DIAC, *Submission 32*, Supplementary, p. 63.

40 Minister for Immigration and Citizenship, Senator the Hon. Chris Evans, "New Directions in Detention—Restoring Integrity to Australia's Immigration System", speech at the Australian National University, Canberra, 29 July 2008; DIAC, *Submission 32*, Supplementary, 24.

2.29 The current government's policy is that children who arrive without valid visas will not be held in immigration detention centres. When necessary for a variety of reasons (such as keeping family members together), children are accommodated in low-security facilities.⁴¹ These include immigration residential housing, transit accommodation and community detention. The emphasis is on allowing children and their families to move into the wider community as soon as practicable, with support from non-governmental and state welfare agencies as necessary.⁴²

2.30 In 2010, the Department was still working towards implementing the policy announcement made in 2008, and some children were still in restrictive detention. In October 2010 the Gillard Government announced it was stepping up efforts to move children out of immigration detention centres and into community-based accommodation.⁴³

2.31 Following the High Court's decision that impacted on the Malaysia solution, the Prime Minister and the Minister for Immigration and Citizenship announced that more IMAs would be moved into community detention and placed on bridging visas.⁴⁴

2.32 On 25 November 2011 the Minister for Immigration, the Hon Chris Bowen MP, announced that the first group of IMAs would shortly be placed on bridging visas.⁴⁵ The Minister advised that he expected about 100 IMAs would be released each month. People considered for a bridging visa will have passed identity, security and character checks, and will be assessed as refugees or cooperating with the removal process. Those released into the community will be subject to reporting conditions. Breach of the conditions will result in cancellation of the visa. Community detention and bridging visas are discussed in detail in Chapter 7.

2.33 The rest of this chapter provides a snapshot of the immigration detention network today.

Types of detention

2.34 The immigration detention network contains five types of detention accommodation: immigration detention centres, alternative places of detention,

41 DIAC, *Submission 32, Supplementary*, p. 92.

42 DIAC, *Submission 32, Supplementary*, p. 27.

43 DIAC, *Submission 32, Supplementary*, p. 27.

44 The Hon. Julia Gillard, MP, Prime Minister of Australia and the Hon. Chris Bowen, MP, Minister for Immigration and Citizenship, *Media release*, 13 October 2011, available at <http://www.pm.gov.au/press-office/transcript-joint-press-conference-canberra-17> (accessed 6 March 2012).

45 The Hon. Chris Bowen, MP, Minister for Immigration and Citizenship, *Media Release*, 25 November 2011, <http://www.chrisbowen.net/media-centre/media-releases.do?newsId=5240> (accessed 22 February 2012).

immigration residential housing, immigration transit accommodation and community detention.⁴⁶

Immigration Detention Centres

2.35 Immigration Detention Centres (IDCs) primarily accommodate individuals with a higher risk profile. IDCs traditionally were designed to accommodate people who had overstayed their visa, or breached their visa conditions and had their visa cancelled, or been refused entry at Australia's entry ports. In recent years IDCs have also been used to accommodate IMAs.⁴⁷

2.36 IDCs are currently located at:

- Villawood, New South Wales
- Maribyrnong, Victoria
- Perth, Western Australia
- Christmas Island, Indian Ocean
- Northern, Northern Territory
- Curtin, Western Australia
- Scherger, Queensland
- Yongah Hill (currently under construction in Western Australia)
- Wickham Point, Northern Territory⁴⁸

Immigration Residential Housing (IRH)

2.37 In 2001 the then Minister for Immigration announced a pilot immigration residential housing program. This program housed eligible families with children in a more domestic and independent environment. It was assessed as a success and implemented on a broader scale in the following years.⁴⁹

2.38 DIAC describes Immigration Residential Housing (IRH) as a 'less institutional, more domestic and independent environment' for low risk detainees, particularly families with children.⁵⁰ Families' eligibility for IRH is based on:

- availability of IRH accommodation;
- satisfactory completion of identity and health checks;

46 Material for this section is derived from DIAC, *Submission 32, Supplementary*, pp 193–194.

47 DIAC, *Submission 32, Supplementary*, p. 193.

48 DIAC, *Submission 32, Supplementary*, p. 193. Pontville Immigration Detention Centre was decommissioned following the transfer of the final group of detainees on 6 March 2012; The Hon. Chris Bowen, MP, Minister for Immigration and Citizenship, *Media release*, 'Pontville Detention Centre Decommissioned', 6 March 2012.

49 DIAC, *Submission 32, Supplementary*, p. 26.

50 DIAC, *Submission 32, Supplementary*, p. 193.

- low flight risk;
- any operational issues particular to the person in detention; and
- any operational issues particular to the effective management of the IRH.

2.39 Immigration residential housing is in three locations across Australia: in Sydney adjacent to the Villawood IDC, in Perth near the Perth IDC and in Port Augusta, South Australia.⁵¹

Immigration Transit Accommodation

2.40 Immigration Transit Accommodation (ITA) was introduced for short-term, low flight risk people and is located in Brisbane, Melbourne and Adelaide. Generally, individuals with a low-risk risk profile on a removal pathway and are expected to depart Australia shortly, are placed in ITA.⁵²

2.41 ITA is hostel-style accommodation, with shared meals areas and semi-independent living. Because of the short-stay nature of the detainee group, less support services are provided than in IDCs.⁵³

Alternative Places of Detention (APOD)

2.42 Alternative places of detention (APODs) are places that have been specifically authorised for immigration detention that are not an IDC, IRH or community detention. APODs generally accommodate people who present a minimal risk to the Australian community. APODs include hospital accommodation in cases of necessary medical treatment; schools for facilitating education to school-aged children and rented accommodation in the community (hotel rooms, apartments).⁵⁴

2.43 APODs can also include accommodation in the community made available through arrangements with other government departments or commercial facilities, such as Defence Housing at Inverbrackie, South Australia and Darwin Airport Lodge. Correctional facilities are also used as APODs where appropriate.⁵⁵

Residence Determination (Community Detention)

2.44 Residence determination, usually referred to as community detention, was introduced in June 2005 and is a type of detention where people to reside in the community without being formally monitored.⁵⁶ The determination can only be made by the Minister, and this ministerial power is non-delegable and non-compellable,

51 DIAC, *Submission 32, Supplementary*, p. 193

52 DIAC, *Submission 32, Supplementary*, p. 194.

53 DIAC, *Submission 32, Supplementary*, p. 194.

54 DIAC, *Submission 32, Supplementary*, p. 194.

55 DIAC, *Submission 32, Supplementary*, p. 89.

56 DIAC, *Submission 32, Supplementary*, p. 194.

although detainees can make a request to the Department to consider whether their case should be referred to the Minister for placement in community detention.⁵⁷

2.45 Residence determination does not give a person any lawful status in Australia, nor are they permitted to work or study. Detainees must agree to the conditions of their residence determination arrangements. These conditions include a mandatory requirement to report regularly to the Department or its contractor, and to reside at the address specified by the Minister.⁵⁸

2.46 Expanded residence determination (community detention) arrangements for unaccompanied minors and vulnerable families were announced by the Prime Minister and the Minister for Immigration and Citizenship on 18 October 2010.⁵⁹ Following this announcement, between 18 October 2010 and 26 September 2011, a total of 1981 individuals were approved for transfer into community detention, including 608 accompanied children and 305 unaccompanied minors. As at 26 September 2011 there were 1073 people in community detention and no children in IDCs.⁶⁰

2.47 The Prime Minister announced a likely further expansion in the use of residence determination in 13 October 2011.⁶¹

2.48 The Committee heard that the Australian Red Cross is the lead contracted service provider for this program, supported by subcontracted nongovernment organisations. The funding covers costs such as housing, residential/out-of-home care for unaccompanied minors, case workers, an allowance to meet daily living costs and a range of activities including recreational excursions.⁶²

2.49 Children in the program have access to schooling, including English language classes. Health care is provided through the Department's contracted detention health provider, International Health and Medical Services. The community detention program is discussed in more detail in Chapter 7.

Expansion of the network from 2008

2.50 The significant increase in the number of IMAs in recent years has required an expansion of Australia's immigration detention network. This included the

57 DIAC, *Submission 32, Supplementary*, pp 89–90.

58 DIAC, *Submission 32, Supplementary*, p. 194.

59 DIAC, *Submission 32, Supplementary*, p. 194; The Hon. Julia Gillard, MP, Prime Minister of Australia and the Hon. Chris Bowen, MP, Minister for Immigration and Citizenship, 'Government to move children and vulnerable families into community-based accommodation', *Media release*, 18 October 2010.

60 DIAC, *Submission 32, Supplementary*, p. 27.

61 The Hon. Julia Gillard, MP, Prime Minister of Australia and the Hon. Chris Bowen, MP, Immigration Minister, *Media release*, 13 October 2011, <http://www.pm.gov.au/press-office/transcript-joint-press-conference-canberra-17> (accessed 6 March 2012).

62 DIAC, *Submission 32, Supplementary*, p. 194. See also, Mr Noel Clement, Head of Australian Services, Australian Red Cross, *Proof Committee Hansard*, 18 November 2011, pp 44–45.

development of facilities to accommodate IMAs on the mainland after their initial reception and processing on Christmas Island, as well as an expansion of residence determination to move children and vulnerable families into community detention. The following discussion of the expansion of the immigration detention network was provided to the Committee by DIAC.⁶³

2.51 In 2009 the increasing number of IMAs meant that the newly-built facility at North West Point on Christmas Island quickly became full, which meant other accommodation options were needed. Transfers to ITAs in Brisbane and Melbourne began in November 2009, and then to Northern IDC in December 2009. In March and April 2010 small numbers of IMAs were transferred to Villawood IDC and Brisbane Virginia Palms APODs. The transfers were on a case-by-case basis and determined on a number of factors, including vulnerability. As a result, 545 people were transferred to the mainland between 1 November 2009 and 9 April 2010.

2.52 In February 2010 the Minister announced measures to ease congestion at the Christmas Island immigration facilities, including the transfer of IMAs in the final stages of a positive pathway to the Northern Immigration Detention Centre in Darwin, and the transfer of a group of unaccompanied minors to the Port Augusta immigration facility.

2.53 On 18 April 2010 the government announced it would re-open the RAAF Base Curtin to accommodate IMAs. On 1 June 2010 the government made a further announcement that a site in Leonora, Western Australia, would be used to temporarily house family groups of IMAs.

2.54 In September 2010 the Minister announced immigration detention accommodation for families and unaccompanied minors in Melbourne, and for single adult men in northern Queensland and in Western Australia. This announcement intended that the:

- Melbourne ITA (MITA) would be expanded for use by families and children (The proposed expansion did not proceed because the subsequent decision to move children and vulnerable families into the community meant this large expansion was no longer needed. However, there was a smaller and temporary expansion of MITA with the leasing of several demountable buildings).
- Scherger Air Force Base (near Weipa in Queensland) would be adapted to accommodate up to 300 single adult men.
- Curtin Immigration Detention Centre would be expanded to accommodate up to 1200 single adult men.

2.55 The Prime Minister and the Minister for Immigration and Citizenship announced on 18 October 2010 that the Australian Government would expand the

63 DIAC, *Submission 32, Supplementary*, pp 201–204.

existing residence determination program and move most children and a significant number of vulnerable families into community detention by the end of June 2011. In addition, the government announced the commissioning of two new detention facilities to house IMAs.

- Yongah Hill (Northam) in Western Australia was originally supposed to accommodate 1500 single men. In May 2011, the Minister announced the facility would accommodate 600.
- Inverbrackie in South Australia would accommodate family groups.⁶⁴

2.56 In response to continuing pressures on immigration detention accommodation, the Minister announced an update on the government's IMA accommodation strategy on 3 March 2011.⁶⁵ This updated strategy involved the commissioning of more appropriate detention accommodation, the expansion of some existing facilities, the decommissioning of less suitable accommodation, and the expanded use of existing residence determination powers for unaccompanied minors and vulnerable families.

2.57 The following mainland facilities were commissioned or expanded:

- a new immigration detention centre at Wickham Point (35 kilometres south-east of Darwin);
- expansion of the Darwin Airport Lodge by up to 435 places at existing facilities adjacent to the current accommodation;
- continued use of the facility at RAAF Base Scherger near Weipa in Queensland for a further 12 months, until 2012.

2.58 In addition, the Minister announced, on 5 April 2011, the government's intention to lease a Defence facility to build a new IDC in Pontville near Hobart to eventually accommodate 400 people. All of this increased accommodation meant the government could close the Virginia Palms APOD in Brisbane and the Asti Hotel APOD in Darwin by mid-2011, and reduce the proposed capacity of the Yongah Hill Centre.

2.59 On 25 July 2011, the Minister announced that newly arriving IMAs would be transferred to Malaysia, a course of action subsequently rendered unviable by a decision of the High Court.⁶⁶

64 The Hon. Julia Gillard, MP, Prime Minister of Australia and the Hon. Chris Bowen, MP, Minister for Immigration and Citizenship, 'Government to move children and vulnerable families into community-based accommodation', *Media release*, 18 October 2010.

65 The Hon. Chris Bowen, MP, Minister for Immigration and Citizenship, 'Government announces new and expanded immigration detention accommodation', *Media Release*, 3 March 2011.

66 *Plaintiff M70/2011 v Minister for Immigration and Citizenship; Plaintiff M106 of 2011 by his litigation guardian, Plaintiff M70/2011 v Minister for Immigration and Citizenship* [2011] HCA 32. A summary of the judgment prepared by the High Court is available online: <http://www.hcourt.gov.au/publications/judgment-summaries> (accessed 27 February 2012).

Decisions relating to detainee placement within the network

2.60 All detainees receive regular reviews by DIAC and periodic reviews by the Commonwealth Ombudsman which include an assessment of the detainee's placement within the network.⁶⁷ DIAC considers recommendations for detainee placement and weighs this against the risks to the Australian community.

Cost of detention

2.61 The cost administering and operating detention facilities across the network in the 2010-2011 financial year was \$772.17 million.⁶⁸ The cost of community detention during the same period was \$15.734 million.⁶⁹

2.62 It is difficult to assess the cost of held detention on a per capita basis.⁷⁰ What is clear, though, is that overall the costs of held detention are much higher than the costs incurred for community detention. The costs of held and community detention are discussed in more detail in Chapter 7.⁷¹

Detainees held in each location

2.63 On 31 January 2012 there were 4783 people accommodated in immigration detention facilities. Of these,

- 3031 were in immigration detention centres
- 171 were in immigration residential housing or immigration transit accommodation
- 1581 were in alternative places of detention.⁷²

2.64 A further 1600 people were placed in community detention (under a Residence Determination by the Minister).⁷³

2.65 The table on the following page provides a snapshot of the location of detainees across the network.

67 DIAC, *Submission 32, Supplementary*, p. 93.

68 DIAC, answer to question on notice, Q13 (received 10 August 2011).

69 DIAC, answer to question on notice, Q42 (received 10 August 2011).

70 DIAC, answer to question on notice, Q16 (received 10 August 2011).

71 For a detailed discussion, see also Harriet Spinks, Elibritt Karlsen and Nigel Brew, 'Australian Government spending on irregular maritime arrivals and counter-people smuggling activity', *Background Note*, Parliamentary Library, 6 December 2011.

72 DIAC, *Immigration Detention Statistics Summary*, 31 January 2012, p. 4.

73 DIAC, *Immigration Detention Statistics Summary*, 31 January 2012.

People in Immigration Detention Facilities and Alternative Places of Detention					
Place of immigration detention ¹	Men	Women	Children	Total	Change from Previous Summary (31/12/11)
Christmas Island IDC	440			440	- 78
Curtin IDC	856			856	- 64
Maribymong IDC	66	12		78	- 20
Northern IDC (Darwin)	203			203	- 101
Perth IDC	34			34	+ 6
Pontville IDC	312			312	- 69
Scherger IDC	283			283	+ 9
Villawood IDC	311	64		375	+ 11
Wickham Point IDC	450			450	+ 66
Total in IDCs	2955	76	0	3031	- 240
Perth Immigration Residential Housing	4			4	- 4
Port Augusta Immigration Residential Housing	4	10	14	28	- 1
Sydney Immigration Residential Housing	11	6	6	23	- 3
Adelaide Immigration Transit Accommodation	4			4	- 2
Brisbane Immigration Transit Accommodation	51			51	+ 5
Melbourne Immigration Transit Accommodation	59		2	61	- 12
Total in Immigration Residential Housing and Immigration Transit Accommodation	133	16	22	171	- 17
Alternative Places of Detention ² (Christmas Island)	207	52	133	392	+ 50
Alternative Places of Detention (Mainland)	605	211	373	1189	- 105
Restricted on Board Vessels in Port				0	0
Total	3900	355	528	4783	- 312
People in Community under Residence Determination	685	364	551	1600	+ 234

Source: DIAC, *Immigration Detention Statistics Summary*, 31 January 2012

Length of detention

2.66 In its submission to the Committee, DIAC reported that the number of IMAs who have spent more than 12 months in detention has increased significantly since September 2010, going from virtually nil to nearly 2000 IMAs.⁷⁴ The explanation given for the rapid and dramatic increase was that:

Several factors have worked in combination to overburden Australia's immigration detention and asylum processing system. These include the suspension of processing of Sri Lankan and Afghan asylum claims and the increased number of people in detention on negative pathways.⁷⁵

2.67 DIAC advised the Committee that families and unaccompanied minors are usually placed in community detention or in alternative places of detention within 6 to 8 weeks of arriving on Christmas Island.⁷⁶ This is an improvement on previous time frames, which sometimes saw people detained on Christmas Island for months.

Services provided in immigration detention facilities

2.68 A wide range of services are provided at each immigration detention facility, these include access to:

- health services;
- active case management services;
- private and official visitors;
- legal and consular services;
- external government and non-government oversight bodies;
- educational programs, including English-language instruction;
- cultural, recreational and sporting activities;
- religious services;
- telephones, newspapers and television;
- library services;
- computers and the Internet;
- culturally appropriate meals and snacks and unlimited access to chilled water, tea, coffee, milk and sugar; and
- incidental items for purchase.⁷⁷

74 DIAC, *Submission 32, Supplementary*, p. 58.

75 DIAC, *Submission 32, Supplementary*, p. 58.

76 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard*, 29 February 2012, p. 24.

77 Serco, *Submission 42*, p. 18.

2.69 The services provided by DIAC's contracted services providers, IHMS and Serco, are discussed in more detail in Chapters 3 and 4.

Infrastructure establishment and maintenance

2.70 One of the key concerns of the Committee is the infrastructure challenge faced by DIAC given the increase in the number of detainees in recent years and the need to accommodate them in an appropriate manner. DIAC advised that it strives to ensure that the infrastructure across the immigration detention network is consistent with the government's Detention Values announced in 2008 and supports the flexible management of people in detention. A number of factors present challenges to the existing infrastructure, including:

- the need to rapidly upscale operations in response to sudden increases in IMA numbers. This creates significant operational challenges, particularly at facilities that are not purpose-built for use as an immigration detention facility;
- the remoteness of a number of immigration detention facilities;
- an increase in regulatory requirements over the past decade that increase the costs and time involved in setting up and running facilities. These include laws related to environment, heritage, occupational health and safety and planning laws; and
- the limited availability of Commonwealth land that is appropriate for the establishment of detention facilities.⁷⁸

2.71 As the Committee conducted site visits, particular concerns were raised about Villawood IDC. This IDC has suffered considerable damage during the riots and disturbances in April 2011, and now a lot of the amenity of the facility is compromised because of construction upgrades. While the Committee appreciates the need to improve the facility, it recognises the adverse impact that the construction phase can have on detainees and staff.

2.72 The Villawood IDC was described by the Department as not fit for purpose, and the subject of:

...wide ranging criticism, including from the Red Cross, the Commonwealth Ombudsman and the Australian Human Rights Commission (AHRC). The AHRC, in particular, has raised concerns about infrastructure and facilities at VIDC in each of its annual inspection reports from 1999 onwards, noting that the centre has "dilapidated infrastructure".⁷⁹

2.73 However, the Department also noted the Government's provision of \$186.7 million in the 2009–10 Budget to redevelop the centre to provide better amenities and

78 DIAC, *Submission 32, Supplementary*, pp 12, 207.

79 DIAC, *Submission 32, Supplementary*, p. 11.

improved privacy for people in detention, while also providing appropriate security at the facility.⁸⁰

2.74 Other facilities visited by the Committee which elicited particular concern included Curtin IDC and Northern IDC.

Location of detention facilities

2.75 The Committee appreciates the difficulties faced by DIAC in identifying locations at which to establish detention facilities, some of which are outlined above, and are discussed also in Chapter 5. The Department explained the factors that it considers when selecting future sites as follows:

[T]here is not a formal set of criteria, but there are a number of factors which we take into consideration. We certainly look firstly at whether there is available Commonwealth property, whether through the Department of Defence or through the Commonwealth Land Register managed by the Department of Finance and Deregulation. We also look at the suitability or the availability of accommodation, including for the department and for service provider staff, and obviously the access to utilities—power, water, sewerage, telecommunications and transport services—or that the required services could be brought up to speed quickly and efficiently. We consider already established infrastructure on the potential site. In the case of Scherger, for example, there were already buildings on site that could be used for accommodation. There is also consideration of whether there is an existing site already established in the area, consideration of the impact on the local community, the environmental impact and any heritage issues.

For future feasibility assessments for possible centres we are looking at issues of how quickly can the site be established, what capacity can be supported by the site, what support is available from the state or local government, what sort of people could be accommodated at the site, can the local community support the facility and whether the service provider is able to adequately offer services.⁸¹

2.76 However, despite these considerations, the Department advised the Committee that the main criteria considered when identifying sites for IDCs was availability of land, and/or ready-made accommodation facilities. For this reason Defence sites in remote areas were often selected as they could be used almost without delay. For example, Scherger IDC, located outside Weipa in Queensland, was selected for this reason:

[T]he key point about Scherger was that it was available, and the things that influenced its availability were the fact that it was a defence site; it was easily able to be signed up, in a sense, or an MOU developed; and there was existing defence infrastructure that we could draw upon, which meant that

80 DIAC, *Submission 32, Supplementary*, p. 11.

81 Mr Ken Douglas, First Assistant Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, p. 59.

we were looking in remote locations. Many people have told us that the remote locations are not optimum for us.⁸²

2.77 DIAC acknowledged that from a health and security perspective remote facilities are not ideal. DIAC stressed that when they have more time to select sites, then more appropriate sites in metropolitan areas can be developed:

[W]hen we have more time we can look at facilities that are closer to urban centres and we can take more time in establishing the services there. The sites that we have got opening up now—most recently in Pontville, and now in Wickham Point and Yongah Hill in northern locations—are much closer to urban centres where services, including security services as well as health services, are available.⁸³

2.78 There can be little doubt of the extra challenges brought about by maintaining multiple detention facilities in remote or very remote locations. In addition to the obvious costs of building infrastructure in such places, the transport of detainees, staff, large quantities of food and other supplies are very much more expensive than they would be in metropolitan areas. The challenges presented by remote facilities are revisited throughout this report.

2.79 The issue is not just remoteness, but also whether a facility has been purpose built. For example, DIAC told the Committee that it would prefer to use Wickham Point over Northern IDC, Darwin. The Secretary of the Department explained how he would prefer to use NIDC:

[We] believe that Northern, which was initially and primarily developed as a place for Indonesian fishermen, is not an appropriate facility for long-term asylum seeker detentions, particularly of failed asylum seekers. It is our strong desire to reduce the population there by using other facilities such as Wickham Point which are more fit for purpose. But I do not think we see any ability at this stage to close Northern altogether; rather, we will try to reduce the population and make the stays there for a shorter period of time.⁸⁴

Security

2.80 DIAC's contract with Serco outlines a Philosophy of Security Services. Security at detention facilities is managed cooperatively between Serco, DIAC's Regional Manager and the Health Services Manager to provide integrated and effective services. The contract has a number of provisions that require Serco to ensure that immigration detention facilities provide a safe and secure environment for

82 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, p. 59.

83 Mr John Moorhouse, Deputy Secretary, DIAC, *Proof Committee Hansard*, 9 December 2011, p. 58.

84 Mr Andrew Metcalfe, Secretary, DIAC, *Proof Committee Hansard*, 29 February 2012, p. 42; see also Mr Greg Kelly, First Assistant Secretary, DIAC, *Proof Committee Hansard*, 26 September 2011, p. 58.

all people within. Serco is required to prepare a security risk assessment for each facility, and for each person in detention. Visitors to detention centres are screened.⁸⁵

2.81 The Detention Services Manual for each detention facility provides that reasonable force or restraint can only be used against a detainee as a last resort. Strict criteria set out the limited circumstances where reasonable force or restraint can be used, and identify other strategies that must be used first.⁸⁶

2.82 Local police and the AFP also attend detention centres from time to time. This may be to respond to violent disturbances, but also to investigate criminal matters referred by Serco.⁸⁷ The local police and the AFP still have powers to act in detention facilities, even though Serco is responsible for general management.⁸⁸ A detailed discussion of the roles of the Police, Serco and DIAC during major incidents is contained in Chapter 8.

Incident reporting

2.83 DIAC officers are required under work health and safety law to report all incidents that they are involved in or witness. During 2010–2011, DIAC received 11 workers' compensation claims relating to irregular maritime arrivals.⁸⁹ DIAC must notify Comcare of serious incidents that occur in immigration detention facilities. This includes DIAC staff, but also Serco staff and people in detention. During 2010–2011 DIAC made 171 notifications to Comcare. The majority of these related to attempted or actual self harm and major disturbances in the facilities.⁹⁰ Comcare's assessment of safety in detention facilities is discussed further in this chapter.

2.84 Serco is required to report and respond, in the first instance, to all incidents in immigration detention centres. Reporting must be done initially verbally to DIAC, and this is followed up by making a written record in DIAC computer systems. Serco is also required to maintain its own Incident Management Log.⁹¹

2.85 IHMS advised that it has established protocols to respond to incidents in detention facilities. This includes proper communication and cooperation and the withdrawal of staff where necessary.⁹²

Health services

2.86 All detainees are provided with an initial health assessment when first entering immigration detention, including a physical examination and mental health

85 DIAC, *Submission 32, Supplementary*, p. 77.

86 DIAC, *Submission 32, Supplementary*, pp 83–84.

87 DIAC, *Submission 32, Supplementary*, p. 80.

88 DIAC, *Submission 32, Supplementary*, p. 84.

89 DIAC, *Submission 32, Supplementary*, p. 74.

90 DIAC, *Submission 32, Supplementary*, p. 74.

91 DIAC, *Submission 32, Supplementary*, p. 83.

92 International Health and Medical Services, *Submission 95*, p. 5.

screening. The Committee was told that detainees receive appropriate health care, commensurate with the level of care available to the broader community.⁹³

2.87 People in facility-based detention are generally provided with primary health care services onsite, with referrals made to external providers as required. IHMS is charged with provision of both the initial health assessment and the onsite primary and mental health medical services, as well as the coordination of referrals and treatment management where detainees have ongoing medical treatment needs, or acute needs.

2.88 Where detainees reside in community detention or immigration residential housing, they are generally provided with health care by community-based health providers. Upon discharge from detention, persons are provided with a discharge health assessment, which informs future health providers of the detainee's relevant health history, treatment received, and ongoing treatment regimes.⁹⁴ Medical services are discussed in detail in Chapter 4.

Legal services

2.89 IMAs who claim asylum are provided with legal assistance through the Immigration Advice and Application Assistance Scheme (IAAAS) during the Refugee Status Assessment (RSA) and the Internal Merit Review (IMR) processes. This also applies to the new processing arrangements, that are discussed in Chapter 6.

2.90 The High Court held in November 2010 that asylum seekers who have arrived in excised off shore locations are entitled to procedural fairness and may seek judicial review of adverse decisions regarding refugee status.⁹⁵

2.91 If an IMA receives a negative IMR assessment the Department provides information that sets out their judicial review rights. IMAs at this point can seek assistance from state and territory legal aid services or advocacy groups, the Department does not directly fund any further legal assistance. The Committee notes advice to the Department from Professor John McMillan, former Commonwealth Ombudsman, that it would be premature to announce a new legal assistance, advice or recommendation scheme for the RSA or IMR processes, or for judicial review but that the situation regarding legal assistance for judicial review should be reviewed regularly.⁹⁶

93 DIAC, *Submission 32, Evolution of the Australian Legislative Framework and Policy for Immigration Detention*, p. 6.

94 DIAC, *Submission 32*, p. 61.

95 *M61/2010E and M69/2010 v Commonwealth of Australia & Ors* [2010] HCA 41. A judgment summary prepared by the High Court is available online: <http://www.hcourt.gov.au/publications/judgment-summaries> (accessed 27 February 2012).

96 Professor John McMillan AO, *Regulating Migration Litigation after Plaintiff M61*, 2011, <http://www.immi.gov.au/media/publications/pdf/2011/mcmillan-review-regulating-migration-litigation.pdf> (accessed 2 February 2012), p. 3.

2.92 As a result of evidence gained during a visit to Curtin IDC in May the Australian Human Rights Commission has criticised the Department for failing to provide detainees with full information about review rights. The Department has responded by improving the fact sheet that is provided to detainees.⁹⁷

Education for children

2.93 Education for school aged children is the responsibility of DIAC, who the Committee heard aim to ensure that all school aged children receive education in accordance with community standards and relevant state or territory laws.⁹⁸

2.94 Children who are accommodated in APODs receive schooling either locally in the community or in detention through arrangements made by Serco. Children living in community detention are enrolled in government or non-government schools, selected on the basis of how close the school is to the child's home, and the availability of English as a Second Language classes (ESL).⁹⁹

2.95 The Department has made arrangements with State and Territory governments and non-government providers, and pay for the services provided. With the expansion of Community Detention it is anticipated that many agreements will need to be renegotiated.¹⁰⁰

2.96 The Department has not always provided full enrolment of students when it is clear that the students will only be staying in the area for a short period of time. For example, at Leonora APOD which accommodates UAMs for 6 week periods while community detention arrangements are made, DIAC has not traditionally provided schooling. At Port Augusta, Serco has provided an English as a Second Language (ESL) teacher for school aged children, and the SA Education Department has been providing some educational material to that teacher.¹⁰¹

2.97 Serco provides education for children who are not enrolled in school, including for children who are not yet old enough to enrol. Serco is responsible for providing education and recreation activities within detention centres, however, DIAC is responsible for arranging education of school age detainees with the local state and territory authorities.¹⁰² Where DIAC encounters difficulties in negotiating student spaces – as it did in Port Augusta – students can be left without schooling for months. Serco explained how it saw its obligations under the contract:

97 Australian Human Rights Commission, *2011 Immigration Detention at Curtin*, pp 24–25, http://www.hreoc.gov.au/human_rights/immigration/idc2011_curtin.html. See also DIAC's response, http://www.hreoc.gov.au/human_rights/immigration/idc2011_curtin_response.html.

98 DIAC, *Submission 32*, p. 79.

99 DIAC, *Submission 32*, p. 79.

100 DIAC, *Submission 32*, p. 79.

101 Ms Cheryl Clay, Regional Manager, Serco, *Proof Committee Hansard*, 15 November 2011, pp 69–70.

102 Mr Steve Johnson, Director, DIAC, *Proof Committee Hansard*, 15 November 2011, p. 69.

As far as Serco are concerned, we can try to provide programs and activities. The policy and provision of education is a separate issue which is managed by the department.¹⁰³

2.98 As a result, a number of students were not attending school and were only receiving training from a Serco provided ESL teacher. In the Committee's view, this reflects poorly on DIAC, and reinforces how important it is that DIAC effectively manage its relationships with local state and territory providers.

Education and activities for adults

2.99 Serco is required to provide education and recreational activities for adult detainees and children who are not enrolled in school: at a minimum, one activity in the morning and one in the afternoon.¹⁰⁴ The Department and Serco have acknowledged that increased numbers of detainees has put pressure on Serco's ability to provide adequate activities within the existing infrastructure.¹⁰⁵

Visitors and community engagement

2.100 As provided for in the Immigration Detention Values, detainees must have access to visitors.¹⁰⁶ DIAC's website outlines the process that must be followed in order to visit a person in immigration detention.

2.101 Immigration detention facilities are by their nature closed facilities. However, members of the public are able to visit people in detention by special arrangement. A prospective visitor will need to provide the following information on a template form available on the Department's website, at least 24 hours before the intended visit:

- Personal details of the visitor;
- Name of the detainee and location;
- Purpose of visit (legal, personal, other); and
- Proposed time (that must be within standard visiting hours).¹⁰⁷

2.102 Approval is at the discretion of the Serco Centre Manager and DIAC. Once a visitor arrives, he or she must pass through a security check point (similar to the security process at an airport) and will usually have limited access to the facility. This might include access to a visits area, such as the purpose built building in Villawood

103 Mr Chris Manning, Managing Director, Serco, *Proof Committee Hansard*, 15 November 2011, p. 70.

104 DIAC, *Submission 32*, p. 59.

105 DIAC, *Submission 32*, p. 59; Serco, *Submission 42*, pp 15–16.

106 DIAC, *Submission 32*, p. 93.

107 DIAC, *Serco Visitor Application Form*, <http://www.immi.gov.au/managing-australias-borders/detention/pdf/idc-visitor-application-form.pdf> (accessed 2 February 2012). The processes are similar for visits to Immigration Residential Housing and Immigration Transit Accommodation: <http://www.immi.gov.au/managing-australias-borders/detention/visiting/visiting.htm> (accessed 2 February 2012).

IDC, or it might be limited to picnic style tables in the open air (such as Inverbrackie). Lawyers may have access to interview rooms, if they are available.

2.103 The Committee received evidence from advocacy groups such as Darwin Asylum Seekers and Advocacy Network and members of the public that raised concerns about the difficulty in arranging visits to people in immigration detention facilities.¹⁰⁸

External review and oversight

2.104 The immigration detention network is the subject of regular external review and oversight by government integrity agencies such as the Australian Human Rights Commissioner and the Commonwealth Ombudsman. Non-government organisations such as Amnesty International, the Australian Red Cross and the United Nations High Commission for Refugees also report on the network. From time to time, usually following a crisis in the network, the Department has commissioned independent reviews. The organisations discussed in this section are referred to throughout this report.

Commonwealth Ombudsman

2.105 The Commonwealth Ombudsman conducts inspections of immigration detention centres, reports on the condition of people held in immigration detention, and investigates complaints about the administrative actions of DIAC.¹⁰⁹

Inspections

2.106 The Commonwealth Ombudsman's program of inspection visits to immigration detention centres, including Christmas Island, and other places of immigration detention, aims to:

- monitor the conditions and services provided to detainees;
- assess whether those services comply with the immigration values and obligations of DIAC and the contracted service provider;
- monitor the non-statutory refugee status assessment process (for detainees who have arrived in an excised territory such as Christmas Island, and claim asylum);
- deal with complaints from detainees; and
- interview detainees who have been detained for more than six months.

108 Mr Rohan Thwaites, Darwin Asylum Seekers Support and Advocacy Network, *Proof Committee Hansard*, 26 September 2011, p. 2. See also Chapter 3.

109 Commonwealth Ombudsman, *Submission 131*.

Reporting on people held in immigration detention

2.107 Under the *Migration Act 1958* (Migration Act), the Ombudsman is required to review the cases of people held in immigration detention for two years or more.

2.108 Section 486N of the Migration Act requires DIAC to provide a report to the Ombudsman within 21 days of a person having been in detention for two years. If the person remains in detention, DIAC must provide fresh reports to the Ombudsman at six-monthly intervals.

2.109 The Ombudsman provides the Immigration Minister with an assessment of the appropriateness of the person's detention arrangements under section 486O of the Act.

2.110 In practice, DIAC and the Ombudsman have agreed that DIAC will provide a report to the Ombudsman every six months while a person is detained. The Ombudsman will then report back to the Secretary of DIAC on the appropriateness of the person's detention arrangements.

2.111 The six-month review process runs parallel to the statutory process, whereupon the Ombudsman reports to the Minister on detentions of more than two years. In practical terms, it provides faster feedback from the Ombudsman to DIAC and more frequent external scrutiny of individual detention cases. Once a person has been detained for two years, they become subject to the statutory reporting regime outlined above.

Complaint handling

2.112 The Ombudsman can decide to investigate complaints made by people in detention about administrative action taken by DIAC or its contractors. The Ombudsman may also investigate other administrative matters, whether or not a complaint is received.

Recent public reports

2.113 The Commonwealth Ombudsman has periodically raised concerns about overcrowding in detention centres, delays in processing applications and the remoteness of detention facilities. The former Commonwealth Ombudsman has expressed concern that the detention values are not being consistently complied with. While acknowledging that the detention network and processing have been put under considerable strain with the increase of IMAs, the Commonwealth Ombudsman called for detention practices to be reviewed by DIAC to ensure they are in line with the detention values.¹¹⁰

110 Commonwealth Ombudsman, *Submission 131*, p. 6.

Australian Human Rights Commission

2.114 The Australian Human Rights Commission has conducted national inquiries and annual inspections focusing on the treatment of detainees in immigration detention in Australia, in particular, asylum seekers. The reports of these inquiries and inspections make recommendations to the Australian Government aimed at protecting the human rights of asylum seekers in immigration detention.¹¹¹

2.115 The Australian Human Rights Commission has visited many immigration detention facilities across the network and has prepared detailed reports that identify human rights concerns, and also documents areas where DIAC's performance has improved over time.¹¹²

2.116 The Australian Human Rights Commission has expressed serious concerns about the length of time many people spend in immigration detention, and the impact of this on their mental health. The Commission is alarmed at high rates of self harm across the detention network and draws particular attention to:

- delays in processing claims for asylum;
- delays in finalising ASIO security assessments;
- detention of long-term residents whose visas have been cancelled under section 501 of the *Migration Act 1958*; and
- detention of people who have received adverse security assessments and those who are found not to be owed protection but are stateless or cannot be returned to their country of origin.

2.117 The Commission has urged the government to find "durable solutions" for individuals who are in indefinite detention and to release people from detention as soon as possible. The Commission is further concerned that the proper treatment of people in detention is not being safeguarded despite the contractual obligations of private service providers and external scrutiny processes. As an alternative the Commission has encouraged the expansion of the community detention system.¹¹³

Comcare

2.118 Comcare works in partnership with employees and employers to reduce the human and financial costs of workplace injuries and disease in the Commonwealth jurisdiction. In July 2011 Comcare made a number of findings as a result of its investigation into work health and safety in seven facilities across the immigration

111 Australian Human Rights Commission, *Submission 112*.

112 See for example, Australian Human Rights Commission, *Submission 112*, attachments 1–4.

113 Australian Human Rights Commission, *Submission 112*, pp 4–6.

detention network.¹¹⁴ This report was released in August 2011 under the *Freedom of Information Act 1982*.

2.119 The investigation was initiated because of concerns held by Comcare about the health and safety of federal workers, contractors and detainees in the immigration detention network. These concerns arose, in part, because of recent reports of the Commonwealth Ombudsman and the Australian Human Rights Commission.

2.120 Comcare concluded that standards of work health and safety varied across the network. For example, the Inverbrackie Alternative Place of Detention was assessed as having the highest standard at the time of the visits. Villawood Immigration Detention Centre was assessed as having the most serious concerns. A number of improvements were observed to have occurred over the course of the investigation.

2.121 The investigator found that DIAC failed to meet its legislated work health and safety obligations in five areas of significant risk: risk management, staffing ratios, training for DIAC staff and contractors, critical incident management, and managing the diversity of detainees.

2.122 The investigation report that has been provided to DIAC includes a series of recommendations for work health and safety improvements to address these areas of risk. Comcare requires an action plan from DIAC in response to the recommendations by 22 August 2011.¹¹⁵ The Committee asked Comcare for a copy of the action plan on 22 November 2011.¹¹⁶ No response was received, an outcome the Committee considers totally unacceptable.

2.123 DIAC advised that it continues to work with Comcare to respond to the risks identified in the report, and has already made changes to the management of Villawood IDC.¹¹⁷ Recent changes include:

- establishing a dedicated health and safety team and the national detention facility health and safety team, to provide specialised work health and safety support for staff and managers working in detention facilities;
- developing national work health and safety guidance for staff and managers at facilities, which was expected to be finalised and implemented across the network by October 2011;
- developing a national detention facility hazard inspection schedule, which was distributed in July 2011;

114 *Investigation Report on National Detention Facilities*, available online: http://www.comcare.gov.au/about_us/freedom_of_information/disclosure_log/foi_requested_documents/report_from_investigation_eve00205473 (accessed 1 November 2011).

115 Comcare, 'Comcare Work Health and Safety Investigation: Immigration Detention Facilities', *Media release*, 10 August 2011. http://www.comcare.gov.au/about_us/freedom_of_information

116 *Proof Committee Hansard*, 22 November 2011, p. 42.

117 DIAC, *Submission 32*, p. 76.

- detention facility ‘environmental scans’ conducted during 2011, involving comprehensive review of current work health and safety practices, identification of risks and training needs and collection of evidence from local activities for the Department's monitoring obligations under the *Occupational Health and Safety Act 1991*;
- establishing with Comcare a process for recording incidents both within DIAC and at Comcare;
- reconciliation of results to enable Comcare to strengthen its guidance on reporting of incidents;
- engaging professional services from Price Waterhouse Coopers to help develop a suite of risk assessments and risk management plans for managing detention services contracts; and
- conducting risk assessment workshops at all sites during July and early August 2011.¹¹⁸

2.124 During the Adelaide hearing the Committee asked DIAC to provide an update on its compliance with the Comcare Report. DIAC advised that it was responding periodically to issues raised by the report, and had discussed some issues with Serco:

There are a variety of recommendations covering a variety of different issues. Time frames are being dealt with through all of those. They are not simple, easy issues. They go to quite complex issues that require changes over time and we are in continuing dialogue with both Comcare and Serco in respect of the implementation of those recommendations.¹¹⁹

Australian National Audit Office

2.125 The Auditor-General is an independent officer of the Parliament who is responsible for providing auditing services to the Parliament and public sector entities. The Australian National Audit Office (ANAO) supports the Auditor-General to perform this role.¹²⁰

2.126 The ANAO is currently conducting an audit on DIAC's management of the provision of individual management services to people in immigration detention.¹²¹ The ANAO is also due to table an audit of the effectiveness of ASIO's arrangements for providing timely and soundly based security assessments of individuals in winter 2012.¹²²

118 DIAC, *Submission 32*, p. 77.

119 Mr Ken Douglas, First Assistant Secretary, DIAC, *Proof Committee Hansard*, 15 November 2012, p. 68.

120 *Auditor General Act 1997* (Cth).

121 Australian National Audit Office, *Audits in Progress*, <http://anao.gov.au/Publications/Audits-in-Progress/2012/Spring/Provision-of-Individual-Management-Services-to-People-in-Immigration-Detention> (accessed 14 March 2012).

122 Australian National Audit Office, *Audits in Progress*, www.anao.gov.au/Publications/Audits-in-Progress?page3 (accessed 14 March 2012).

Review into riots and disturbances at Christmas Island and Villawood

2.127 In addition to external oversight and accountability, the Department has also commissioned its own independent reviews from time to time. The most recent and relevant of this was the review by Mr Allan Hawke AO and Ms Helen Williams AM into the incidents at Christmas Island and Villawood in early 2011. This review is covered in detail in Chapter 8, but it bears summarising here by way of background.

Background

2.128 Dr Allan Hawke AO and Ms Helen Williams AM were commissioned to conduct the inquiry into the Christmas Island and Villawood riots, in March and April 2011 respectively, through an investigation into the management and security at the relevant IDCs. The reviewers were to report to the Minister and to make recommendations to strengthen security and prevent similar incidents occurring again. Particular attention was paid to:

- the clarity of roles and responsibilities between Serco and DIAC in managing the IDC and in managing the incident;
- how breaches of security were achieved, what access detainees of the centre had to tools to assist with such breaches, and, if relevant, how such access occurred;
- the extent of any prior indicators or intelligence that would have assisted in the prevention and/or management of the incident;
- the adequacy of infrastructure, staffing and detainee management in maintain appropriate security at the centre;
- the adequacy of training and supervision of DIAC and Serco staff;
- the effectiveness of the communication and coordination between the relevant government agencies and contractors; and
- the appropriateness of the response measures taken to the incident.¹²³

2.129 The reviewers made 48 recommendations to the Minister, which were accepted in full. Key recommendations related to infrastructure, security, training, staffing numbers and communication with state police. The report and its findings are considered again in Chapter 8.

Review of Humanitarian Settlement Services by Mr David Richmond AO

2.130 Mr David Richmond was commissioned by the Minister for Immigration and Citizenship to conduct a review of humanitarian settlement services (HSS), a program

123 Dr Allan Hawke AO and Ms Helen Williams AM, *Independent Review of the Incidents at the Christmas Island Immigration Detention Centre and Villawood Immigration Detention Centre*, 31 August 2011, pp 17–18, <http://www.immi.gov.au/media/publications/pdf/2011/independent-review-incidents-christmas-island-villawood-full.pdf> (accessed 1 February 2012).

run by the Department of Immigration and Citizenship.¹²⁴ The key objectives of the program are to provide on-arrival support to recipients of humanitarian visas. The report was provided in September 2011.

2.131 The report does not review the immigration detention network, but it does discuss the impact that increased numbers of irregular maritime arrivals (IMAs) has had on HSS, and also discusses how the community detention program could be better managed to prepare detainees who receive protection visas for the HSS program.

2.132 The report identifies a number of stresses on the program. Relevantly, the rise of IMAs has impacted upon the effectiveness of the HSS program in two ways.

2.133 First, the Department is currently trying to decrease the number of people in restrictive detention, placing them into community detention. Mr Richmond was concerned that, as community detention also involves the use of outsourced services, this may increase DIAC's coordination risks with the HSS program. For example, IMAs who have been detained in IDCs or APODs, but then move to community detention may expect the same level of support when they move to the HSS program. Mr Richmond noted that each phase provides different levels of support and services and the expectations of IMAs need to be effectively managed.

2.134 Secondly, the increase in IMAs – many of whom are single adult males – has changed the demographic of clients served by the HSS program. Mr Richmond noted:

In the current environment of increased numbers (particularly of onshore arrivals from detention), very significant increases in the numbers of single adult males and unaccompanied minors, and significantly rising expectations about service standards and quality, inevitably some of these features present challenges to the Contract.¹²⁵

2.135 Mr Richmond appreciated that once a person has been granted a protection visa, the imperative is to move that person out of detention as soon as possible (as the individual is now a permanent resident of Australia). However, this imperative must be balanced against the capacity of HSS contractors to source appropriate accommodation and support for the client.¹²⁶

2.136 Overall Mr Richmond concluded that DIAC's oversight and management of the program is adequate, but areas of improvement were identified.¹²⁷

124 Mr David Richmond AO, *Review of Humanitarian Settlement Services: Performance Measures and Contract Management*, September 2011, <http://www.immi.gov.au/living-in-australia/settle-in-australia/find-help/hss/review-of-hss-richmond.pdf> (accessed 1 February 2012).

125 Mr David Richmond AO, *Review of Humanitarian Settlement Services: Performance Measures and Contract Management*, September 2011, p. 8.

126 Mr David Richmond AO, *Review of Humanitarian Settlement Services: Performance Measures and Contract Management*, September 2011, p. 10.

127 Mr David Richmond AO, *Review of Humanitarian Settlement Services: Performance Measures and Contract Management*, September 2011, p. 27

Findings in the inquests into the deaths at Villawood in 2011

2.137 The NSW Coroner handed down findings in relation to the deaths of three detainees at Villawood IDC on 19 December 2011. The Coroner found that Josefa Rauluni, Ahmed Obeid Al-Akabi and David Saunders had died from self inflicted injuries in September, November and December 2010. The Coroner's report makes sobering reading. The Coroner found that DIAC, IHMS and Serco cannot 'escape criticism for the manner in which that duty was fulfilled in caring for the inmates at Villawood at least in the last months of 2010'.¹²⁸

2.138 The Coroner observed that people in immigration detention are at a greater risk of self harm than people in the general community. For this reason DIAC and its contractors owe a higher standard of care. The Coroner found that appropriate mental health screenings and protocols were not in place, or at least not carried out, to minimise the risk or treat appropriately any of the men who died. DIAC Case Managers were constantly changing, IHMS did not keep adequate records, Serco officers were not adequately trained to follow procedures, and all parties failed to record and share information.¹²⁹ The Coroner concluded:

In all three deaths, some of the actions of some staff were careless, ignorant or both, and communications were sadly lacking. [Suicide and Self Harm] procedures were not followed by DIAC or Serco personnel, DIAC failed to ensure that Serco and IHMS were fulfilling the terms of the contract between them and there were startling examples of mismanagement on the part of DIAC, Serco and IHMS.¹³⁰

2.139 The Coroner made a number of recommendations to DIAC, Serco and IHMS to improve procedures in detention centres. The Coroner recommended that DIAC:

- revise procedures in relation to use of force in removing a detainee from Australia, in particular where that person has made a threat of self harm;
- ensure that case managers are aware that they must make referrals for risk assessments to IHMS as soon as risk factors are observed;
- ensure that all referrals to IHMS are made in writing, and documented on a central database; and
- ensure that all staff keep proper records of any relevant observations made of detainees, and any information received from IHMS, DIAC or Serco.

128 *Findings in the inquests into the deaths of Josefa Rauluni, Ahmed Obeid Al-Akabi and David Saunders*, New South Wales Coroner, 19 December 2011, p. 10, [http://www.lawlink.nsw.gov.au/lawlink/Coroners_Court/ll_coroners.nsf/vwFiles/VillawoodFindings-redacted.pdf/\\$file/VillawoodFindings-redacted.pdf](http://www.lawlink.nsw.gov.au/lawlink/Coroners_Court/ll_coroners.nsf/vwFiles/VillawoodFindings-redacted.pdf/$file/VillawoodFindings-redacted.pdf) (accessed 1 March 2012).

129 *Findings in the inquests into the deaths of Josefa Rauluni, Ahmed Obeid Al-Akabi and David Saunders*, New South Wales Coroner, 19 December 2011, p. 11.

130 *Findings in the inquests into the deaths of Josefa Rauluni, Ahmed Obeid Al-Akabi and David Saunders*, NSW Coroner, 19 December 2011, p. 11.

2.140 The Coroner recommended that Serco develop procedures to better respond to detainees who have been assessed as being at risk. For example,

- ensuring that the outcome of a risk assessment is sought when a detainee has been referred to IHMS;
- documenting the presence of risk factors on detainee files;
- ensuring that all Serco officers in the area are aware when there is a need for higher support for a detainee; and
- developing a policy on use of force, including de-escalation techniques and appropriate planning to reduce risks.¹³¹

2.141 The Coroner recommended that IHMS develop a standard procedure for risk assessments that takes into account all relevant information, train staff on these procedures and notify DIAC and Serco on the outcome of all risk assessments in writing.¹³² The Coroner also recommended that DIAC, IHMS and Serco work to develop better communication processes, and that DIAC consider changing the clinical governance structure at Villawood so that all the processes are overseen by a psychiatrist, and consider using trained negotiators in local and federal police forces.

2.142 The Secretary of DIAC, Mr Andrew Metcalfe, advised the Committee during its last hearing on 29 February 2012 that DIAC was in the process of responding to all the recommendations, with some significant changes already made. For example, the recommendation in relation to clinical governance was implemented in August 2011.¹³³ DIAC has not yet made a formal response to the report, but expected to do so imminently.

Conclusion

2.143 This chapter has provided a broad outline of the immigration detention network in Australia: the types of facilities, location and infrastructure challenges. The key responsibilities of DIAC and its contracted service providers have been set out, along with the experience of detainees within the network. The rise of IMAs in recent years has put considerable pressure on the network and on the services provided by DIAC, IHMS and Serco. Oversight and integrity agencies such as the Commonwealth Ombudsman and the Australian Human Rights Commission have reported regularly on pressures within the system and the need for change. These organisations, as well as independent reviewers, have made recommendations for improvements to the system.

2.144 In the next two chapters the Committee examines in more detail the important services that IHMS and Serco are contracted to deliver.

131 *Findings in the inquests into the deaths of Josefa Rauluni, Ahmed Obeid Al-Akabi and David Saunders*, NSW Coroner, 19 December 2011, p. 16.

132 *Findings in the inquests into the deaths of Josefa Rauluni, Ahmed Obeid Al-Akabi and David Saunders*, NSW Coroner, 19 December 2011, p. 16.

133 Mr Andrew Metcalfe, Secretary, DIAC, *Proof Committee Hansard*, 29 February 2012, p. 23.