

MONITORING COMMONWEALTH PLACES OF DETENTION

**Annual Report of the Commonwealth
National Preventive Mechanism
under the Optional Protocol to the Convention
Against Torture (OPCAT)**

1 July 2021 – 30 June 2022

ISSN 2653-7273 - Online

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FOREWORD

The *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) is unique in many ways. It is the only exclusively preventive international human rights instrument. It is also the first instrument entrusting national bodies – namely National Preventive Mechanisms – with a direct role in monitoring the implementation of international human rights obligations by States Parties.



This annual report marks the 5th anniversary of the Commonwealth Ombudsman's appointment as the National Preventive Mechanism (NPM) for places of detention under control of the Commonwealth.

The report covers our observations from the past year and highlights some important recurring issues. The 2021–22 year was dominated by the ongoing impacts of COVID-19. We continued to carry out our NPM mandate throughout lockdowns and closed state and territory borders, despite limitations on our ability to visit places of detention in person. Through remote monitoring we were able to ensure our preventive mandate was carried out continuously during this period. This complemented our in-person visits to 10 institutions where people may be deprived of their liberty.

I acknowledge the ongoing support and cooperation we receive from the Department of Home Affairs, the Department of Defence, and the Australian Federal Police in carrying out our work as NPM. I also acknowledge the contribution of operational staff at detention facilities – Australian Border Force, Serco, International Health Medical Services (IHMS) and other contractors – and, of course, people in detention, who speak with us to share their personal stories and experience.

I thank the UN Subcommittee on Prevention of Torture, the Association for the Prevention of Torture, and the UN Working Group on Arbitrary Detention for their continued support and guidance. We will continue to work hard, raise issues, and make recommendations aimed at improving the circumstances of those deprived of their liberty.

Finally, I would like to thank the members of the Commonwealth NPM team for their expertise and hard work throughout the year.

It is important to note that Australia's NPM is a cooperative network of Commonwealth, state and territory bodies responsible for inspecting places of detention. Full compliance with OPCAT requires NPM bodies to be able to oversee all places of deprivation of liberty across Australia. At the time of writing: the federal government, Australian Capital Territory (ACT), Northern Territory (NT), South Australia (SA), Western Australia (WA), and Tasmania have nominated NPM bodies and the remaining Australian jurisdictions – New South Wales, Victoria, and Queensland – have existing inspection bodies possessing many of the powers, immunities and protections required. I understand the federal government will continue to discuss nomination of appropriate bodies with these jurisdictions. I expect that a separate NPM Network Report, discussing the work of all Australian NPMs nominated or appointed at that time, will be published in late 2023.

I look forward to continuing to work with my NPM counterparts across Australia and internationally as OPCAT enters full implementation in January 2023.

A handwritten signature in black ink, appearing to read 'Iain Anderson'. The signature is fluid and cursive, with a large initial 'I' and 'A'.

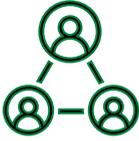
Iain Anderson

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OUR REPORT – AT A GLANCE

| Key Concepts | | |
|---|--|---|
|  <p>The Optional Protocol to the UN Convention against Torture (OPCAT) aims to prevent torture and inhuman treatment of people deprived of their liberty.</p> |  <p>The Immigration Detention Network (IDN) refers to facilities where people in immigration detention can be accommodated including detention centres, transit accommodation, and APODs. In this report, this does not include community detention.</p> |  <p>A National Preventive Mechanism (NPM) is an independent domestic (not international) mechanism of one or more bodies, established to visit places where people are deprived of their liberty, for the prevention of torture and other cruel, inhuman, or degrading treatment or punishment.</p> |
| Recommendations | | |
| <p>We made 18 recommendations to the Department of Home Affairs:</p> <ul style="list-style-type: none"> • 3 recommendations have been raised by us before • 4 recommendations call for a review of existing policy • 6 recommendations relate to health and welfare of people in immigration detention • 2 recommendations seek consideration of alternative options to held immigration detention • 2 recommendations relate to complaints management • 1 recommendation regarding welfare of immigration detention centre staff | | |
| Key messages from this report | | |
|  | | |
| <ul style="list-style-type: none"> ❖ The number of people held in immigration detention needs to be reduced, as does the length of time people spend in detention. ❖ There are people who face being held in immigration indefinitely, without any clear immigration or removal pathway. ❖ It is not suitable to hold people in hotels as alternative places of detention for more than 4 weeks ❖ COVID-19 has been difficult for both people in detention and staff. ❖ People in detention should receive purposeful activity and family visits, and food of an acceptable quality. ❖ The Australian Federal Police have already started to make improvements to their detention facilities following our visit this year. ❖ We gained a broad overview of Defence detention facilities and procedures and will commence full visits to Defence facilities in the 2022-23 financial year. ❖ The Department of Home Affairs agreed with 13 of our recommendations, disagreed with 2 recommendations, and noted 3 recommendations. | | |

INTRODUCTION

By Ben Buckland, Association for the Prevention of Torture

The Optional Protocol to the Convention against Torture came into existence 20 years ago. In terms of norms, it did nothing new. Countries around the world already had an obligation to prevent torture. In terms of practice, however, it was revolutionary.

By creating an international system of visiting bodies, including the Subcommittee for the Prevention of Torture (SPT) at the international level and national preventive mechanisms (NPMs) domestically, the OPCAT gave birth to a world in which no place where people are deprived of liberty should remain closed to outside eyes.

When the Association for the Prevention of Torture (APT) was asked to write this foreword to the Commonwealth NPM's 2022 Annual Report, I thought it would be a good opportunity to introduce the OPCAT very practically, by talking about how, over the past two decades, NPMs around the world have shown the strength of this system and the approach it brings to solving problems in detention.

One of these is the way that NPMs bring an objective, outside gaze that enables them to **question practices** inside otherwise closed institutions. In Norway, for example, by conducting visits both during the day and at night, the NPM was able to discover that staff working different shifts did not interact and had their own subcultures and working methods, including relating to serious practices like the use of force.

NPMs around the world have also brought a clear **focus on the most vulnerable people**. The NPM of Paraguay for example, brought new attention, through its visits, to the institutionalisation of children, leading to the eventual closure of care homes for children and their reintegration into community and family environments.

While the focus of NPMs is on human dignity, broadly defined, they have also played a key role in uncovering and preventing the most **serious violations** of human rights. In the Philippines, for example, the Human Rights Commission, as Interim NPM, discovered a hidden cell behind a bookshelf in a Manila police station where men and women were ill-treated or even tortured in secret.

While many countries, before OPCAT ratification, had systems of complaints handling and investigation, NPM establishment has often brought with it a focus on **systemic issues and processes** that require a long-term approach. In Togo, for example, the NPM has sought to combat extreme levels of overcrowding by focusing on pre-trial detention: monitoring and making recommendations that relate to every step in the process from police custody to court appearances and prison.

Where state institutions and civil society have often been in opposition in relation to detention issues, the OPCAT has provided an opportunity in many places to work more closely together. In Armenia, for example, the NPM has established a formal system for the **involvement of civil society organisations** (CSOs) in NPM visits, which allows them to benefit from CSO expertise.



OPCAT has also **opened new places to monitoring**. In New Zealand, before NPM establishment there was no independent monitoring of health and disability institutions. And once they began proactively visiting such institutions, they uncovered a number of serious problems, including the use of restraint beds, seclusion rooms and other controlling practices.

While much of the focus of NPMs is on detainees, they also play a role in improving **working conditions for staff**, as part of their systemic approach to detention. This has included, for example, work by the UK NPM to shine a light on the causes of severe staffing shortages in prisons and the impact this has had both on existing staff and on detainees.

The OPCAT system is also based on a spirit of **dialogue and cooperation**. This is why, for example, the Swiss NPM, when it decided to work thematically on youth detention, conducted a series of visits to juvenile detention places and then convened a closed-door meeting with the heads of each establishment to discuss and explain their recommendations in advance. While maintaining their independence, this discussion meant that the final recommendations were largely supported by the institutions themselves and thus much more likely to be implemented quickly.

Joining the OPCAT also means joining a **global torture prevention community**, where NPMs exchange good practices and support each other in their mission. For example, during the COVID pandemic, regular NPM webinars, hosted by the APT, allowed monitoring institutions from all world regions to share ideas on how to continue monitoring existing places, as well as how to approach visits to new places, including quarantine sites.

Australia is at a crossroads. Horrific events like those at Don Dale in 2016 and at Banksia Hill a few months ago have brought attention and recommendations to bear on problems that have existed for too long. Now, five years after OPCAT ratification, we have an opportunity to create change across the country – in law, in practice and in oversight – by establishing and fully funding NPM bodies in every state and territory. As the APT, we welcome these advances and stand with the Commonwealth Ombudsman and the NPMs in every state and territory as we move ahead: opening every closed institution to unannounced visits by independent monitors, at any time; and creating a framework for engagement and constructive dialogue on how to solve the problems that we all recognise are there.

Because together we can prevent torture.

Ben Buckland

Senior Advisor
Association for the Prevention of Torture

EXECUTIVE SUMMARY

This report presents observations of the Commonwealth National Preventive Mechanism (NPM) related to our oversight of places of detention during the period 1 July 2021 to 30 June 2022 (the reporting period).

Our oversight is conducted under the Optional Protocol for the Convention Against Torture (OPCAT) and the *Ombudsman Regulations 2017* made under the *Ombudsman Act 1976*.

This report focuses on immigration detention facilities. The Commonwealth NPM is also required to monitor Australian Defence Force (ADF) detention facilities and Australian Federal Police (AFP) custodial facilities, but the COVID-19 pandemic, which resulted in state lockdowns and border closures, limited our ability to undertake visits to these places in 2021-22. As immigration detention is generally a higher risk remit, visiting these facilities was our priority.

During the reporting period, we conducted 8 visits to immigration detention facilities, one visit to an AFP detention facility and one visit to an ADF detention facility.

As the Commonwealth NPM, we conduct our visits in accordance with Articles 19, 20 and 21 of OPCAT and prioritise matters that pose the greatest risk to the human rights and dignity of people in detention. This includes:

- the conditions of accommodation facilities
- the appropriateness of medical, health and wellbeing services
- the availability of purposeful activity
- the ability of people in detention to remain in contact with family, friends, and advocates
- monitoring the use of force in detention facilities.

We engage with the Department of Home Affairs (Home Affairs) – including Australian Border Force (ABF) – and its service providers, and review records and reports provided by them. We speak with people in detention, their advocates and civil society, and monitor media reporting and international developments.

The Commonwealth NPM is also informed by other sources of information which support it to fulfil its mandate. The Office's complaints management function may help identify issues for the Commonwealth NPM to focus on during visits, and, as part of an ongoing own motion investigation, Home Affairs provides the Office with statistics on people who were detained on suspicion of being unlawful non-citizens and who were subsequently found to be not unlawful and released from detention.

The intention of this annual report is to bring transparency and foster a broader public understanding of the need to maintain appropriate conditions in Commonwealth detention facilities, and to support compliance with OPCAT. We also make recommendations to strengthen protections for people held in detention and to influence systemic improvement.

In this report, we make 18 recommendations. Some of these repeat themes covered in our previous reports to Home Affairs, notably:

- reducing the number of people in detention (Recommendations 1 and 2)
- the use of mechanical restraints (Recommendations 7 and 8)
- the appropriateness of the use of hotels as Alternative Places of Detention (APODs) for long term detention of over 4 weeks (Recommendations 9)
- complaints management (Recommendations 12-13).

We encourage Home Affairs to take timely action to address these ongoing issues.

Monitoring Home Affairs' response to, and management of, COVID-19 was a particular focus of our oversight activities during 2021-22. In addition to assessing the appropriateness of controls to manage the risk of COVID-19 in detention facilities, we considered the impacts of these controls on people in detention and whether the restrictions implemented were proportionate. Overall, we found COVID-19 management within immigration detention met our expectations. We made 4 recommendations about COVID-19 management related to improvements to communication during an outbreak, support for detention centre staff, and equivalent health care for unvaccinated and vaccinated detainees (Recommendations 3 to 6).

Our visit to the Melbourne APOD highlighted concerns with food provision and emergency management procedures in detention (Recommendations 10 and 11).

In addition we recommended:

- that Commonwealth Government consider reforms to ABF powers within immigration detention facilities (Recommendation 14)
- opportunities for improved medical and wellbeing services (Recommendations 15 to 18).

We provided this report to all agencies for response before publication. Home Affairs provided a detailed reply to our report (**APPENDIX A**).

Home Affairs agreed with 13 of our recommendations, disagreed with 2 recommendations, and noted 3 recommendations, reflecting an appreciation of the concerns raised in our report. Where recommendations are accepted, we will continue to monitor implementation. Otherwise, where Home Affairs has noted or not agreed with a recommendation, we intend to work with the department to identify ways it can systemically improve administration and meet the intent of the recommendation.

We are particularly pleased to see that Home Affairs agreed with Recommendation 15 and 17 to review the Programs and Activities curriculum and the approval framework for dental treatment. We are also satisfied to see that actions have already commenced progress on Recommendation 2, Recommendation 10, Recommendation 11 and Recommendation 14.

Home Affairs did not agree with Recommendation 3 noting that it is not practical to provide people held in detention with a summary of actions and advice received to after each Outbreak Management Team meeting, due to the dynamic nature of COVID-19 outbreak and since actions may evolve multiple times throughout the day during the period of the outbreak. We will continue to work with Home Affairs to develop a better, more practical solution to information sharing in these circumstances.

Home Affairs did not agree with Recommendation 5, which states that there should be COVID-19 safe strategies to enable family visits irrespective of vaccination status. Home Affairs advised that their requirement for visitors to be up to date with vaccinations is in line with advice from the Departmental Clinical Advisory Team, taking into consideration the Communicable Diseases Network Australia (CDNA) Guidelines. However, we note that the Guidelines do not specify that visitors to high-risk settings need to be fully vaccinated.¹ We also note that not all Australia jurisdictions where detention centres are located require vaccination for visitors of correctional facilities.² Home Affairs advised that family visits are managed on a case-by-case basis. We will look into the transparency of this process at our future visits.

¹ [Coronavirus \(COVID-19\) – CDNA National Guidelines for Public Health Units | Australian Government Department of Health and Aged Care](#)

² As at 17 January 2023 – only Victoria and Western Australia require proof of vaccination or exemption to visit people in correctional facilities.

Home Affairs noted Recommendation 1 – to work with the Minister to reduce the number of people in detention. This is a recommendation that Home Affairs agreed to in our last report, and in response to this report Home Affairs noted it has previously advised us of their actions in this area. Further information on Home Affairs’ actions in response to this issue is included in **Appendix B**. We will continue to monitor trends in the number of people in detention.

Home Affairs noted Recommendation 9 – that Hotel Alternative Places of Detention should not be used on a long-term basis, being greater than 4 weeks. This is the second time that Home Affairs has formally noted this recommendation. We remain concerned about protracted placements at hotel APODs. In our view, access to safe and serviceable facilities, medical and welfare services, programs and activities, and fresh air should be standard across all detention facilities.

Home Affairs noted Recommendation 18 – that people should be able to receive certification for courses they complete while in immigration detention. Home Affairs advised that under that under current policy settings and reflected in the Facility and Detainee Services Contract, certificate courses are not provided to people in detention, but they are able to undertake courses of study using their own resources. We will continue engage with Home Affairs on this issue.

We will continue to monitor these matters and engage with Home Affairs on our concerns. Our ongoing dialogue contributes to continuous improvements in immigration detention and assists us to work in partnership with all Commonwealth controlled detention agencies to strengthen protections against ill-treatment for people held in detention.

“THE NATIONAL PREVENTIVE MECHANISMS REPRESENT THE MOST SIGNIFICANT SINGLE MEASURE WHICH STATES CAN TAKE TO PREVENT TORTURE AND ILL-TREATMENT OCCURRING OVER TIME.”

Justice Aisha Shujune Muhammed
Vice-Chair, UN Subcommittee on Prevention of Torture

WHAT IS THE OPCAT AND WHAT IS OUR ROLE?

THE UN CONVENTION AGAINST TORTURE

The International Covenant on Civil and Political Rights states that *“no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”*

The Convention against Torture provides that *“each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”*

Torture is a crime anywhere in Australia under the [Commonwealth Criminal Code Act 1995](#) (Division 274). Most other acts of cruel, inhuman or degrading treatment would be covered by laws such as those dealing with assault or causing serious injury (eg sections 19 – 36 of the *Crimes Act 1900* (ACT)).

The Optional Protocol to the Convention against Torture (OPCAT) also established an international prevention committee that works in parallel with the preventive mechanisms, the **UN Subcommittee on the Prevention of Torture (SPT)**. The SPT can visit all places of detention in the countries that have endorsed the Optional Protocol. The SPT's mandate also includes providing advice and guidance to the national preventive mechanisms.³

THE OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE

The **OPCAT** is an international human rights treaty designed to strengthen the protections for people deprived of their liberty and potentially vulnerable to mistreatment and abuse. The OPCAT was adopted by the UN General Assembly in 2002, and entered into force in 2006.

OPCAT does not create new rights for people who are detained, rather it seeks to reduce the likelihood of mistreatment. OPCAT combines monitoring at an international level (by the SPT) and at a domestic level (by National Preventive Mechanisms or NPMs).

By signing up to OPCAT, States parties like Australia are obliged to set up, designate or maintain NPMs, and commit to establishing a system of regular preventive visits to places where people are deprived of their liberty, as well as allowing the SPT to have unfettered access to places of detention.

Australia is a federation of 6 states and 2 self-governing internal territories. Powers and responsibilities are divided between the federal, state and territory governments by Australia's Constitution.

This division of powers impacts both responsibility over places of detention, and responsibility over their oversight. The federal, state and territory governments each have jurisdiction and control over places of detention which fall under OPCAT's scope.

As a consequence, detention oversight is also divided between these levels of government. This extends to Australia's approach to implementing NPM obligations under OPCAT. On ratifying OPCAT, the federal government foreshadowed that Australia's NPM would be established as a cooperative network of federal, state and territory bodies responsible for inspecting places of detention, to be coordinated by an NPM Coordinator.

³ The language around OPCAT and NPMs is based on the Optional Protocol and guidance provided by the SPT. Most NPMs and related organisation use very similar wording, so this will appear similar across reports internationally

WHAT IS A NATIONAL PREVENTIVE MECHANISM (NPM)?

National Preventive Mechanisms (NPMs) are independent visiting bodies established in accordance with the OPCAT to examine the treatment of persons deprived of their liberty, with a view to strengthening their protection against torture and other cruel, inhuman, or degrading treatment or punishment.

An NPM is **not** an investigative body. The mandate of an NPM differs from other bodies working against torture in its preventive approach: it seeks to identify patterns and detect systemic risks of torture, rather than investigating or adjudicating complaints concerning torture or ill-treatment.

WHAT ARE THE FUNCTIONS OF AN NPM?

NPMs have 4 key functions.

The foremost function of an NPM is the **Visiting Function**, or carrying out visits to places of detention. An NPM has the right of access to all places of detention and the right to speak in private with people who have been deprived of their liberty. An NPM also has the right to access all necessary information that is relevant to the conditions of people deprived of their liberty.

During visits, the NPM will endeavour to identify risk factors by making its own observations and through interviews with the people involved.

NPMs also have an **Advisory Function** that includes:

- providing recommendations to governments and agencies (opinions, proposals, reports);
- submitting legislative proposals;
- reviewing rules concerning both detention (interrogation rules, instructions, methods and practices) and personnel-related issues regarding those involved in the custody, interrogation and treatment of persons deprived of their liberty (including, for example, law enforcement; civil, military or medical personnel; and public officials); and
- contributing to government or agency reports or presenting their own reports to human rights mechanisms and following up their recommendations.

The **Educational Function** of an NPM includes:

- participation in training and development of educational and awareness-raising programmes in schools, universities and professional circles; and
- examination of the curricula of educational institutions to ensure that education and information on the prohibition of torture is included in the training persons who may be involved in the custody, interrogation or treatment of any individual subject to any form of detention.

The **Cooperation Function** embraces engagement through meaningful dialogue with the government authorities and other relevant stakeholders concerning prevention of torture and ill-treatment.

NPMs establish and maintain contact both with other NPMs, with a view to sharing experiences and reinforcing effectiveness, and with the SPT, through regular meetings and the exchange of information.

OUR MANDATE

In July 2018, the Australian Government announced the Commonwealth Ombudsman as the NPM for places of detention under the control of the Commonwealth (the Commonwealth NPM). The places of detention we currently visit are:

- Immigration Detention Facilities under the remit of the Department of Home Affairs;
- Custodial Detention Facilities managed by the Australian Federal Police; and
- Military Detention Facilities controlled by the Australian Defence Force.

Oversight of adult prisons, youth detention, police station cells, and closed mental health and forensic disability facilities fall within scope of state and territory NPMs.

VISITING FUNCTION POWERS

Following the rules set out in the OPCAT, the Commonwealth NPM has the following powers:

- access to all information concerning the number of persons deprived of their liberty in places of detention as defined in Article 4 of the OPCAT, as well as the number of places and their location
- access to all information referring to the treatment of those persons as well as their conditions of detention
- access to all places of detention and their installations and facilities
- the opportunity to have private interviews with the persons deprived of their liberty who agree to speak with us – without witnesses, either personally or with a translator if deemed necessary
- the opportunity to speak with any other person who the NPM believes may supply relevant information
- the liberty to choose the places they want to visit and the persons they want to interview
- to maintain contact with the UN Subcommittee on Prevention of Torture, to send it information and to meet with it.

METHODOLOGY

The Commonwealth NPM has a broad methodical approach. Our primary method is to visit places where people are deprived of their liberty. This gives us the opportunity to speak with the persons deprived of their liberty, and it provides a good insight into the conditions in places in Australia where deprivation of liberty takes place.

The foundation of our work is to monitor and understand the challenges of the places we visit, and to make recommendations and influence change. Our visits are one of the core safeguards for people who have been deprived of their liberty, against the risk of inhuman treatment.

Our visits to places of detention are designed to be preventive and consider systemic issues where torture and other inhuman or degrading treatment or punishment may occur.

During a visit, we may conduct some or all of the following activities to gather information about the operation of a facility:



Interviewing people in detention



Attending meetings with groups who run facilities



Reviewing records



Reviewing footage and records of incidents



Walking through and noting the material conditions of the accommodation

We benchmark our observations against Australia’s obligations under OPCAT, associated international treaties and other relevant human rights standards. In addition, we consider whether Home Affairs, including the Australian Border Force (ABF), along with government contractors including Serco and International Health and Medical Services (IHMS) adhere to their respective legislation, policies, and procedural instructions.

We pay particular attention to problems and risks that have been previously identified and consider whether sufficient progress has been made to address those matters.

Based on the information gathered, we assess overall performance based on the management and conditions for people in detention. We assess these against the 5 indicators of a healthy detention facility, adapted from those used by other international and domestic visiting bodies⁴.

The 5 indicators of a healthy detention facility we use are:



⁴ Healthy indicators adapted from: Convention on the Rights of Persons with Disabilities (CRPD); International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights (ICESRC); United Nations Standard Minimum rules for the treatment of prisoners (SMR); United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) – NMR; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials – BPUFF; Convention Against Torture (CAT) Article 13; UN Standard Minimum rules for the treatment of prisoners (SMR), rules 54-57; Body of Principles for the protection of all persons under any form of detention or imprisonment (BPP); Commonwealth Ombudsman Better Practice Guide to Complaint Handling, April 2009; Guiding Principles for Corrections in Australia (GPCA) 2018; Revised Standard Guidelines for Corrections in Australia (R-SGCA) 2012; Australian Food Safety Standards – Chapter 3 Australian and New Zealand Food Standards Code; Australian Drinking Water Guidelines (2011); International Covenant on Economic, Social and Cultural Rights (ICESRC); International Covenant on Civil and Political Rights (ICCPR); . Convention on the Rights of Persons with Disabilities (CRPD); UN Convention on the Rights of the Child; SMR 65; United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UNRPJDL); CRC - General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin (CRC-GC 6); N - Report of the Special Rapporteur on the human rights of migrants (SRHRM); CRC; International Covenant on Civil and Political Rights (ICCPR); and ICESRC.

WHAT IS COVERED BY THE COMMONWEALTH NPM'S MANDATE?

The Commonwealth NPM can visit any place under the control of the Commonwealth where people are or may be deprived of their liberty. At this stage our visit and oversight activity covers:



IMMIGRATION DETENTION FACILITIES



ALTERNATIVE PLACES OF IMMIGRATION DETENTION (APPROXIMATELY)



ACT POLICE WATCH HOUSE



AUSTRALIAN FEDERAL POLICE STATIONS IN EXTERNAL TERRITORIES



AUSTRALIAN DEFENCE FORCE DETENTION FACILITIES

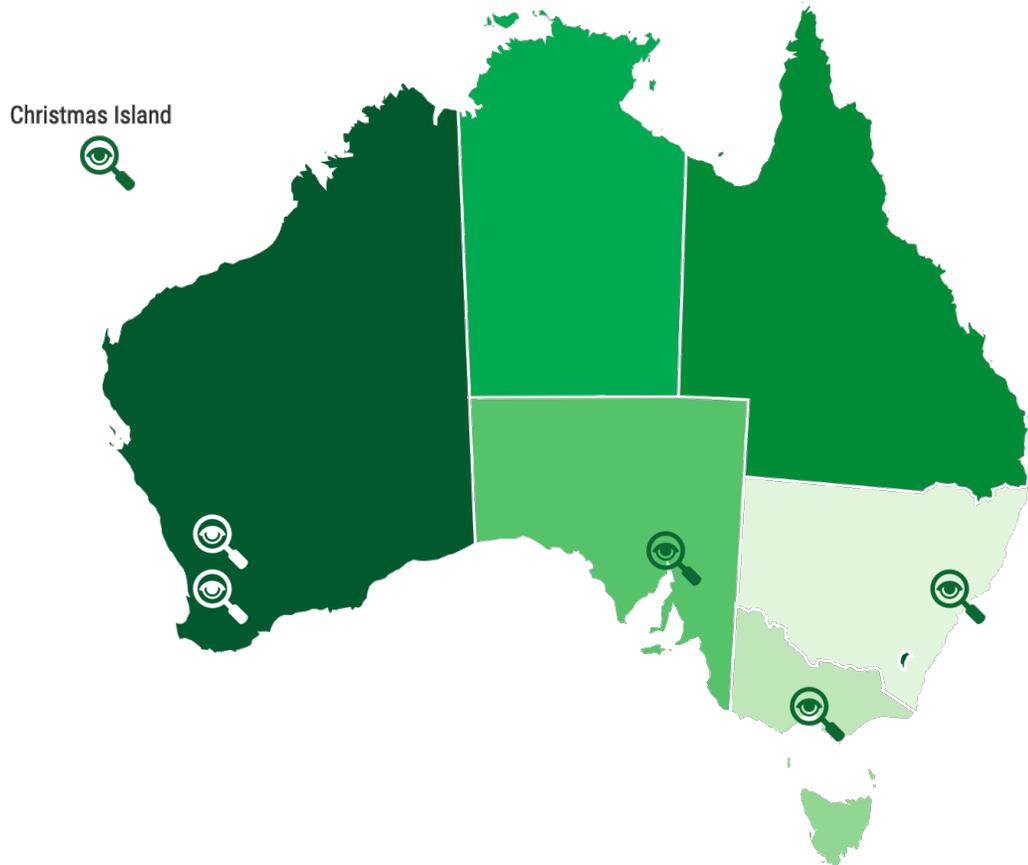


ACT POLICING HOLDING CELLS

WHERE DID WE GO DURING THE REPORTING PERIOD?

Between 1 July 2021 to 31 December 2021 several states and territories were subject to lockdowns and closed borders in response to COVID-19, which impacted our ability to conduct visits. Through remote monitoring, we were able to ensure our preventive mandate was carried out continuously during this period, and in 2022 we were able to complete most of our visiting schedule despite some delays.

Between 1 January 2022 and 31 June 2022, we visited 6 out of the 7 permanent immigration detention facilities, 2 hotel APODS, 1 AFP custodial facility and 1 ADF detention facility.



| Facility | Date of visit |
|---|----------------------------------|
| Defence Force Corrective Establishment (Holsworthy) | February 2022 |
| Melbourne Hotel APOD (Park Hotel) | Feb-March 2022 |
| Melbourne ITA, Broadmeadows Residential Precinct | March 2022 |
| Villawood IDC (NSW) | March 2022 |
| Sydney Hotel APOD (Meriton Suites Parramatta) | March 2022 |
| AFP Christmas Island Holding cell | April 2022 |
| North West Point IDC (Christmas Island) | April 2022 |
| Adelaide IDC | June 2022 |
| Yongah Hill IDC (WA) | June 2022 |
| Perth IDC | June 2022 |
| Brisbane ITA | <i>Postponed due to COVID-19</i> |

IMMIGRATION DETENTION FACILITIES

OVERVIEW OF RECOMMENDATIONS TO HOME AFFAIRS

| | | | |
|---|---|------------|---|
| COVID-19 MANAGEMENT IN IMMIGRATION DETENTION |  | 1. | We reiterate our previous recommendation that Home Affairs work with the Minister to reduce the number of people in detention. |
| |  | 2. | Home Affairs should work with the relevant Minister to consider alternative arrangements for individuals facing prolonged or indefinite detention. |
| |  | 3. | A summary of actions and advice received from relevant health authorities should be disseminated to all people held in detention after each Outbreak Management Team meeting (OMT). |
| |  | 4. | Home Affairs/ABF should ensure adequate support for staff across the Immigration Detention Network with ongoing access to Employee Assistance Programs including being responsive to spikes in absenteeism and/or attrition. |
| |  | 5. | Home Affairs/ABF should implement COVID-19 safe strategies to enable family visits irrespective of vaccination status of detainee and/or family members. |
| |  | 6. | Unvaccinated detainees should receive equivalent health care and the same level and timeliness of access to health professionals as vaccinated detainees. |
| DETENTION MANAGEMENT |  | 7. | We reiterate our previous recommendation that ABF decision makers consistently record reasons for their decision when approving the use of mechanical restraints, including when it is against the advice of IHMS or when IHMS advice is not available. |
| |  | 8. | Alternatives should be considered for detainees who refuse to attend a medical appointment due to being mechanically restrained. Alternatives may include additional escort personnel, onsite appointments, or telehealth consultations. |
| |  | 9. | We reiterate our previous recommendation that Home Affairs cease the use of hotels as alternative place of detention (APOD) for long-term detention (greater than 4 weeks). |
| |  | 10. | Contingency plans should be in place and alternative meals should be available if any food served is unfit for consumption. |
| |  | 11. | Home Affairs should ensure appropriate emergency management procedures are in place and should regularly test and review them to ensure they remain fit for purpose. |



12.

Home Affairs should ensure that all people in detention, including those in High Care Accommodation and alternative places of detention (APODs), have access to complaint and request forms and the ability to anonymously lodge complaints.



13.

Best practice examples of complaint management should be shared and implemented across the immigration detention network to improve consistency.



14.

The Government should consider reforms to allow the ABF to exercise its full range of powers conferred under the *Customs Act 1901* and the *Migration Act 1958* to detect and address criminal activity within immigration detention facilities.

MEDICAL AND WELLBEING



15.

Threshold costs and the approval framework for dental treatment should be reviewed, to ensure people in detention receive timely access to the dental treatment they require.



16.

Drug and alcohol rehabilitation services should be available consistently across for people in detention who need these services.



17

The Programs & Activities curriculum should be reviewed to ensure meaningful options are provided for all cohorts of people held in the immigration detention network.



18.

People should be able to receive certification for courses they complete while in immigration detention.

COVID MANAGEMENT IN IMMIGRATION DETENTION

The size of the detention population is the biggest COVID-19 risk factor

Immigration detention is considered a high-risk setting due to the large population living in close proximity to each other. The size of the detention population and the facilities' capacity and design generally means physical distancing measures cannot be fully realised, particularly in sleeping quarters.⁵

The design of the facilities typically means people in detention rely on shared amenities, including bathrooms and dining facilities. This directly impacts the ability of people in detention to practice social distancing and puts them at increased risk of transmission.⁶ Single occupancy accommodation options are limited, and detention facilities have advised us that they do not have sufficient capacity to reduce risks to vulnerable people in detention (those at higher risk of serious disease) by providing them with their own room.

We have consistently recommended that Home Affairs work with relevant ministers to reduce the number of people in detention.

For most of the reporting period, the number of people in detention remained high [Figure 1].



Figure 1: Detention population by month during the reporting period⁷

⁵ Physical distancing measures may include individuals maintaining a minimum distance of 1.5 metres from other people and density restrictions in line with jurisdictional guidance ([CDNA National Guidelines for Public Health Units](#)).

⁶ Chu DK, Akl EA, Duda S, Solo K, Yaacoub S, Schünemann HJ. Physical distancing, face masks, and eye protection to prevent person-to-person transmission of SARS-CoV-2 and COVID-19: a systematic review and meta-analysis. *Lancet*. 2020;395(10242):1973-87 as referred to in ([CDNA National Guidelines for Public Health Units](#)).

⁷ Source: Department of Home Affairs Immigrations statistics <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-july-2022.pdf>

We acknowledge there are a range of reasons inhibiting the removal of people from Australia, including COVID-19 restrictions. However, as outlined in our previous report, the challenges posed by COVID-19 are not insurmountable to reducing the number of people held in detention. For example:

- the UK reduced its immigration detention population by 39.5 per cent in 2020 by using immigration bail.⁸
- Canada reduced its population by 66.3 per cent by taking COVID-19 risks into account during individualised detention review hearings and using alternatives to detention such as ankle monitors.⁹

As seen in *Figure 2*, the number of people in detention was higher at certain times compared to the same month in 2020-21 even though international travel restrictions had eased.

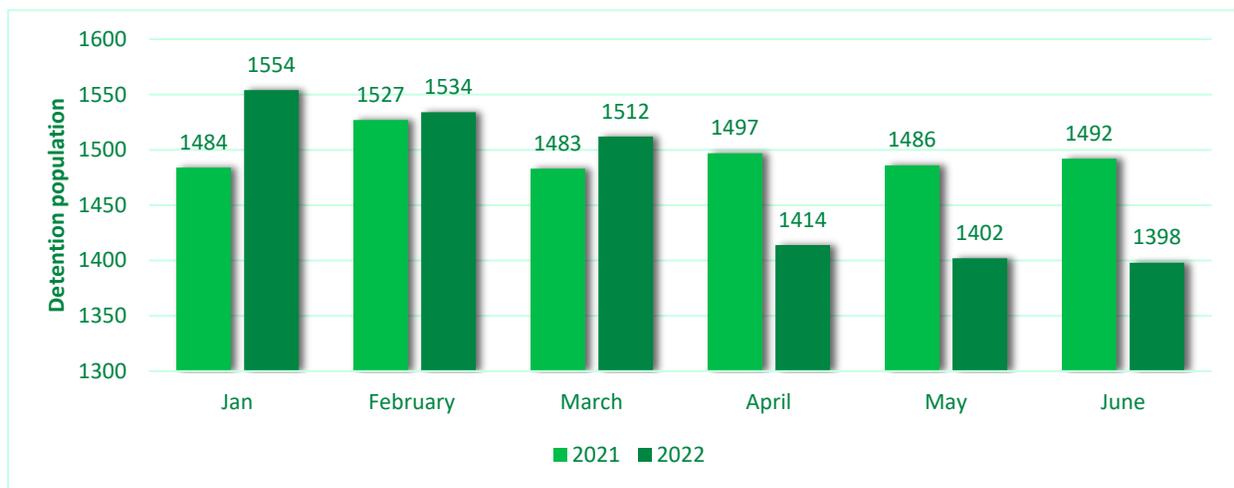


Figure 2: Comparison of detainee population by year and month during reporting period

We are encouraged to see a decrease in the detention population from March 2022 onwards and an average decrease throughout the year. We hope to see this trend continue.

RECOMMENDATION 1: We reiterate our previous recommendation that Home Affairs work with the Minister to reduce the number of people in detention.

RECOMMENDATION 2: Home Affairs should work with the relevant Minister to consider alternative arrangements for individuals facing prolonged or indefinite detention.

⁸ Immigration detention in the UK, The Migration observatory, 16 September 2021. [Immigration Detention in the UK - Migration Observatory - The Migration Observatory \(ox.ac.uk\)](https://www.migrationobservatory.ox.ac.uk/)

⁹ Global Detention Project, April 2021 Canada report, [Canada Immigration Detention Profile – Global Detention Project | Mapping immigration detention around the world](https://www.globaldetentionproject.org/canada-immigration-detention-profile/)

Managing COVID-19 outbreaks is challenging for both staff and detainees

Home Affairs' approach to COVID-19 management is informed by the Communicable Diseases Network Australia (CDNA) Guidelines for COVID-19 outbreaks in correctional and detention facilities (the Guidelines) which are published by the Commonwealth Department of Health.

We actively monitor COVID-19 prevention and control measures within immigration detention with a focus on adherence to these Guidelines.

During the reporting period, multiple facilities experienced COVID-19 outbreaks and the ABF was required to implement Outbreak Management Plans in accordance with the Guidelines.

We observed that outbreak management was generally consistent with the Guidelines.

We attended Outbreak Management Team meetings across different immigration facilities and observed a considered and thorough approach taken by stakeholders to the risks identified from positive COVID-19 cases.

Notwithstanding adherence to the Guidelines, COVID-19 outbreaks are challenging to both the people in detention and the staff looking after them. There is disruption to routines and people in detention often have to spend time in quarantine to prevent spread and to protect their health.

During Outbreak Management Team meetings, decisions are made not just by Home Affairs or facility staff, but rather, are informed by advice from medical officers of the Commonwealth, state or territory health departments.

While we observed sound decision-making processes in the meetings, it was unclear whether people in detention are aware of the decision-making process during COVID-19 outbreaks. We are of the view that communication could be improved by informing people in detention of the reasons for certain actions that are taken.

RECOMMENDATION 3: A summary of actions and advice received from relevant health authorities should be disseminated to all people held in detention after each Outbreak Management Team meeting (OMT).

Staff are under pressure

Across the IDN, many of the staff we spoke with were fatigued and under pressure. This had been exacerbated by increasing pressures and responsibilities since the COVID-19 pandemic commenced.

We observed that at most centres, there was high turnover of IHMS staff particularly, and Serco staff indicated that they were struggling to fill vacancies with appropriate personnel.

We acknowledge that there is difficulty in recruiting and maintaining detention centre staff due the nature of the work and remote locality, particularly for Yongah Hill and Christmas Island.

Persistent high work pressures can lead to burnout and fatigue which may impact staff performance and professionalism, may result in high turnover of staff or difficulties filling vacancies, and may introduce risks of ill-treatment. We encourage Home Affairs to monitor the impacts of ongoing pressures for staff, particularly ensuring that staff are not required to work extended periods without appropriate breaks

RECOMMENDATION 4: Home Affairs/ABF should ensure adequate support for staff across the Immigration Detention Network with ongoing access to Employee Assistance Programs including being responsive to spikes in absenteeism and/or attrition.

The COVID-19 pandemic affected the mental health of people in detention

Access to mental health services continued during COVID-19 lockdowns but did decrease for some detainees for factors outside of Home Affairs' control. Continued access to a detainee's specific provider relied on whether the provider had telehealth, as well as availability of telehealth. As restrictions have since eased, we are continuing to monitor access to mental health services.

Due to the COVID-19 pandemic, family, social and professional visits to people in detention were paused at various intervals throughout the last 2 years. The suspension of visits and bouts of quarantine, while consistent with CDNA Guidelines and relevant state health authorities, negatively affected mental health and increased feelings of loneliness and social isolation.

By June 2022, visits to detention centres had resumed but only for individuals and family members who were up to date with their COVID-19 vaccinations. To our knowledge, during the reporting period there were no protocols for visitors who may be medically unable to receive COVID-19 vaccinations. We acknowledge there is a balance between limiting exposure to COVID-19 and meeting the needs of people in detention. However, not allowing visits from unvaccinated people, particularly family members, gives rise to situations where individuals may not have seen their family or support system for a significant period of time.

RECOMMENDATION 5: Home Affairs/ABF should implement COVID-19 safe strategies to enable family visits irrespective of vaccination status of detainee and/or family members.

Christmas Island quarantine arrangements could be improved

Due to the isolation of the Indian Ocean Territories, authorities implemented additional quarantine measures for people in detention who were being transferred to Christmas Island – all people who were vaccinated required 7 days of quarantine, while those who were unvaccinated required 14 days. This potentially restricted access to welfare and medical services for individuals in quarantine.

We were advised that welfare staff did not engage with new arrivals until they were out of quarantine. New arrivals are vulnerable due to their (often sudden) change in location, and logistical challenges in maintaining

family contact. This could be mitigated by telephone appointments with welfare officers, as is the practice at other facilities.

We spoke with a detainee who advised that he was not permitted to see a doctor while in operational quarantine. He told us that although he received medications from an IHMS nurse every day, his requests to have a foot injury assessed by a doctor were refused. Once his quarantine period was completed, he said that he was seen by a doctor and found to be suffering from deep vein thrombosis (DVT). This claim is concerning for a number of reasons, including the potential severe health consequences of untreated DVT.

RECOMMENDATION 6: Unvaccinated detainees should receive equivalent health care and the same level and timeliness of access to health professionals as vaccinated detainees.

DETENTION MANAGEMENT

Use of mechanical restraints has not improved

We reiterate concerns raised in our previous reports regarding the use of mechanical restraints on people in detention taken offsite for routine and planned medical appointments and other non-urgent appointments.

We are concerned with what appears to be the circumvention of processes governing the use of mechanical restraints in non-urgent circumstances when IHMS has not been available to provide medical guidance on their use. Examples that we encountered include:

- At Villawood IDC, unplanned use of force appears to be used by default for many routine offsite transport and escort activities. Reports indicate that unplanned use of force was applied because IHMS was not available to provide an assessment.
- At Yongah Hill IDC, medical advice about the use of mechanical restraints on people in detention was not always sought. In these cases, the default position was to proceed with the use of mechanical restraints.
- At North West Point IDC, we noted one instance where use of force for a medical appointment was deemed 'unplanned' rather than planned, due to the lack of available IHMS staff to provide a medical risk assessment.

It is concerning that the established processes governing planned use of force were not followed. When such instances occur, individual risk assessments are not completed, and restraints may inadvertently be used on people in detention with histories of torture or trauma, which risks further traumatising. In our previous report, we detailed our concern that this practice could result in a reluctance from some people in detention to seek medical treatment and it may also be a barrier to receiving medical treatment.¹⁰

RECOMMENDATION 7: We reiterate our previous recommendation that ABF decision makers consistently record reasons for their decision when approving the use of mechanical restraints, including when it is against the advice of IHMS or when IHMS advice is not available.

RECOMMENDATION 8: Alternatives should be considered for detainees who refuse to attend a medical appointment due to being mechanically restrained. Alternatives may include additional escort personnel, onsite appointments, or telehealth consultations

¹⁰ See section 2.318 – 2.325 *Monitoring Immigration Detention – The Ombudsman’s oversight of immigration detention – July 2020-June 2021: Monitoring Immigration Detention Report - 1 July 2020 to 30 June 2021 (ombudsman.gov.au)*

SPECIAL REPORT: INAPPROPRIATE CROWD CONTROL ON CHRISTMAS ISLAND

During the first quarter of 2022, significant disturbances occurred at the North West Point IDC on Christmas Island.

We reviewed footage of these disturbances and identified that fire extinguishers and other firefighting equipment were used against people in detention during 2 of these disturbances in what appeared to be to be a pre-planned and systematic use of force.

The use of the firefighting equipment did not appear to be in response to any active fire but rather, appeared to be a technique to control the movement of people in detention and to clear people from particular areas. Firefighting devices were discharged directly on to people in detention and, in one disturbance, into enclosed areas where people had retreated, including people who had not been involved in the disturbances.

The incident reports related to these disturbances appeared incomplete. Incident reports would normally provide a comprehensive summary of the key events relating to an incident. However, the reports for both incidents failed to mention the use of firefighting equipment in this manner.



The tactical tools available to staff in responding to disturbances are identified in Home Affairs' procedural instructions and include body armour, shields, and restraint devices. We confirmed with Home Affairs that firefighting equipment is not listed for use during disturbances in the absence of a fire; and confirmed ABF and contracted service providers are not authorised to, and not trained to, use firefighting equipment for any purpose other than for fighting fires. Home Affairs also confirmed that no chemical agents are authorised for use by staff against people in immigration detention.

Our enquiries into these incidences continued across reporting periods.

In September 2022, we wrote to the Secretary of Home Affairs asking a series of questions relating to these incidents and encouraging an independent investigation into the management of these disturbances be undertaken.

In November 2022, we received a response advising that the use of firefighting equipment was unauthorised and had not been requested nor authorised by senior staff.

Home Affairs confirmed that the unauthorised use of this equipment was restricted to the 2 disturbances we identified, and action had been taken to prevent the future use of these unauthorised devices. Home Affairs also advised that an internal investigation of the management of these disturbances was commissioned.

We are continuing to monitor this issue and will review the outcome of Home Affairs' investigation.

Spit hood use in immigration detention

Spit hoods are restraint devices designed to prevent a person from spitting or biting other people. Their use by police and custodial officers has been the subject of considerable debate in the Australian community, and they have recently been banned in some Australian jurisdictions.

During the reporting period, there were 5 reported incidents of spit hood use within the immigration detention network. We are monitoring the use of spit hoods and undertaking an assessment of number of incidents where spit hoods have been used.

In November 2022, Australia appeared before the United Nations' Committee against Torture on the implementation of OPCAT. One of the concluding observations the Committee made is that Australia should:

“...take all necessary measures to end the use of spit hoods in all circumstances across all jurisdictions and to provide adequate and regular training for those involved in detention activities on legal safeguards and monitor compliance and penalize any failure on the part of officials to comply.”¹¹

Hotel APODs are not suitable for long-term detention

We have consistently raised concerns over the long-term use of hotel APODs in our publications, available on our website:

- Immigration Detention Report January – June 2019
- Immigration Detention Report July – December 2019
- Immigration Detention Report for January – June 2020
- Immigration Detention Report for July 2020 – 30 June 2021
- Joint Statement on the use of Hotel Alternative Places of Detention (published on 7 October 2022, after the 2021-22 reporting period).

Our visits to hotel APODs have shown time and again that hotel APODs are not suitable to accommodate people in immigration detention for prolonged periods of time. It is difficult for these facilities to meet basic human rights standards for housing people in immigration detention, including suitable access to fresh air, exercise and other programs and activities.

Our visits to APODs during this reporting period identified the same issues with extended stays (greater than 4 weeks). That is, hotel APODs are suitable for short term accommodation (like the Meriton Suites APOD in Sydney used for COVID-19 quarantine) but the design, infrastructure and operations of hotels are not suited for detention of people for longer than 4 weeks.

RECOMMENDATION 9: We reiterate our previous recommendation that Home Affairs cease the use of hotel APODs for long-term detention (greater than 4 weeks).

¹¹ Committee against Torture: Concluding Observations on the sixth periodic report of Australia. 25 November 2022



SPOTLIGHT ON

MELBOURNE APOD (PARK HOTEL)

SPOTLIGHT ON MELBOURNE APOD (PARK HOTEL)

During our visit to the Melbourne APOD at the Park Hotel, our observations reaffirmed our view that hotel APODs are not suitable for long term use. At our visit, we noted:

- People accommodated at Melbourne Park Hotel APOD had limited outdoor access and limited options for privacy, respite, and activities.
- The material conditions and atmospherics did not meet expectations.
- The significance of food contamination was not appreciated.
- Knowledge of correct emergency evacuation procedures was lacking.

While we are pleased to see that all the people in detention from the Melbourne APOD have been removed or released, this does not address our concerns regarding hotel APODs generally.

People accommodated at Melbourne Park Hotel APOD had limited outdoor access and limited options for privacy, respite, and activities

At the Melbourne Park Hotel APOD, the outdoor areas did not provide for recreation or exercise:

- Most of the space was taken up by a pool which was unable to be used because there was no lifeguard.
- The pool was surrounded by tables and chairs covered by a cabana and the enclosed space did not provide an external view.

There were twice daily trips to Melbourne ITA (located approximately 40 minutes away from the hotel) to facilitate access to recreation facilities. However, the transport vehicle did not have capacity for the 28 people accommodated at the Melbourne APOD at the time of our visit. We note that prior to our visit, up to 60 people had been accommodated at the Melbourne APOD. Based on the intended operational capacity at the Melbourne APOD, it is unlikely that all people in detention would have had a genuine opportunity for daily fresh air access and outdoor exercise.

Consistent with our previous recommendations regarding hotel APODs, we remained concerned about the suitability of the Melbourne Park Hotel APOD where adequate access to fresh air and recreation space involved a 40-minute bus trip each way.

Further, one person in detention brought to our attention that because of the small outdoor space compared to the concentration of people, they would be exposed to second-hand smoke exposure, and it was pervasive whenever they were outside.

We considered that the provision of outdoor access and fresh air encompasses clean air without exposure to second hand smoke.

On the accommodation floors, some former hotel guest rooms had been turned into recreation rooms. However, Serco officers often congregated in these rooms which discouraged the people being detained wanting to use the room for their own recreation.

We suggested separate break-out areas should be set up for staff, rather than shared spaces, similar to that observed at the Sydney Meriton Hotel APOD.

The material conditions and atmospheric did not meet expectations

The physical space of the hotel had a negative impact on well-being. We understand that staff also did not find the environment appealing as a place to work.

The confined nature of the Park Hotel limited movement. The hallway was dimly lit and narrow and 2 people could not walk side-by-side. There was no fresh air circulation within the accommodation. Movement was further limited by COVID-19, as access to a common eating area on the ground floor was closed.

During our visit, we were concerned about the lack of cleanliness. COVID-19 touch point cleaning was regularly occurring; however, we observed the facility was generally unclean and appeared not to be well-maintained. As an example, it appeared that the computer room and other floors had not been vacuumed, in addition we observed uncleaned faeces in the bathroom. There was a stale, musty odour which was exacerbated by the fact there are no open windows on Levels 1-3 (where people were detained).

There was a strong Serco presence – approximately 1 officer per 2 people detained which created a strong security atmospheric and feeling of scrutiny. We observed, and were advised that, there was limited ABF presence at the Melbourne APOD, and we were encouraged to see there was an intention to increase the presence of ABF staff. We were optimistic an increased ABF presence would provide greater oversight, improve services and conditions for people detained there, and likely reduce the exacerbated feelings of restriction.

We examined the Prayer Room at the Melbourne APOD which was found to be unclean, with dirty carpet and dusty furnishings. Moreover, the sunset calendar was out of date and there was no indication of where Mecca was situated in relation to the room. Whilst not a legal requirement, an appropriately set up and maintained Prayer Room would demonstrate cultural respect.

Contamination incident

In the lead up to the visit, we received advice from civil society groups and through social media monitoring, that one of the people detained at the Melbourne APOD had maggots in their dinner food. Serco staff confirmed the incident occurred as reported and advised it was referred to the City of Melbourne, the responsible municipal authority, for investigation.

During our discussions with the Serco staff who were working at the time of the incident, it was clear there was insufficient appreciation of the significance of the contaminated food, and how important it is for people in detention to have confidence in the quality and safety of food provided. Staff advised us at the time of the incident, sourcing an alternative was not considered by staff because the maggots were ‘just on the vegetables.’

Food was cooked onsite by hotel staff. We asked about contingency options in the event of an issue with the food or if hotel cooks were not available. We were advised that one option would be to have food prepared by the kitchen at Melbourne ITA and transported to the APOD or to purchase food from a local restaurant. It did not appear that these contingencies were considered at the time of the food contamination incident.

RECOMMENDATION 10: Contingency plans should be in place and alternative meals should be available if any food served is unfit for consumption.

Emergency management procedures – December 2021 fires

On 23 December 2021, deliberately lit fires at the Melbourne APOD caused extensive damage. Three staff members and one detained person were taken to hospital for smoke inhalation and observation.

The fires received media coverage and social media reports indicated that people detained in the APOD were not evacuated from the building during the fire. During our visit, staff confirmed people detained in the APOD remained in the building during the fire. They were evacuated to the ground floor of the hotel which was not the designated meeting point identified in the evacuation diagrams displayed throughout the hotel (Lincoln Park).

When we queried why this occurred, staff stated that an evacuation to Lincoln Park was not feasible due to the possibility of escape. We acknowledge this risk, but risk of escape does not outweigh the safety of staff and people in detention.

We found that lack of knowledge of emergency evacuation procedures at the APOD remained an issue. The staff we spoke to were unclear on what emergency evacuation procedures were in place at the APOD – even after the incident. To our knowledge, there had not been a fire drill at the Melbourne APOD at the time of our visit. It is a requirement under Australian Standard AS3745-2010 to run at least 1 full evacuation exercise for buildings/workplaces each year.

Home Affairs has a duty of care to people in detention. Emergency procedures that are appropriate to the specific needs of each detention facility should be in place and followed when an emergency occurs. Additionally, signage relating to emergency management procedures should be accurate. We are aware that the incident was referred to, and investigated by, Comcare as the Work Health Safety regulator.

RECOMMENDATION 11: Home Affairs should ensure appropriate emergency management procedures are in place and should regularly test and review them to ensure they remain fit for purpose.

Access to complaint forms

At some facilities we visited, complaint forms that had previously been freely available in common areas had been removed and people were required to request a complaint form from a staff member to be able to lodge a complaint. We consider this to be a likely deterrent to making complaints and there are obvious issues of anonymity with this process.

The ability for people held in detention to make complaints about any aspect of their detention, including doing so anonymously, is an essential protective factor in preventing abuse within detention facilities. This includes people accommodated in High Care Accommodation¹² and APODs.

RECOMMENDATION 12: Home Affairs should ensure that all people in detention, including those in High Care Accommodation and APODs, have access to complaint and request forms and the ability to anonymously lodge complaints.

Incident report writing

An area of increasing concern is that incident reports typically do not tell the detainee's side of an incident.

At Adelaide ITA, we were encouraged to see staff promoting to people in detention that they can raise a complaint about an incident. Their complaint is then attached to the incident record, and appropriately investigated showing good governance and record keeping.

RECOMMENDATION 13: Best practice examples of complaint management should be shared and implemented across the immigration detention network to improve consistency.

Drug infiltration

Drug infiltration is an ongoing problem throughout the immigration detention network and negatively impacts on the wellbeing of people in detention.

Both the drug trade and drug use pose significant risks to the health and safety of people in detention. Many people in detention are vulnerable due to being susceptible to intimidation, existing mental health concerns, and/or social isolation.

Further, people in detention become unsafe due to higher risks of violence and retribution associated with the drug trade and drug use. For example, IHMS at Villawood IDC advised us that they had observed an increase of drug-related physical assaults and founded fears of retribution.

¹² High Care Accommodation refers to an environment where a higher degree of supervision and engagement of a high-risk detainee can be maintained.

Both staff and people in detention recognise drug infiltration as a serious concern. During our visits, people in detention:

- raised concerns over their safety because of drug activity
- described incidences of drug related conflict
- had perceptions that nothing was being done about the drug trade
- noted that while they did not have previous involvement with drugs, they started using them in detention because of the boredom, lack of meaningful activity, and depression arising from their protracted detention
- at Villawood IDC described a culture of fear for people who are not involved in the drug trade.

We acknowledge immigration detention staff have limited powers to prevent ongoing access to and distribution of controlled substances within detention facilities. We understand regular matrix searches of rooms ceased on legal advice and now only intelligence-led room searches for weapons are permitted. This change considerably impacted security staff and ABF's ability to disrupt and detect drug trade and use.

Drug infiltration and substance misuse is a multi-faceted and complex issue that cannot simply be resolved through tighter security controls and restrictions on people in detention. Increased controls and restrictions on individual autonomy and freedoms can have a negative impact on wellbeing. In addressing the issues of drug infiltration and substance misuse, a more holistic approach is necessary which considers security controls, but also provides people in detention with support services to manage drug dependency including diversion programs.

IHMS at Villawood IDC advised that drug use has particularly affected the women's compound in terms of conflict, tension, and physical assaults. This was exacerbated by the fact that as there is only one female compound, and no one can be moved out.

RECOMMENDATION 14: The government should consider reforms to allow the Australian Border Force to exercise its full range of powers conferred under the *Customs Act 1901* and the *Migration Act 1958* to detect and address criminal activity within immigration detention facilities.

SPECIAL REPORT: UNDOCUMENTED USE OF PROPERTY ROOMS AS HOLDING CELLS

During the reporting period, we identified a practice at Villawood IDC that was of particular concern. VIDC has 2 holding cells in its property building which are used as 'cool down rooms' – a room to place a person in detention after they have been removed from an incident to give them time to calm down. Serco staff explained that during this time, investigations could be commenced, and information gathered, which would then determine whether a High Care Accommodation (HCA) placement was required. This information would also be passed to NSW Police if they became involved.

Placement in an HCA room requires a series of checks and balances to be followed. Responding officers must request and justify placement based on the situation at hand. Approval must be granted by the facility's ABF Detention Superintendent, who is further required to consult IHMS on the physical and mental health of the detainee in question. Placement may only be granted for up to 72 hours, but 24-hour extensions of this may be granted by the Commander of the National Immigration Detention (Operations) in writing.

The use of HCA contrasts significantly with how the holding cells are used within the property building. In the case of property holding rooms, there is:

- no policy governing their use
- no training on how they should be used
- no notification processes in place to advise ABF of their use
- no consultation with health or mental health staff
- no time limits governing their use
- limited record keeping of their use.

The rooms are essentially holding cells, consisting of a mattress on a concrete plinth with CCTV cameras installed. They lack the basic amenities required to hold an individual for any length of time, including a toilet, sink and running water. As such, they meet the definition of a dry cell, the use of which is prohibited in the Immigration Detention Network.

This practice poses considerable risks, both to the detainees who are placed there, and the officers involved in their placement. We have, and will continue to, raise concerns regarding the use of holding rooms in this manner.

Addendum: During a further visit to the site in November 2022, we were advised that a policy was being developed by Serco regarding the use of the holding cells in the property building. We will monitor the policy's implementation and ensure that it is appropriate.

MEDICAL AND WELLBEING

Barriers to dental treatment

A recurring theme throughout our visits is that IHMS staff are having trouble procuring dental care for people in detention who require significant treatment. The main barrier to treatment is that staff can only approve dental care for up to \$2,000. When treatment is quoted above this threshold, approval must be sought from the Director of Detention Health Services Operations Section, the Director of IHMS Contracts Management Section, and the Detention Health Services Branch, National Office.

Feedback from IHMS indicated that this process is time consuming and while the business case goes through the approval process, the affected person remains untreated and increasingly frustrated. Some IHMS staff advised that to secure timely treatment, they negotiate the price with dentists.

RECOMMENDATION 15: Threshold costs and the approval framework for dental treatment should be reviewed, to ensure people in detention receive timely access to the dental treatment they require.

Access to drug and alcohol rehabilitation programs

We have heard reports from people in detention and IHMS that that people enter immigration detention 'clean' but either resume or commence taking illicit substances when detained. People in detention have expressed to us an interest in undertaking drug and alcohol rehabilitation programs.

In the 2020-21 Monitoring Immigration Detention report, we recommended that Home Affairs:

“ensure IHMS engages specific drug and alcohol staff at North West Point IDC and facilitate drug and alcohol rehabilitation and redirection programs to detainees at North West Point IDC.” (Recommendation 8)

In the 2021-22 period, we continued to see that the level of access to drug and alcohol rehabilitation was inconsistent across facilities within the immigration detention network and did not account for the changing nature and needs of the cohorts of people detained at each facility.

RECOMMENDATION 16: Drug and alcohol rehabilitation services should be available consistently across the immigration detention network for people in detention who need these services.

Purposeful activity

The ability for people in detention to engage in age-appropriate purposeful activity is essential for physical and mental health and wellbeing.

While programs and activities are run in all centres, the quality of the programs varies widely between centres and is influenced by factors such as staffing levels and the availability of resources such as classrooms. Formal programs and activities are usually restricted to business hours Monday to Friday with no formal programs in the evenings, weekends, or public holidays. Even when they do not consider the activities on offer to be meaningful, people in detention facilities (other than APODs) must participate in at least some of these activities to accumulate 'points' to use at the facility canteen (shop).

A trial at Yongah Hill IDC of extended hours for programs and activities to allow for activities in the evenings and on weekends appeared to be successful. We encourage a review of the success of this program and consideration of the expansion of availability of programs and activities being introduced throughout the network.

People in detention reported to us their significant concerns, and the impact on their well-being, of:

- their inability to receive certification for completion of courses (where that certification would be available for similar courses outside the immigration detention network).
- the limitations on the kinds of courses that can be accessed in immigration detention, in part because people held in immigration detention are not eligible to receive certification.

This is often a point of contention among people in detention who are interested in developing their skills. This is of particular concern noting the average length of time in detention as of June 2022 was 742 days.

There are other consequences from this policy. For example, to participate in the cooking program offered at Yongah Hill, people in detention need to have completed a food handling course. People who did not have this certificate prior to entering detention are not able to attain one under the current policy.

Being able to obtain training and qualifications whilst in detention would assist people to gain meaningful employment both on release and/or on removal to their own or a third country.

Currently, many people have entered immigration detention from correctional facilities. People in detention continue to advise they are unhappy that they lose access to programs they used to have in correctional facilities or in the community, such as anger management programs and other programs to learn skills that will be useful to them upon release.

RECOMMENDATION 17: The Programs & Activities curriculum should be reviewed to ensure meaningful options are provided for all cohorts of people held in the immigration detention network.

RECOMMENDATION 18: People should be able to receive certification for courses they complete while in immigration detention.

Programs and activities have improved on Christmas Island

Since our visits to Christmas Island in 2021, there has been a considerable increase in the provision of Programs & Activities for people in detention. This, in addition to the provision of good quality, reliable Wi-Fi, appeared to have a positive and settling impact on people detained there.

At the time of our visit in April 2022, most people in detention could access up to 6 out-of-compound hours on weekdays (with 2-hour blocks allocated to the Greenheart outdoor space, gym, and education per day) – a significant improvement since our last visit.

A good range of Programs & Activities were available. Vocational activities (woodwork, leather work, and cooking) were constructive and well-attended. Celebrations for key cultural and religious festivals were led by people in detention, and built on several programs and activity classes, including cooking and arts/crafts. We note that Serco was proactively trying to increase participation through conducting in-compound activities.

Additional inter-compound sports were available on weekends which could extend out-of-compound hours for people in detention to 8 hours per day and permit inter-compound mixing. Inter-compound sport comprised of soccer games; however, some people in detention told us they would prefer touch rugby. All compounds could also access the gym on weekends and public holidays.

We were advised that further work is being done to increase activities for people in detention, including in-compound and further inter-compound activities. It was positive to hear that inter-compound sports between White 2 and Gold 2 were about to commence.

It was evident that considerable work was done to achieve these improvements. Some people in detention felt the activities on offer were not age-appropriate or practical. We acknowledge that this was an ongoing area of focus for centre management.

Deaths in detention

There were 4 deaths in the immigration detention network within the reporting period:

- death of a male in a Tier 4 nursing home placement in Victoria in March 2022
- alleged suicide of a male at Villawood IDC in March 2022
- alleged suicide of female at Villawood IDC in June 2022
- alleged homicide at Yongah Hill IDC in June 2022.

Our oversight following a death in detention is to ensure Home Affairs has fulfilled its notification requirements, which Home Affairs did on each occasion, and to ensure that appropriate support is provided for staff and people in detention.

Following the alleged homicide at Yongah Hill, we noted that mental health services and counselling were made available to both staff and people in detention within 24 hours. We commend Yongah Hill IDC staff for taking swift action.

Comcare is the national authority who will investigate these deaths. We will look closely at the outcome of Comcare's investigations.



SPOTLIGHT ON

LENGTH OF TIME IN IMMIGRATION DETENTION

SPOTLIGHT ON LENGTH OF TIME IN IMMIGRATION DETENTION

Reporting on long-term detention

Under s 486N of the *Migration Act 1958*, Home Affairs is required to provide the Commonwealth Ombudsman with a report relating to the circumstances of a person's detention. Home Affairs must provide the report within 21 days of a person having been in detention for 2 years, and then every 6 months thereafter, for as long as the person remains in detention.

Under s 486O of the Act, the Commonwealth Ombudsman is required, as soon as practicable, to prepare an assessment on the appropriateness of the arrangements for people who have been in immigration detention for 2 years, and then every 6 months, for as long as they remain in detention.

Between July 2021 and June 2022, we provided 735 assessments to the Minister. These assessments related to 1,079 people in held immigration detention.

The Commonwealth Ombudsman remains concerned about delays in the case progression of people in long-term detention, including delays in administrative processes. During this reporting period, the Commonwealth Ombudsman made 23 recommendations to expedite a process Home Affairs or the Minister had already commenced. This included assessments against the Guidelines for ministerial intervention and other aspects of a person's case progression, such as the consideration of a visa or community placement, an International Treaties Obligations Assessment, or the lifting of a bar to allow a person to apply for a visa.

During the reporting period, the Commonwealth Ombudsman made 12 recommendations for a person to be assessed against the Ministerial Guidelines for consideration of a bridging visa or community placement under ss 195A and 197AB of the Migration Act. Whilst it is usual for the Minister to note, rather than accept or reject the Ombudsman's recommendations of this type, in almost all cases the individual was referred for assessment against the guidelines.

The Commonwealth Ombudsman made 7 recommendations about a person's placement, either to move them within the detention network to be closer to support networks or change their current address in the community. In most instances, the Minister's response acknowledged the Ombudsman's recommendation but advised that, for operational reasons, the move could not be facilitated. We acknowledge that, for much of this reporting period, COVID-19 impacted moves between locations.

The Commonwealth Ombudsman made 11 recommendations for the Minister to grant a visa or community placement in circumstances the Office was of the view held detention was inappropriate for the person. In most instances, the Minister's response acknowledged the Ombudsman's recommendation but advised they were not prepared to consider granting the person a visa. In other instances, the Minister advised the person was found not to meet the Minister's s 195A or 197AB guidelines and would not be referred to them for consideration.

All tabled assessments and ministerial responses can be found [here](#).

Length of time in detention

There remains a high number of people held in immigration detention. This includes individuals facing apparent indefinite detention, such as those who engage Australia's protection obligations and cannot be involuntarily removed.

The average length of time an individual spends in detention has increased by approximately 191 days in the last 2 years. In June 2021, the average length of time was 673 days compared to 742 days in June 2022 (Figure 3).



Figure 3: Average length of time in detention by year

Caseload per month in the reporting period

It is difficult to reflect the number of people in long-term detention for each month within each year because of how often people in detention move in and out of detention for various reasons. The statutory reporting caseload indicates many people in detention have spent a considerable amount of time in detention, some over a decade.

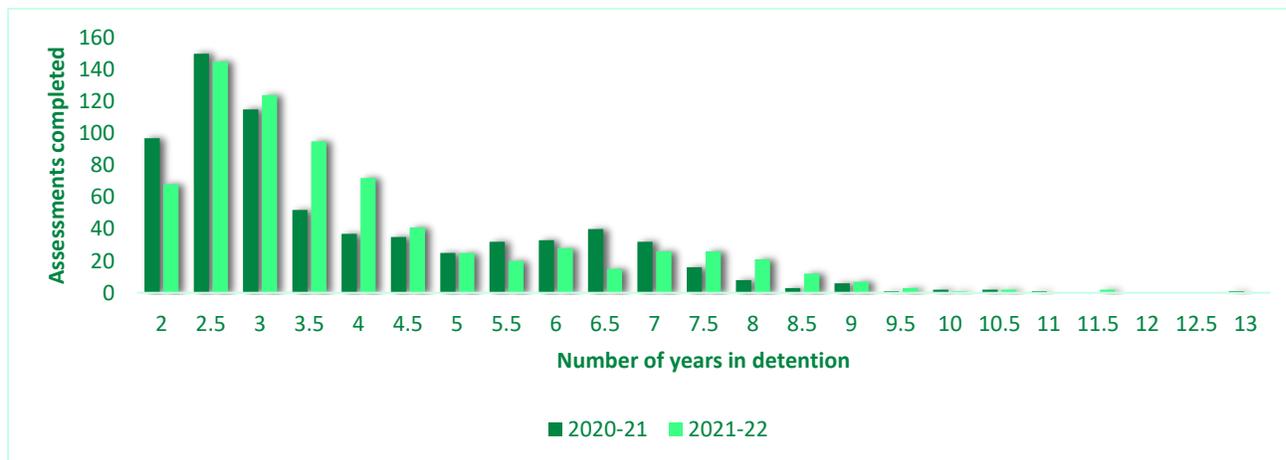


Figure 4: Total length of time in detention



Figure 5: Long-term detention caseload 2021-2022

Our Office is in a unique position where we can observe patterns in our statutory reporting caseload and as the NPM we can observe how long-term detention can increase the likelihood of systemic harm.

It is clear that detention facilities and certain policies were not established for long term use. This is evidenced through:

- lack of capacity within the immigration detention network
- the small size Adelaide ITA, Brisbane ITA, and Melbourne ITA – which were originally built as facilities for transitory persons, not long-term detention
- lack of access to purposeful activity like those available in correction facilities.

On numerous occasions people in detention expressed to us that they would rather be in prison because at least they would know their date of release.

The time an individual spends in immigration detention depends on a range of factors, including the complexity of their case, the legal processes they pursue and whether they voluntarily choose to leave Australia.

We welcome the advice from Home Affairs that alternatives to held detention are being explored and note that Home Affairs will keep us informed of any progress.

AUSTRALIAN FEDERAL POLICE FACILITIES

We visited the AFP holding cell on Christmas Island for the first time on 29 April 2022. There are 2 cells – one of which was operational and authorised to hold an individual for a maximum of 4 days. After this time, a warrant from the Christmas Island magistrate (who is based in Perth) would be required to keep the person detained. We were advised that the cells were not used often and typically hold people for between 20 minutes and one hour as a last resort for drunk and disorderly conduct.

Overall, the holding cells are low risk and there are appropriate record-keeping processes, notification requirements, and services (hospital services on call 24/7, courtyard access, halal meals) in place for short term detention. However, the ducted air conditioning does not work well in the cells which, given the climate on Christmas Island, would make it uncomfortable for individuals if they had to stay there for 4 days. We will continue to monitor the material conditions of the holding cells at our next visit.

We will continue to work with the AFP to conduct visits to AFP facilities in 2022-23 and will discuss this in the NPM report for 2022-23.



AUSTRALIAN DEFENCE FORCE FACILITIES

We did not conduct any formal visits to military detention facilities managed by the ADF during this reporting period.

In the lead up to Australia's deadline for implementation of OPCAT we focused on:

- relationship building
- familiarisation with military detention
- familiarisation with the ADF's inspectorate function.

This has given us a broad overview of ADF's facilities and procedures prior to the implementation of OPCAT.

We attended and observed a NSW Corrective Services technical inspection of the Defence Force Corrective Establishment in February 2022. This valuable opportunity was brought to our attention by ADF officials.

Further familiarisation visits where we accompanied ADF staff during their routine inspections of detention facilities were held in the 2022-23 financial year and will be discussed in the NPM report for 2022-23.



ADVISORY FUNCTION

INPUT TO STATE AND TERRITORY GOVERNMENTS ON OPCAT LEGISLATION

As NPM Coordinator, the Office also used the opportunity to submit proposals and observations on draft legislation consistent with Article 19(c) of OPCAT. We consider legislation giving effect to OPCAT itself to be an important part of Australia's implementation of OPCAT.

In our capacity as NPM Coordinator, in this reporting period we provided publicly available comment on the following pieces of legislation relating to OPCAT implementation:

- Terrorism (Extraordinary Temporary Powers) Amendment Bill 2022 (ACT)¹³
- OPCAT Implementation Bill 2021 (Tas)¹⁴
- Custodial Inspector Amendment (OPCAT) Bill 2020 (Tas)¹⁵.

EDUCATION FUNCTION

The Office is still developing our Education Function as an NPM, but delivered a number of keynote presentations at conferences including the Future Justice and Corrections Summit, the Disability Summit, and Annual Prisons Conferences.

In July 2021 the Office participated as a panel member on the Australian Human Rights Commission's webinar to discuss their report on Management of COVID-19 risks in immigration detention. The Commission's report follows on from the Office's statement on the management of COVID-19 risks in immigration detention facilities published in July 2020. A link to the webinar recording is [here](#)

As NPM Coordinator, we are engaging with our state and territory counterparts to identify education and training needs and will continue to expand this function into the future.

¹³ [Terrorism \(Extraordinary Temporary Powers\) Amendment Bill 2022 \(ACT\)](#); the NPM Coordinator's comments can be found on the Office's OPCAT webpage, [here](#).

¹⁴ [OPCAT Implementation Bill 2021 \(Tas\)](#); my Office's comments can be found on my OPCAT webpage, [here](#).

¹⁵ [Custodial Inspector Amendment \(OPCAT\) Bill 2020 \(Tas\)](#); my Office's comments can be found on my OPCAT webpage, [here](#).

COOPERATION FUNCTION

NPM COORDINATOR

The function of NPM Coordinator is conferred on the Commonwealth Ombudsman by regulation 17 of the *Ombudsman Regulations 2017*.¹⁶

The regulation also lists the following functions of the NPM Coordinator:

- in relation to persons in detention:
 - consult with governments and stakeholders on the development of standards and principles
 - collect information and undertake research, and
 - propose options and develop resources to facilitate improvements in oversight arrangements
- communicate on behalf of the NPM Network with the SPT
- convene meetings and facilitate collaboration between NPMs, and state/territory and foreign governments
- give information to the SPT, NPMs, and state/territory and foreign governments
- report to the public and to federal, state and territory Ministers on OPCAT implementation and NPM activities
- make recommendations to the federal government in relation to OPCAT implementation.

The Ombudsman Regulations are clear that in performing the NPM Coordinator function, the Commonwealth Ombudsman must not compel or direct another NPM which is part of the NPM Network (regulation 17(4)).

NPM NETWORK

While not all Australian jurisdictions have nominated NPMs, the nomination of 13 NPMs within 6 of the 9 jurisdictions means Australia's NPM Network is now emerging.

In March 2022, the NPM Coordinator convened the first meeting of the NPM Network to bring together the nominated NPMs as a group.

As a Network, we started discussing:

- information-sharing
- shared challenges
- opportunities for collaboration, and
- the practicalities of implementing the NPM function in a multi body system, and how best to operate as a Network.

On behalf of the Network, the Office also publishes public communiqués after NPM Network meetings. NPM Network meeting communiqués can be found on the Office's OPCAT webpage, [here](#) and [here](#).

¹⁶ *Ombudsman Regulations 2017 (Cth)*, reg 17.

NPMs appointed or nominated as of December 2022

| Jurisdiction | NPM | Date named |
|------------------------------------|---|-------------------|
| Commonwealth | Office of the Commonwealth Ombudsman | July 2018 |
| Western Australia (WA) | WA Office of the Inspector of Custodial Services (<i>for justice-related facilities, including police lock-ups</i>) | July 2019 |
| | WA Ombudsman (<i>for mental health and other secure facilities</i>) | |
| Northern Territory (NT) | NT Ombudsman (<i>interim NPM; expected to be appointed for all places in the NT not otherwise visited by another NPM</i>) | April 2021 |
| | NT Children's Commissioner (<i>proposed only; expected to be appointed for places where persons under 18 are detained</i>) | Not yet appointed |
| | Principal Community Visitor (<i>proposed only; expected to be appointed for disability care facilities and mental health treatment facilities</i>) | |
| South Australia | Training Centre Visitor (<i>for training centres / youth detention facilities</i>) | January 2022 |
| | Principal Community Visitor (<i>for closed mental health facilities and closed forensic disability facilities where people are detained for 24 hours or more</i>) | |
| | Official visitors (<i>for adult prisons, and police lockups or police cells where people are detained for 24 hours or more</i>) | |
| Australian Capital Territory (ACT) | ACT Inspector of Correctional Services | January 2022 |
| | ACT Human Rights Commission | |
| | ACT Ombudsman | |
| Tasmania | Mr Richard Connock (<i>concurrently Tasmanian Ombudsman and Custodial Inspector</i>) | February 2022 |

OPCAT ADVISORY GROUP

In early 2020, the Commonwealth Ombudsman established an OPCAT Advisory Group (OAG), with representatives from civil society and academia. Its purpose is to provide advice to the Office on OPCAT, and on the roles the Office plays in fulfilment of the OPCAT mandate.

As at 30 June 2022 (the end of the reporting period), the membership of the OAG was :

- Mr Paris Aristotle AO, Chief Executive Officer, Foundation House (Victoria)
- Emeritus Professor Neil Morgan AM, Former Inspector of Custodial Services (WA)
- Professor Bronwyn Naylor OAM, RMIT University, co-founder of the Australian OPCAT Network.

Between the establishment of the OAG up to 30 June 2022, 7 OAG meetings were held:

- 3 March, 21 July and 18 November 2020
- 21 April, 28 July and 30 November 2021
- 20 May 2022.

Since the fourth meeting in April 2021, communiqués have been published after OAG meetings. These communiqués and further information about the OAG are available [here](#).

ENGAGEMENT WITH INTERNATIONAL BODIES

Committee against Torture and Subcommittee on Prevention of Torture

The Office engages with the Subcommittee on Prevention of Torture (SPT) to inform our work as NPM. The SPT's expertise, advice and support is invaluable to us, as it is to all NPMs.

In October 2022 – after this reporting period – the SPT conducted its first visit to Australia. In November 2022, the Commonwealth Ombudsman attended a private meeting with the Committee Against Torture as part of that Committee's consideration of Australia's sixth periodic report under the Convention against Torture. The SPT visit and the Office's engagement with the Committee will be discussed in our report for 2022-23.

Association for the Prevention of Torture

The Office has a strong relationship with the Association for the Prevention of Torture (APT), the leading international non-government organisation on torture prevention. This includes seeking guidance from the APT ahead of the SPT's visit to Australia and my appearance before the Committee. While in Geneva, the Commonwealth Ombudsman also met with the APT and had a constructive dialogue about how the APT could support Australia's NPM.

We are hopeful that continued engagement with the APT will provide further opportunities for our Office and Australia's NPM to learn from the APT's considerable expertise in OPCAT implementation, including through information sharing and training sessions.

International NPMs

The Office has routinely sought to learn from the experiences of NPMs in other countries, particularly those who are further advanced than Australia in their OPCAT implementation journey. We have engaged with Her Majesty's Inspectorate of Prisons (HMIP) and HMIP Scotland, the New Zealand Human Rights Commission, and the South African Human Rights Commission. This engagement provided many benefits, including guidance on implementing a multi-body NPM model, how to effectively carry out a coordination function within such a multi-body NPM model, opportunities, and potential challenges to OPCAT implementation, and lessons learned from previous SPT visits and appearances before the Committee.

ENGAGEMENT WITH DOMESTIC BODIES

Australian Human Rights Commission

The Office engages closely with the Australian Human Rights Commission (AHRC), Australia's national human rights institution, on OPCAT related matters. The AHRC is comprised of several Commissioners. Former Human Rights Commissioner Mr Edward Santow was a founding member of the OAG. AHRC Commissioners provide valuable perspectives on how the Ombudsman's roles as the Commonwealth NPM and NPM Coordinator can be carried out.

Australian Red Cross

The Australian Red Cross has substantial experience monitoring immigration detention facilities and assessing the conditions and treatment of individuals who are detained there. The Commonwealth NPM also meets regularly with the Red Cross and other non-governmental organisations to inform the future visits to immigration detention facilities to strengthen the Commonwealth NPM's oversight and target my Office's focus during visits.

Civil Society Organisations

The Office engages regularly with civil society organisations, and works to leverage their knowledge and experience, particularly in regard to immigration detention.

Members of the Commonwealth NPM regularly attend the Detention Working Group which is attended by a diverse collection of civil society organisations including Amnesty International, Refugee Advice and Casework Service, Settlement Services International, Supporting Asylum Seekers Sydney, Life Without Barriers, and other interested parties.

FINANCIAL INFORMATION

In the 2018-19 Federal Budget,¹⁷ the government provided the Commonwealth Ombudsman with approximately \$300,000 per year to undertake its new functions under OPCAT as both the Commonwealth NPM¹⁸ and NPM Coordinator. This added to some pre-existing ongoing funding for inspection of immigration detention facilities before appointment as Commonwealth NPM.

The resourcing needs of my Office to implement its OPCAT mandates currently significantly exceed this funding. The Office has re-directed resources internally to supplement this funding on an interim basis, but this is not sustainable on an ongoing basis

Consistent with the requirements of Article 18 of OPCAT, the NPM is both functionally and financially independent of the broader Ombudsman Office.

¹⁷ Commonwealth Government, *'Budget 2018-19: Budget Measures Budget Paper No. 2 2018-19'*, p. 76.

¹⁸ Additional to resources provided to my Office to inspect immigration detention facilities before appointment as Commonwealth NPM.

APPENDIX A: AGENCY RESPONSES TO THE REPORT AND RECOMMENDATIONS

DEPARTMENT OF HOME AFFAIRS



Australian Government
Department of Home Affairs

OFFICIAL

Mr Iain Anderson
Commonwealth Ombudsman
GPO Box 442
Canberra ACT 2601

Dear Mr Anderson,

Thank you for providing the Department of Home Affairs (the Department) with a draft copy of your report *Commonwealth National Preventative Mechanism Annual Report – 2021-22* (the NPM Report).

The Department values the Commonwealth Ombudsman's oversight of immigration detention as part of its National Preventative Mechanism under the Optional Protocol of the Convention against Torture.

The Department agrees with the majority of the recommendations made in the report, has noted recommendations 1, 9 and 18, and does not agree with recommendations 3 and 5.

The Department's response to the recommendations and key themes of the NPM Report is provided at **Appendix A**. Additionally, on 19 December 2022, the Department provided its response to an *Update on Implementation of Recommendations* from previous immigration detention reports at **Appendix B**.

Should you wish to discuss the Department's response, please contact Ms Robyn Miller, Assistant Secretary, Audit and Assurance on [REDACTED]

Yours sincerely

A handwritten signature in blue ink, appearing to read 'M. Seccull', written over a light blue circular stamp.

Megan Seccull
Acting First Assistant Secretary
Integrity, Security and Assurance
Department of Home Affairs
13 January 2023

Appendix A – Department of Home Affairs' response

The Department of Home Affairs (the Department) welcomes the Commonwealth Ombudsman's Report *Commonwealth National Preventative Mechanism Annual Report – 2021-* (the NPM Report).

The Department values the Commonwealth Ombudsman's oversight of immigration detention as part of its National Preventative Mechanism under the Optional Protocol to the Convention against Torture. The Department agrees with majority of the recommendations made in the report, notes recommendations 1, 9 and 18, and does not agree with recommendations 3 and 5 as the Department has provided responses indicating how those recommendations are already addressed through existing policies or procedures.

The Department notes the Ombudsman's concerns about recurring themes in the recommendations from previous reports, namely: reducing the number of people in immigration detention; the use of mechanical restraints on people in detention when taken offsite for routine and planned medical appointments and other non-urgent appointments; and, the use of Alternative Places of Detention (APODs). The Department has addressed these themes in the below responses.

COVID Management in Immigration Detention (Recommendations 1- 6: Safety, Respect and Well-Being & Social Care)

The Department acknowledges the Commonwealth Ombudsman's concerns related to the COVID Management in Immigration Detention, specifically in regard to the detainee density across the Immigration Detention Network (IDN). The Department welcomes the Commonwealth Ombudsman's comment that despite the challenges posed by COVID – 19 recent outbreaks, the Department was generally consistent with the Communicable Diseases Network Australia (CDNA) National guidelines. The Department notes recommendation one, agrees with recommendation two, four and six and does not agree with recommendations three and five.

The Department notes recommendation one and agrees with recommendation two. The Department has previously advised the Commonwealth Ombudsman of its regular reviews, escalations and referral points to ensure that people are detained in the most appropriate placement to manage their health and welfare, and to manage the resolution of their immigration status. The Department also maintains that review mechanisms regularly consider the necessity of detention and where appropriate, the identification of alternate means of detention or the grant of a visa, including through Ministerial Intervention.

Where a detainee's status cannot be resolved by a Departmental delegate, for example, where a legislative bar prevents a person from making a valid visa application, Ministerial intervention may be required to enable a non-citizen to reside in the community while their status is resolved.

The *Migration Act 1958* (the Migration Act) provides the Home Affairs' portfolio Ministers with personal intervention powers, allowing them to either grant a visa, or make a residence determination in respect of a person in immigration detention, if they think it is in the public interest to do so. These public interest powers are non-compellable, that is, the Ministers are not required to exercise their power. What is in the public interest is a matter for the Ministers to decide. The Ministerial intervention guidelines establish which cases should or should not be referred for Ministerial consideration.

The Department continues to refer persons in immigration detention for Ministerial intervention consideration under section 195A and section 197AB of the Migration Act. The Department also notes that it remains open to individuals who have exhausted all avenues to remain in Australia, to end their detention by departing Australia voluntarily.

Regarding alternative arrangements for individuals facing prolonged or indefinite detention, the Department completed the Phase 1 Alternatives to Held Detention (ATHD) report in early 2022. This was in response to two of the recommendations made by the Independent Detention Case Review (IDCR). Research and analysis was conducted on international detention models, the use of parole and bail in domestic jurisdictions, dynamic risk assessment models, and how electronic monitoring could be utilised in an immigration context.

The ATHD program and related work is being refined to reflect the Government's priorities and includes immediate through longer term measures:

- Immediate and ongoing: Continued referral of cases for possible Ministerial intervention under section 195A or section 197AB of the Migration Act.
- Short-Medium term: Consideration of the establishment of an independent assessment capability to advise on risk mitigation for individuals being considered for a community placement.
- Longer-term: Undertake further analysis and engagement with like-minded countries who utilise ATHD models. Continue to develop options for an ATHD model with consideration of placement in a community setting using risk-based assessments from relevant criminal justice bodies, with tailored conditions, support and monitoring.

The Department does not agree with recommendation three and notes that due to the dynamic nature of an active COVID-19 outbreak, it is not practicable to provide a summary of actions and advice received to detainees after each Outbreak Management Team (OMT) meeting, as the actions recommended and implemented may evolve multiple times throughout the day during the period of the outbreak.

The Department notes that all COVID-19 outbreaks across the IDN are managed by relevant OMT. The OMT consists of Australian Border Force (ABF), Facilities and Detainee Service Provider (FDSP), Detention Health Services Provider (DHSP), Department of Home Affairs, State and Territory Public Health Unit and other co-opted members. All decisions are consultative, based on medical advice, Public Health Orders along with consideration of the CDNA Guidelines for COVID-19 outbreaks in correctional and detention facilities. During a COVID-19 outbreak, OMT meetings are conducted regularly, with progressive actions recommended and implemented after each meeting.

The ABF, DHSP and FDSP staff within the immigration detention facilities (IDFs) advise detainees of any changes in conditions or relevant health updates in response to the outbreak. This may include, but is not limited to, provision of surveillance testing, changes in programs and activities offered, provision of Personal Protective Equipment (face masks) and COVID-19 information. All medically vulnerable detainees are engaged by DHSP or FDSP staff and offered an alternative placement during outbreaks.

The Department agrees with recommendation four and notes that staff within the IDN both onshore and offshore have access to the Employee Assistance Program (EAP) and complementary services. These services include:

1. Benestar EAP service – access to individual confidential counselling, BeneHub App to access additional resources and My Coach for People Leaders. There is manager specific coaching and support available, through My Coach for People Leaders (provided by Benestar), which covers all aspects of people management issues to seek safe and proactive resolution of workplace issues and to support staff members. EAP support can be accessed via telephone, LiveChat, and SMS. Support is available 24/7.
2. EAP Onsite Visitation – National Onsite EAP Visitation Schedule is in place for Immigration Detention and Status Resolution functions providing access to an onsite clinician for proactive counselling support.
3. Critical Incident Intervention via Benestar – Benestar provides support to employees following a critical incident, this support service is available 24/7.
4. Staff Support Resources via MyHR – includes a list of resources for immediate assistance such as responding to suicide and self-harm risk.
5. Wellbeing Checks – a health monitoring service to prepare staff to meet the unique occupational challenges, including dealing with difficult or challenging material or clients.

6. Training, Short Seminars, and On-site Services available from EAP (Benestar) – the Benestar Training and Short Course Seminars can be accessed online or arranged for face to face delivery.
7. NewAccess Workplaces – is a proven effective, Cognitive Behavioural Therapy program, providing mental health support service for employees who are feeling overwhelmed with work or life pressures.
8. Early Intervention and Case Management Services – aims to help staff as soon as possible after they experience symptoms or an injury or illness has occurred. Case Management services provide additional support to supervisors when a health condition is impacting staff attendance, return to work, performance and behaviour.

The Department also notes that staff with managerial and leadership responsibilities are required to:

- Monitor their individual team members' attendance, engagement and wellbeing and to proactively manage these including promoting staff support services and referring staff for appropriate support as needed.
- Monitor their team's workloads, resourcing, performance, operational capacity, staffing levels, culture and behaviours to identify and appropriately and proactively respond to any concerns (including high staff absenteeism and presenteeism or attrition rates).

Additionally, staff with managerial and leadership skills have a number of departmental tools and resources available to them to assist with this, including access to the Manager's Dashboard in easySAP.

The Department does not agree with recommendation five and notes that in line with advice from the Commonwealth, State and Territory Health jurisdictions, visits have resumed subject to minimal controls required to manage clinical risks to immigration detainees and the general community. The requirement for family and other visitors to be up to date with their COVID-19 vaccinations is based on advice from the Departmental Clinical Advisory Team, taking into consideration under the Communicable Diseases Network Australia (CDNA) Guidelines, COVID-19 control measures should recognise the specific needs and vulnerabilities of detainees in detention.

Any facility-level decisions to modify these arrangements for family visits are managed on a case-by-case basis based on the specific circumstances of the detainee and visitors.

The Department agrees with recommendation six and notes that the Department and ABF work closely with its service providers to manage the health and welfare of all detainees placed in immigration detention. All detainees in immigration detention have access to health care services broadly commensurate with health care available to the Australian community, regardless of vaccination status.

All operational quarantine arrangements are based on medical advice, and take into consideration State and Territory Public Health Orders and the CDNA Guidelines for COVID-19 outbreaks in correctional and detention facilities. Detainees in operational quarantine have access to both mental health and primary health care services and they undergo regular welfare checks. Detainees are able to submit a medical request form (MRF) to the FDSP if they wish to seek medical attention.

The DHSP provides a model of care commensurate with primary health care services in the Australian community. DHSP staff adhere to the standards of practice set by the Royal Australian College of General Practitioners Standards for Health Services in Australian Immigration Detention Centres. DHSP clinicians evaluate a patient's health issues and the effectiveness of treatment at the time of presentation based on signs and symptoms and diagnostic results. Treatment is then adjusted as required. If deemed clinically indicated, a patient will be referred to other specialties or allied health for further assessment and interventions.

Health care services are provided within an integrated primary care framework, delivered by a multidisciplinary team consisting of health services manager, general practitioners, registered nurses, mental health nurses, a psychologist, a torture and trauma psychologist, a counsellor and visiting specialists (dentist, psychiatrist etc.).

The Department notes the example cited in the report and can advise that operational quarantine placement is for the purpose of maintaining separation of detainees from the general detainee population based on clinical advice from the DHSP. Detainees are not generally permitted to leave their accommodation room at all for the duration of their quarantine period other than if there was an emergency situation. Medications and food/drink/consumables are delivered in a non-contact capacity as required. Detainees in operational quarantine have access to mental health support via telehealth if required.

With specific reference to the detainee allegations on Christmas Island, all detainees are reviewed upon arrival at North West Point Immigration Detention Centre. During a detainee's operational quarantine period, the DHSP advise detainees how to request additional medical support and provide regular welfare checks. Detainees may accept any or all medical assistance offered.

Detention Management (Recommendation 7 – 14: Safety, Respect, Physical and Mental Health)

The Department acknowledges the Ombudsman's concerns related to the use of mechanical restraints applied on people in detention whom are taken offsite for routine and planned medical appointments and other non-urgent appointments. The Department agrees with recommendations seven, eight, and ten to fourteen and notes recommendation nine.

The Department notes that as per the Department's Detention Services Manual 623 – *Safety and Security Management – Use of Force*, all instances where use of force and/or mechanical restraints are applied must be reported. The Detention Services Manual 616 – *Procedural Instruction – Safety and security management – Incident management and reporting* provides guidance on the procedures in place to ensure the consistent record of decisions when approving the use of mechanical restraints. The decision to authorise the planned application of force, including restraints, by the FDSP is recorded on the operational documentation relevant to the specific task taking the respective expertise of the service providers in relation to safety, security, health and welfare into consideration.

FDSP officers must document the request for information to the DHSP in writing, as well as any advice provided by the DHSP.

This documentation provides the record of the decision to authorise the use of mechanical restraints, including any countervailing factors. Instruments of restraint must:

- Never be applied as a punishment or for discipline;
- Never be applied as a substitute for medical treatment;
- Never be used for convenience or as an alternative to reasonable staffing; and
- Be removed once the threat has diminished and the officer believes that the person is no longer a threat to themselves, others or property.

Any written advice received from the DHSP is included in the use of force approval request submitted to the ABF. When considering the FDSP request to use force, the ABF Superintendent will consider the DHSP advice and if there are any known health issues with the detainee. Use of force and/or restraints are only used as a measure of last resort, must be reasonable and may be used to prevent the detainee inflicting self-injury, injury to others, escaping or destruction of property, and is considered alongside DHSP advice.

The ABF is responsible for assessing requests for the use of restraints from the FDSP within an IIDF or during transport and escorts to external venues or appointments. Requests are considered on a case by case basis, with an assessment conducted on whether restraints are reasonably necessary to maintain detention. The assessment is conducted in accordance with the relevant legislation, Departmental policy and guidelines.

The ABF decision maker (ABF Superintendent of the IDF) can provide approval for planned use of force verbally in exceptional circumstances e.g. where time constraints apply, and verbal approval must be documented after the event in accordance with reporting guidelines. Planned use of force, including the use of restraints, must not commence prior to the approval of the ABF Superintendent being received. Included in the approval documentation, ABF Superintendents must outline their reasons for approving use of force where there are extenuating circumstances, such as the security risks outweighing the clinical advice.

When considering the overall risk rating of a detainee, including their escort risk rating, the FDSP considers a number of factors. Whilst escape is one of those factors, it is not the sole factor considered. In providing a comprehensive assessment, the FDSP identifies five key risk areas impacting the IDN. As per risk management protocols, the FDSP provides a Site Risk Assessment and an Escort Risk Assessment based on the factors identified in the five key risk areas.

Regarding alternatives for people in detention that refuse to attend a medical appointment due to being mechanically restrained, the Department notes that where offsite escorts for medical appointments are required, the Department works with the DHSP and FDSP. In addition, where alternative health service delivery methods are available, removing the requirement to transport a detainee, the Department takes advice from the DHSP on the relative efficacy of these services.

The Department also notes that detainees may choose to accept or decline any or all medical services offered.

The Department notes recommendation nine regarding the use of hotel APODs for long-term detention and notes that it is actively working to reduce its reliance on hotel APODs for the placement of immigration detainees in held detention.

Accommodation decisions are made on a case-by-case basis, but where appropriate immigration detainees may be placed in hotel APODs rather than at an immigration detention centre. Furthermore, the ongoing need for a particular APOD is subject to review based on operational needs, including considerations regarding IDF capacity constraints, COVID-19 health measures, individual detainee or cohort risks, and detainee status resolution pathways.

The use of hotel APODs for detainee placements is always premised on the shortest possible time and has significantly reduced since the removal of various measures that significantly impacted the IDN capacity. This includes the re-opening of international borders and the resumption of the ABF being able to remove detainees from Australia.

Detainees in hotel APODs are transferred to accommodation within IDFs as placements suitable for their individual needs become available. For detainees with specific placement requirements, it should be noted that this can often mean that the detainee will be separated from their family via an interstate transfer. For some detainees, APOD accommodation is the most appropriate placement option for their circumstances.

The Department agrees with recommendation ten and notes that contingency strategies are in place for APODs in the event food served is unfit for consumption.

All food supplied is separately packaged to prevent spoilage of the entire meal. In the event of contaminated food or concern on the quality of food, the FDSP will arrange for food to be delivered from an alternative venue. Where available, the preference is to transport food from an IDF kitchen. Contractually, the FDSP as part of providing catering services must, at all times, keep all food transportation, storage, preparation, cooking, service, dining and waste storage areas and all equipment relating to and used for the above clean, hygienic and appropriately maintained in accordance with:

- (i) The Certified Food Safety Plan, as agreed by the Department;
- (ii) The Australian New Zealand Food Standards Code; and
- (iii) Any applicable manufacturers or suppliers specifications for cleaning and catering equipment.

The Department agrees with recommendation eleven and notes that each IDF has an Emergency Management Committee comprised of Departmental, ABF and service provider staff to ensure emergency management procedures are in place. This Committee meets quarterly and within seven days after any emergency and is responsible for:

- Developing and maintaining an emergency management plan setting out the procedures for managing and responding to emergencies;
- Implementing emergency procedures for each type of emergency;
- Ensuring sufficient personnel within their area of responsibility are trained for their role in an emergency;
- Checking on the effectiveness of emergency systems and equipment; and
- Overseeing emergency exercises.

In relation to the fire that occurred at the Melbourne APOD on 23 December 2021, the ABF, FDSP and Park Hotel management reviewed and implemented an updated emergency management procedure for the Park Hotel in May 2022. The updated emergency management procedure was provided to Comcare following their recommendations. The Department also notes that the Park Hotel is no longer being used as an APOD.

The Department agrees with recommendation twelve and notes that complaint forms are available in all compounds and online on the ABF website. Complaints can also be lodged anonymously at any time. The complaint and feedback boxes are to be cleared daily by a member of the FDSP and a Departmental officer, together, to ensure the integrity of the complaints process.

Following the Ombudsman Post Visit Reports from March 2022, the Department and ABF commenced a review into the concerns raised regarding complaint management within the IDN, particularly around access to complaint and request forms. The ABF identified the concerns resulted from the COVID-19 infection control measures implemented, such as quarantining paper based complaints for 48-72 hours, and staffing issues. The Department wishes to inform that these issues have since been rectified and complaint forms are readily available.

The Department agrees with recommendation thirteen and specifies that the *Complaint Management Procedural Instruction DM-4827* is considered to be best practise in the IDN. This document provides information on registering, actioning, investigating and recordkeeping on complaints and has been shared across the IDN to improve consistency. All IDFs have been encouraged to share additional methods to improve investigations/responses to complaint management.

The Department agrees with recommendation fourteen and notes that the rising risk profile and criminal background of the immigration detention population is seen as a driver of drug, contraband and violence related incidents within IDFs. The existing search and seizure powers in the Migration Act do not empower officers to search for illicit drugs. Illicit drugs are only seized if located within facilities or when located during searches using other lawful powers. Where drugs are suspected to be present or located, the ABF refers the matter to police for action. Detainees are provided programs aimed at decreasing dependencies on substances such as drugs and alcohol, and minimising associated harms, including withdrawal management, counselling and peer-to-peer support. An Opiate Substitution Treatment Program is offered in some IDFs. The ABF continues to work with the Department to provide options to Government for consideration to remedy the current limitations on managing prohibited items, as well as search and seizure provisions.

Medical and Well-Being (Recommendations 15 – 18: Purposeful Activity, Well-Being & Social Care and Physical and Mental Health)

The Department recognises the importance of the provision of medical and wellbeing programs to people in detention and agrees with recommendations fifteen, sixteen and seventeen and notes recommendation eighteen.

The Department agrees with recommendation fifteen and notes that the Department's detention health policy on the Provision of Allied Health Services in Immigration Detention, which includes the provision of dental services was recently updated following a comprehensive review over 12 months. The review involved extensive stakeholder engagement with the detention health service provider and input from the Department's former Chief Medical Officer.

Adults in immigration detention can access a range of clinically necessary dental health service treatments as and when required. Spending approval is only required if the dental service is beyond the treatment of pain only and exceeds \$2,000 per person per treatment.

Where a request for dental treatment is in excess of the \$2,000 per person per treatment threshold, it must be approved by Detention Health Operations with a treatment plan and supporting clinical evidence detailing the necessity of the treatment and that the treatment or service is in line with services available in the Australian community. If required, urgent treatment can be escalated by the DHSP at any time, through to Detention Health Operations for timely consideration and approval.

The Department agrees with recommendation sixteen and advises that people in detention have access to programs aimed at decreasing dependencies on substances such as drugs and alcohol, and minimising associated harms, including withdrawal management, counselling and peer-to-peer support. An Opiate Substitution Treatment Program (OSTP) is offered across most facilities within the IDN.

In February 2022, the Department received a proposal from the DHSP for a comprehensive drug and alcohol services across the entire IDN. Internal stakeholder engagement has occurred with feedback provided to the DHSP for consideration in August 2022. Submission of a revised proposal is currently with the DHSP for action with a response anticipated in late January 2023. An implementation date is yet to be confirmed and is subject to ongoing negotiations.

The Department agrees with recommendation seventeen and notes recommendation eighteen.

The Department continues to jointly develop and update Programs and Activities (P&A) with the FDSP for the purpose of supporting detainee health and well-being. This occurs on a monthly basis with the FDSP developing a structured and unstructured P&A schedule that caters for the diverse needs of detainees including physical, mental, emotional and religious needs. The P&A schedule is submitted to the IDF Superintendent prior to the month started for approval.

Regarding provision of certification for courses completed by detainees, under current policy settings and reflected in the Facility and Detainee Services Contract, certificate courses are not provided to immigration detainees. Detainees are able to undertake courses of study using their own resources if they wish.

Summary of Recommendations

National Preventative Mechanism Annual Report 2021-22

1. **Noted** - We reiterate our previous recommendation that Home Affairs work with the Minister to reduce the number of people in detention.
2. **Agreed** - Home Affairs should work with the relevant Minister to consider alternative arrangements for individuals facing prolonged or indefinite detention.
3. **Not Agreed** - A summary of actions and advice received from relevant health authorities should be disseminated to all detainees after each Outbreak Management Team meeting (OMT).
4. **Agreed** - Home Affairs/ABF should ensure adequate support for staff across the Immigration Detention Network with ongoing access to Employee Assistance Programs including being responsive to spikes in absenteeism and/or attrition.
5. **Not Agreed** - Home Affairs/ABF should implement COVID-19 safe strategies to enable family visits irrespective of vaccination status of detainee and/or family members.
6. **Agreed** - Unvaccinated detainees should receive equivalent health care and the same level and timeliness of access to health professionals as vaccinated detainees.
7. **Agreed** - We reiterate our previous recommendation that ABF decision makers consistently record reasons for their decision when approving the use of mechanical restraints, including when it is against the advice of IHMS or when IHMS advice is not available.
8. **Agreed** - Alternatives should be considered for detainees that refuse to attend a medical appointment due to being mechanically restrained. Alternatives may include additional escort personnel, onsite appointments, or telehealth consultations.
9. **Noted** - We reiterate our previous recommendation that Home Affairs cease the use of hotel APODs for long-term detention (greater than 4 weeks).
10. **Agreed** - Contingency plans should be in place and alternative meals should be available if any food served is unfit for consumption.
11. **Agreed** - Home Affairs should ensure appropriate emergency management procedures are in place and should regularly test and review them to ensure they remain fit for purpose
12. **Agreed** - Home Affairs should ensure that all people in detention, including those in High Care Accommodation and APODs, have access to complaint and request forms and the ability to anonymously lodge complaints.
13. **Agreed** - Best practice examples of complaint management should be shared and implemented across the immigration detention network to improve consistency.
14. **Agreed** - The Government should consider reforms to allow the Australian Border Force (ABF) to exercise its full range of powers conferred under the Customs Act 1901 and the Migration Act 1958 to detect and address criminal activity within immigration detention facilities.
15. **Agreed** - Threshold costs and the approval framework for dental treatment should be reviewed, to ensure people in detention receive timely access to the dental treatment they require.
16. **Agreed** - Drug and alcohol rehabilitation services should be available consistently across the immigration detention network for people in detention who need these services.
17. **Agreed** - The Programs & Activities curriculum should be reviewed to ensure meaningful options are provided for all cohorts of people held in the immigration detention network.

18. **Noted** – People should be able to receive certification for courses they complete while in immigration detention.

AUSTRALIAN FEDERAL POLICE

OFFICIAL



AFP
AUSTRALIAN FEDERAL POLICE

COMMISSIONER



6 January 2023

Mr Iain Anderson
Commonwealth Ombudsman

Via email: 

Dear Mr Anderson *Iain,*

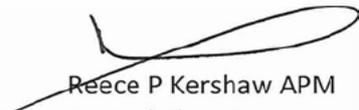
Thank you for your letter dated 12 December 2022, regarding the *Commonwealth National Preventative Mechanism Annual Report 2021–22* (Report), and your visit to the Australian Federal Police (AFP) facilities on Christmas Island.

The AFP is committed to meeting the highest standards of compliance under the Optional Protocol to the Convention Against Torture for Commonwealth places of detention, and I appreciate the opportunity to review and comment on the Report.

I note there were no recommendations or suggestions made for the AFP following this inspection. However, I acknowledge the Report included an observation regarding the ducted air conditioning in the AFP facility, to which a response is provided in *Appendix A: AFP response to the Commonwealth National Preventative Mechanism Annual Report 2021–22*.

In addition, I can advise that improved printed correspondence regarding rights and complaint procedures is now provided to all detainees upon their release, and the closed-circuit television (CCTV) system will undergo an upgrade in early 2023.

Yours sincerely


Reece P Kershaw APM
Commissioner

POLICING FOR A SAFER AUSTRALIA

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Appendix A - AFP response to Commonwealth Ombudsman report

Commonwealth National Preventative Mechanism Annual Report 2021-22

For the period 1 July 2021 – 30 June 2022

Inspection details

The Office of the Commonwealth Ombudsman (OCO) inspection of the AFP place of detention in its capacity as National Preventive Mechanism under the Optional Protocol to the Convention Against Torture for the period 1 July 2021 to 30 June 2022 took place at the AFP facilities on Christmas Island on 29 April 2022.

Preliminary summary

The inspection report contains no recommendations or suggestions however there is one observation. A summary of the observation and AFP's response to address the issue is noted below.

Inspection Observation:

Observation 1. Ducted air conditioning does not work well in the holding cells.

AFP response:

Repairs to the ducted air conditioning units in the Australian Federal Police facilities on Christmas Island have commenced and are anticipated to be completed by February 2023.

AUSTRALIAN DEFENCE FORCE



CHIEF OF THE DEFENCE FORCE

██████████
Mr Iain Anderson
Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601

Dear Iain,

COMMONWEALTH NATIONAL PREVENTATIVE MECHANISM ANNUAL REPORT 2021-2022

Thank you for the opportunity to comment on the draft Commonwealth National Preventive Mechanism (NPM) Annual Report 2021-22, specifically, the section that relates to the Australian Defence Force detention facilities. I appreciate the co-operation between your office and the Australian Defence Force and we look forward to continuing our support for this important oversight mechanism.

In relation to the use of the photograph in your report, we have provided a current image for use at enclosure 1. In addition, the title of the facility that is mentioned in the third paragraph should be amended from *Correctional* to *Corrective*. Otherwise, I have no concerns over the report or the public release of its information.

My point of contact is Provost Marshall Australian Defence Force, Group Captain Terrence Lewis. Group Captain Lewis can be contacted by telephone on ██████████ or email:
██████████

Yours sincerely

Angus J Campbell, AO, DSC
General
Chief of the Defence Force

16 January 2023
██████████

Enclosure:

1. Updated Image of the Defence Force Corrective Establishment

APPENDIX B: UPDATE ON THE DEPARTMENT OF HOME AFFAIRS IMPLEMENTATION OF RECOMMENDATIONS MADE IN PREVIOUS REPORTS

| RECOMMENDATIONS FROM 1 JULY 2020 TO 30 JUNE 2021 | | | | |
|---|---------------------|---|--|---|
| Recommendation | Department response | Update from the Office | Update from Home Affairs (as of 19 December 2022) | Analysis/need for further action |
| <p>Recommendation 1</p> <p>The department should continue to work with the relevant ministers to reduce the numbers of people held in immigration detention facilities.</p> | Agreed | The department advised us it is exploring a range of measures aimed at addressing barriers to status resolution (including visa and return and removal pathways) and associated risks of long-term detention. Please provide an update on the progress of these measures. | <p>The Department is currently preparing a range of options for the Minister to consider cases under the Ministerial Intervention powers, including those in long-term detention.</p> <p>The Department is reviewing and exploring options (such as third country pathways) for detainees that are unable to be involuntarily removed to their country of nationality or former habitual residence as they have been found to engage Australia’s protection obligations with reference to that country, or who are stateless.</p> <p>The Department is also exploring options to identify alternatives to held immigration detention and the management of unlawful non-citizens where community risk could potentially be mitigated through the implementation of additional controls, such as:</p> <ul style="list-style-type: none"> Enhanced use of residence determination as a tool to manage non-citizens in a community detention setting rather than held immigration detention. <p>Enhanced visa conditions for non-citizens released from immigration detention on bridging visas.</p> | We continue to monitor the number of people held in immigration detention facilities and reiterate this concern through recommendation 1 and 2 of this report. We acknowledge that the number of people in detention has reduced in the latter part of this of reporting period and hope to see this trend continue. We welcome advice that alternatives to detention are being explored. |
| <p>Recommendation 2</p> <p>The department should make alterations to high care accommodation (HCA) rooms used for quarantine placements at all facilities to differentiate between traditional HCA placement and quarantine placement, such as installing power points for detainees to charge mobile devices, installing TVs for entertainment, and providing normal mattresses and bedding</p> | Noted | Please provide up update on whether any further consideration has given to agree to this recommendation and/or what progress has been made regarding adjustments to HCA rooms when they are used for quarantine. | The administration and governance applied to COVID-19 and related quarantine processes continues in the least restrictive placement within the existing facilities. Where this placement is in accommodation that has been used under HCA procedural settings, it is provisioned appropriately within the built environment and for the shortest period under clinical advice. | We will continue to engage with Home Affairs and continue to monitor this issue at future visits. |
| <p>Recommendation 3</p> <p>The department should implement a policy which clearly outlines the different arrangements to apply to placements in HCA for quarantine purposes, to ensure consistency across the immigration detention network (IDN).</p> | Partially agreed | Please provide an update on the implementation of this recommendation. | <p>In October 2022, ON 2022-23 “Updated immigration detention COVID-19 quarantine placement arrangements for detainees” was issued to the network.</p> <p>This was silent on the use of HCA as the accommodation is defined by its use under the conditions at the time as opposed to being defined by application of other procedural settings.</p> | We consider that this recommendation has not been implemented based on the actions taken. We have requested a copy of ON 2022-23 and will continue to monitor this issue at future visits. |

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| | | | The operational notification outlines the collaborative consultation obligations when making internal placement decisions for quarantine placement. | |
| <p>Recommendation 4</p> <p>The ABF ensure CCTV footage of incidents in immigration detention facilities is retained, in line with departmental policy and the Archives Act, which will provide greater opportunity for review of activities in detention, including when detainees make claims of ill-treatment</p> | Agreed | Please advise whether there is an update to the implementation of this recommendation further to the response the department provided in our previous report. | <p>The management and storage of audio visual records of incidents processes remain unchanged and subject to management under departmental guidelines and the <i>Archives Act 1983</i>.</p> <p>Oversight of Facility and Detention Services Provider (FDSP) information governance processes for fixed, hand held and body worn camera data is managed by the Department of Home Affairs Detention Contracts Management Unit.</p> | No further action required at this stage. We will continue to monitor this recommendation at future visits. |
| <p>Recommendation 5</p> <p>The department should ensure detainees can access meaningful programs and activities (P&A) at North West Point Immigration Detention Centre (IDC), including within accommodation compounds, commensurate with P&A provided at facilities on the mainland.</p> | Agreed | Update not required at this stage. We will continue to monitor. | NIL response required. | <p>We consider this recommendation implemented. During our visit to Christmas Island in May 2022, we observed progress and action in this area.</p> <p>This report recommends a review of the Programs and Activities curriculum more generally (Recommendation 17).</p> |
| <p>Recommendation 6</p> <p>The department should provide more time out of accommodation compounds for detainees at North West Point IDC, particularly in the absence of meaningful programs and activities within the accommodation compounds.</p> | Noted | Update not required at this stage. We will continue to monitor. | NIL response required. | We consider this recommendation implemented. During our visit to Christmas Island in May 2022, we observed progress and action in this area |
| <p>Recommendation 7</p> <p>The department should ensure removals staff are part of the staffing complement posted to North West Point IDC to facilitate detainee removals, particularly voluntary requests, and to ensure the distribution of timely and accurate information to detainees about the removal process.</p> | Agreed | Update not required at this stage. We will continue to monitor. | NIL response required. | We consider this recommendation implemented. During our visit to Christmas Island in May 2022, we observed progress and action in this area. |
| <p>Recommendation 8</p> <p>The department should ensure IHMS engages specific drug and alcohol staff at North West Point IDC and facilitates drug and alcohol rehabilitation and redirection programs to detainees at North West Point IDC</p> | Agreed | Please provide an update on the implementation of this recommendation. | The Department has received IHMS' comprehensive proposal for drug and alcohol services across the entire IDN. Internal stakeholder engagement has occurred with feedback provided to IHMS for further consideration. | We welcome IHMS's proposal but remain concerned about the availability and access of drug and alcohol rehabilitation services available for people in detention – as noted in the concerns raised in this report (see Recommendation 16). We have requested further information on how this recommendation is being implemented and we will continue to monitor progress against this recommendation and the proposal. |
| <p>Recommendation 9</p> <p>The department should engage specialised torture and trauma services to be located at</p> | Agreed | Please provide an update on the implementation of this recommendation. | IHMS sub-contract the arrangements with service providers at NWPIDC who are members of FASSTT, the peak body for torture and trauma rehabilitation in Australia. Services are delivered by general practitioners, mental health nurses, | We note the department's contractual arrangements. We will continue to monitor continuity of treatment when people are transferred to Christmas Island. |

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| <p>North West Point IDC to support detainees, and require IHMS to proactively engage with detainees previously receiving torture and trauma services with a view to continuity of treatment.</p> | | | <p>psychologists, counsellors and psychiatrists and available to all detainees. While there may not be a physical presence of the support services at all times at NWPIDC, these services are available in forms such as telehealth.</p> | |
| <p>Recommendation 10 The department should ensure body worn cameras are available, operative, and in use at North West Point IDC.</p> | <p>Agreed</p> | <p>Please provide an update on the implementation of this recommendation.</p> | <p>The Facilities and Detainee Service Contracted Service Provider continues to have access to, and wear, body worn cameras that are in good working order.</p> | <p>We have requested more information as to how this recommendation has been implemented. We will continue to monitor this recommendation at future visits.</p> |
| <p>Recommendation 11 The department should discontinue the use of Phosphate Hill APOD until rectification works to make this facility safe and serviceable occur. Consistent with recommendation 13, APODs including Phosphate Hill should not be used for detention for periods greater than 4 weeks</p> | <p>Noted</p> | <p>We note Phosphate Hill APOD has not been used since 18 June 2021 and we are continuing to monitor its use. Please provide an update on the status of Phosphate Hill APOD.</p> | <p>Remediation works are ongoing at Phosphate Hill APOD as contingency for any necessary future use. The ABF can confirm that the Phosphate Hill APOD is not in use.</p> | <p>Implemented. No further action is required at this time.</p> |
| <p>Recommendation 12 The department should ensure facilities across the network have the same provision of programs and activities and the same access to medical and welfare services, including APODs.</p> | <p>Agreed</p> | <p>Please provide an update on the implementation of this recommendation.</p> | <p>The Department continues to jointly develop and update Programs and Activities (P&A) with the FDSP for the purpose of supporting detainee health and well-being.</p> | <p>We note this report recommends a review of the Programs and Activities curriculum (Recommendation 17). We will continue to monitor whether facilities across the IDN have the same access to programs and activities and the same access to medical and welfare services.</p> |
| <p>Recommendation 13 The department should cease the use of hotel APODs for long-term detention (greater than 4 weeks).</p> | <p>Noted</p> | <p>Please provide up update on whether any further consideration has given to agree to this recommendation and/or please provide an update of what steps have been taken towards ensuring hotel APODs are not used for long-term detention (greater than 4 weeks).</p> | <p>The Department is actively working to reduce its reliance on hotel APODs for the placement of immigration detainees in held detention. Hotel APODs that are no longer required for operational purposes are being removed from legislative instruments. The ongoing risk that COVID-19 presents to the safety and wellbeing of those held, and working, in the Immigration Detention Network (IDN) necessitates the ongoing use of Hotel APOD accommodation as a viable placement option, particularly for operational quarantine purposes, and for those detainees considered vulnerable due to their complex placement needs (ie. Health / criminal history). Detainees accommodated in Hotel APODs have their placement reviewed monthly and the number of detainees who have been accommodated in APODs for 30 days or more has reduced significantly. Detainees in Hotel APODs are transferred to accommodation within Immigration Detention Facilities as placements suitable for their individual needs become available. For detainees with specific placement requirements, it should be noted that this can often mean that the detainee will be separated from their family via an interstate transfer. For some detainees, APOD accommodation is the most appropriate placement option for their circumstances.</p> | <p>We will continue to engage with Home Affairs on this issue. As noted in report, we still have concerns on the use of hotel APODs for long-term detention (greater than 4 weeks) and reiterate this recommendation (Recommendation 9).</p> |

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| <p>Recommendation 14</p> <p>The department should develop and implement memoranda of understanding with state and territory correctional services which outline responsibilities in the care and management of detainees held in correctional facilities for the purposes of immigration detention under the Migration Act.</p> | Agreed | Please provide an update on the implementation of this recommendation. | The Department is currently in negotiations with state based corrections facilities. These negotiations will continue into the 2023 period and will continue to be driven to address roles and responsibilities in the care and management of detainees held in correctional facilities. | We will continue to monitor the implementation of this recommendation. |
| <p>Recommendation 15</p> <p>The department should work with relevant state and territory correctional services with a view to:</p> <p>a. providing detainees placed in correctional facilities for immigration detention purposes (under the Migration Act) with a means to privately contact the Office to lodge complaints or provide information about their treatment and conditions.</p> <p>b. ensuring the Office is able to contact detainees held in correctional facilities to follow up on complaints and investigations.</p> | Agreed | Please provide an update on the implementation of this recommendation. | <p>As discussed in Recommendation 14, the Department is actively in negotiations with state/territory correctional agencies to develop a Memorandum of Understanding (MoU) for holding detainees under immigration detention provisions. The purpose of each MoU seeks to establish the guiding principles and framework for cooperation between participants and formalises arrangements to allow the exchange of information, services/support to be provided and payment mechanisms.</p> <p>In conjunction, the Department is also developing Policy which will provide guidelines and procedures for the use of correctional facilities under immigration detention provisions. The MoU and Policy will support that an immigration detainee has access to reasonable facilities to obtain legal advice, or to make complaints to the Commonwealth Ombudsman or the Australian Human Rights Commission (AHRC).</p> | We will continue to monitor the implementation of this recommendation. |
| <p>Recommendation 16</p> <p>The department should ensure that detainees participating in excursions are only subjected to pat searches and the use of mechanical restraints when necessary, using a risk-based approach and in accordance with departmental policy.</p> | Agreed | Please provide an update on the implementation of this recommendation and provide an update on what steps have been taken to ensure there is a risk-based approach and adherence with departmental policy | <p>Current procedural instructions remain in effect with a scoping exercise underway to analyse the use of force by the FDS Provider.</p> <p>The ABF has commenced a review of Use of Force incidents and are engaging Audit and Assurance Branch to identify an external provider to conduct a further review and analysis of Use of Force incidents. It is anticipated that the review by the external provider is completed by June 2023.</p> | We will continue to monitor implementation of this recommendation noting we still have concerns with the use of mechanical restraints as outlined in this report. We have requested more information about the review and look forward to its outcomes. |
| <p>Recommendation 17</p> <p>The department should ensure detainees have free access to complaint forms and the ability to lodge complaints anonymously at all facilities.</p> | Agreed | Please advise whether there is an update to the implementation of this recommendation further to the response the department provided in our previous report. | <p>Complaints forms are available in all compounds and the ABF website. Complaints can be lodged anonymously at any time.</p> <p>NWPIDC is working with Serco FM and Site Operations to install boxes to house new complaint forms so detainees can use them without approaching the officer station.</p> | Our ongoing concerns with complaint management are reiterated through Recommendation 12 of this report. We will continue to monitor this issue and assess at future visits. |