



Commonwealth
National
Preventive
Mechanism



FOR CONSUMERS

Post Visit Summary

Melbourne Immigration Detention Centre
(MIDC) and Broadmeadows Residential
Precinct (BRP)

17 December 2024

Table of Contents

Summary	3
Our visit.....	3
What we found.....	3
Recommendations	4
Facility	6
Observations	7
Safety	7
Use of Force	7
Purposeful Activity	10
Respect	12
Property	12
Wellbeing and Social Care	13
Visits and meals.....	13
Staff and training.....	16
Wheelchair accessible infrastructure.....	17
The Commonwealth National Preventive Mechanism Mandate	19
Methodology.....	20
Agency response.....	21



Summary

Our visit

The Commonwealth National Preventive Mechanism (Commonwealth NPM) undertook an announced visit to the Melbourne Immigration Detention Centre (MIDC) and Broadmeadows Residential Precinct (BRP) between 30 April and 2 May 2024.

This visit was conducted by four OPCAT Monitors and an observer from the Office of the Commonwealth Ombudsman.

The Commonwealth NPM last visited the MIDC and BRP in February 2022. Although we provided a post visit summary (PVS) to the facility after that visit, it was not published. That PVS focussed heavily on the effects of COVID-19 in the centre as it followed the pandemic period and sustained lockdowns in Melbourne.

What we found

We observed improved relationships between Australian Border Force (ABF) and Facilities and Detainee Services Provider (FDSP) staff compared to previous visits and clear shared goals between all service providers at the location. The FDSP was Serco at the time of this visit.

We observed an overall positive relationship between ABF staff and people in detention, evidenced by frequent, prosocial interactions when in the compound. There appeared an underlying tension in the relationship between people in detention and FDSP staff, which we believe to be the result of several recent, significant assaults on FDSP staff by detained persons, and some allegations of excessive or inappropriate use of force by the FDSP Emergency Response Team (ERT). This observation is based on what people in detention, as well as staff from both ABF and FDSP, told us when we met with them. Serco management acknowledged the impact of recent assaults on staff morale and committed to seeing this improve through positive leadership. We will continue to monitor this relationship during future visits.

The other most common issues raised by people detained at the site related to property (inability to access some items or inconsistent or absent messaging about what property is permitted), the quality of visits with family and friends including access to shared meals, and access to purposeful activity.



Recommendations

Based on our visit to MIDC and BRP, I recommend:



Recommendation 1

Within three months, the Department implement, across the network, a process for the routine, formalised review of all unplanned use of force incidents, independent of the FDSP to identify and reduce unnecessary or inappropriate uses of force.

Recommendation 2

The Department should work with the FDSP to improve the Programs and Activities Schedule, to ensure all people in detention at MIDC and BRP have access to stimulating and engaging activities regardless of their age, ability, or placement.

[This recommendation reiterates previous recommendations made]

Recommendation 3

The Department, in consultation with the FDSP, should develop clearer guidance for detained persons and staff on what items and materials, including food products, people in detention are permitted to have in their possession.

Recommendation 4

The Department should provide people in detention the opportunity to regularly share meals other than commercially packaged foods during visits, to promote cultural and filial ties with visitors, subject to appropriate screening and other acceptable limits.



Recommendation 5

The Shaw HCA unit should undergo renovation within six months to enable detained persons to directly access the adjacent outdoor area for smoking, sunlight, and fresh air access.

Recommendation 6

The Department should ensure facilities maintenance staff are provided with situational awareness training before the employee commences working within the facility

Recommendation 7

The Department should ensure the Shaw HCA unit is accessible for detained persons with mobility issues or disability.

[This recommendation reiterates a previous recommendation]

Iain Anderson

Commonwealth Ombudsman
Commonwealth NPM

Facility

MIDC is a purpose built, high-security immigration detention facility located in Broadmeadows, Victoria. The FDSP is Serco, overseen by ABF, and health services are provided by the International Health and Medical Services (IHMS).

During this visit, the MIDC and BRP were operational and fully staffed with approximately 160 people in custody. The MIDC is comprised of a North and a South wing containing eight residential compounds housing detained persons, with separate Facilities Operations Managers managing each wing. Steps are being taken to move away from 'North' and 'South' wing management to a more holistic operation as a singular facility.

Detained persons are placed in either North or South compounds based on their vulnerabilities and behaviour. There is a compound within North which is used for Operational Quarantine (Dargo). Notably, one half of the Dargo compound has been inaccessible due to fire damage which occurred in 2023.

The site has one administration building, individual North and South reception areas, property and visits areas, individual North and South gym and education buildings, and a pair of medical buildings which house health and medical services, including IHMS offices, which service the entire facility.

The facility has a high care accommodation (HCA) unit (Shaw) which was unoccupied at the time of the visit. The HCA unit has no fresh-air access, only a 'smoking room', which is a room in which the window has been heavily barred and covered by slanted shades.

The Broadmeadows Residential Precinct (BRP), a designated Alternative Place of Detention (APOD), falls within the management of the MIDC. It is used to house female detained persons, airport turnarounds, and highly vulnerable detained persons such as those receiving palliative care or intensive medical treatment. BRP detained persons use the facilities within the MIDC proper - such as medical and gymnasiums.

Observations

Safety

Use of Force

More than ten of the detained persons we spoke to told us they felt there was frequent excessive use of force by the FDSP Emergency Response Team (ERT) and many detained persons had complained to the Australian Human Rights Commission (AHRC). This is consistent with reports published by the AHRC, for example the case of Mr CJ1, which found the use of force by ERT staff at MIDC was disproportionate, not properly executed, and inconsistent with ICCPR2 Article 10, which provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The AHRC also found that insufficient attempts had been made at de-escalation.

In the data provided to us by the Department of Home Affairs, 138 instances of planned use of force (including the use of mechanical restraints for routine transport and escorts) occurred in the 6 months between November 2023 and April 2024. In the same period, 47 unplanned use of force incidents were recorded.

Overall, we observed tension between FDSP staff and detained persons which was not mirrored in the relationship between ABF and detained persons. This tension was also acknowledged by centre management. There have been recent instances of significant violence against centre staff by detained persons, which is likely to have strained this relationship. In January 2024, a detained person stabbed a Serco staff member with an improvised weapon, for which they received a sentence of imprisonment. Not long after, a different detained person punched another Serco staff member to the head repeatedly, unprovoked.

¹ *Mr CJ v Commonwealth of Australia (Department of Home Affairs)* [2024] AusHRC 169: Report into the use of force Australian Human Rights Commission

² *International Covenant on Civil and Political Rights (ICCPR)*

Case study

Use of mechanical restraints to transport a detained person from hospital

Mx X reported to detention services staff they were experiencing chest pains. A code blue was called and Mx X was transported to hospital, unrestrained based on medical advice.

Mx X was assessed and discharged from hospital, at which time staff indicated restraints would be applied to Mx X for the journey back to the centre based on their risk rating. Mx X requested and argued that restraints not be applied and provided no physical resistance or violence.

Restraints were applied to Mx X and shortly after they reported experiencing further chest pains. Mx X was returned to the hospital emergency department, where restraints remained in place. They received further assessment and treatment before being discharged again. Mx X was returned to the MIDC with restraints in place until arrival.

Mx X reported to Commonwealth NPM staff they had requested the removal of the restraints whilst at the hospital to go to the toilet. This request was declined and as a result they were denied use of the toilet until they returned to the IDC.

The use of force in this instance was initially recorded as a “Planned” use of force, a minor incident. After being brought to the attention of the Superintendent via a complaint from the detained person, the incident was appropriately re-labelled as an “Unplanned” use of force incident, which is classified as a major incident.

Our review of footage and Serco reports of the incident reveal that restraints were used preventatively, in anticipation of resistance from the Mx X. Mechanical restraints were the first and only resort used in this incident, even after Mx X volunteered to be moved via the Enhanced Escort Position and had been transported to the hospital without restraints. We also observed insufficient de-escalation once mechanical restraints had been applied and Mx X had expressed their aggravation verbally. This is consistent with reports from other detained persons we spoke to that ERT staff members seem to escalate existing situations rather than de-escalate them.

The use of restraints in this situation is inconsistent with both Departmental Policies and the Human Rights Standards for Immigration Detention¹. AHRC Detention Standard 3.6, states *"Restraints are not used on detained persons who are hospitalised, in transport to and from hospital"* and *"...only to be used as a last resort..."*. According to the ABF policies and Operational Notifications: *"no use of force is mandatory, there is a presumption against use of force, and use of force (including applying restraints) is a measure of last resort"*.

The Serco and ABF response to the complaint failed to acknowledge that the Detention Services Manual and ABF policies identify that force is to be used as a means of last resort. The Post Incident Review also did not acknowledge that restraints had been used before non-compliance had been demonstrated by Mx X, instead focussing on errors in the initial incident report. The use of restraints proactively was justified by Serco both in discussion with OPCAT Monitors and in post incident reviews because Mx X had made verbal threats to staff approximately 3 months prior.

The use of restraints in this situation is inconsistent with both Departmental Policies and the Human Rights Standards for Immigration Detention¹. AHRC Detention Standard 3.6, states *"Restraints are not used on detained persons who are hospitalised, in transport to and from hospital"* and *"...only to be used as a last resort..."*. According to the ABF policies and Operational Notifications: *"no use of force is mandatory, there is a presumption against use of force, and use of force (including applying restraints) is a measure of last resort"*.

The Serco and ABF response to the complaint failed to acknowledge that the Detention Services Manual and ABF policies identify that force is to be used as a means of last resort. The Post Incident Review also did not acknowledge that restraints had been used before non-compliance had been demonstrated by Mx X, instead focussing on errors in the initial incident report. The use of restraints proactively was justified by Serco both in discussion with OPCAT Monitors and in post incident reviews because Mx X had made verbal threats to staff approximately 3 months prior.

There is no formalised or regular process to review use of force incidents by ABF or the FDSP unless a formal complaint of excessive force is made by a detained person, or if an incident is referred to law enforcement for investigation (either by a detained person or a staff member). Reviews of use of force incidents occur as an adjunct to

management staff's daily duties. When these reviews occur at this site, they are conducted by both ABF and the FDSP, and depending on whether the detained person has complained to ABF or the FDSP, the respective party/parties will respond directly to the complainant.

Most issues related to inappropriate use of force occur during unplanned uses and the FDSP's response to the complaints process has been criticised by various parties. There should be a formalised process to review all unplanned use of force incidents to provide a forum for independent assessment of staff use of force by a party not involved in the incident (eg ABF), and to facilitate all relevant stakeholders to discuss the appropriate balancing of safety and detained person rights, with a view to improving practices and reducing instances of inappropriate or disproportionate use of force.



Recommendation 1

Within three months, the Department implement, across the network, a process for the routine, formalised review of all unplanned use of force incidents, independent of the FDSP to identify and reduce unnecessary or inappropriate uses of force.

Purposeful Activity

Multiple detained persons disclosed to OPCAT monitors independently that they felt their time in prison had been less frustrating compared to immigration detention. They explained that in prison they had clarity and consistency of rules and purposeful work and education could be undertaken. These comments are not specific to the MIDC but are consistent across much of the detention network.

The Department's policy is that non-citizens are not eligible to undertake formal education or employment. However, many detained persons cited reduced motivation to engage in the programs that are available because they consider the content more appropriate for children – such as arts and crafts or sewing, and they do not receive

OFFICIAL

any formal recognition or benefit from completing these programs beyond the accumulation of IAP points.³

Detained persons most frequently reported the activity they were most interested in was attending the gymnasium to improve or maintain their physical fitness.

Many detained persons who had experiences in criminal custody indicated they missed the ability to prepare their own food as they had in prison. Notably, the MIDC offers cooking classes – which are so popular there is a waitlist. Detained persons must remain incident free for a period of time before being eligible, which has yielded positive improvements in the behaviour of those motivated to attend.



Image 1: MIDC kitchen where cooking classes are undertaken

The Commonwealth NPM commends the cooking program and the way in which it has been implemented and encourage the Department to consider expanding the availability of this and similar programs across the network where possible.

The Commonwealth NPM would like to see a broadening of purposeful and meaningful activities available across the network to reinforce positive behaviour to reflect community standards and expectations.

We have seen that having people engaged in more purposeful activities may lead to a lower rate of incidents in the detention environment, contributing to a safer and more stable facility. Serco and ABF staff reported that this was the case at MIDC, where participation was dependent on good behaviour, yielding less incidents.

³ IAP is the Individual Allowance Program which awards points to detainees based on engagement with programs, which can be exchanged for items in the IDC store including tobacco.



Recommendation 2

The Department should work with the FDSP to improve the Programs and Activities Schedule, to ensure all people in detention at MIDC and BRP have access to stimulating and engaging activities regardless of their age, ability, or placement.

[This recommendation reiterates previous recommendations made]

Respect

Property

Some detained persons expressed their preference for prison environments due to their comparative clarity and consistency regarding permitted property in the facility. A large proportion of detained persons had experienced incarceration before immigration detention and reported responding more positively to clear and consistent rules, even if they did not agree with them.

Detained persons gave examples of food they expected to be permitted to have in their possession in detention which were declined based on the need for the food to be refrigerated. However, they found those items for sale within the canteen.

The Detention Services Manual notes that perishable items such as those “...likely to spoil, decay or become unsafe to consume if not kept refrigerated are not permitted...”. We consider that these criteria may be subject to interpretation. One detained person pointed out to us that the all-day breakfast items which are stocked in communal areas of all compounds include butter packets, and their labels state they require refrigeration (although they are not refrigerated).

We acknowledge there may be health and safety reasons that prevent detained persons from having some food items in their possession, and facilities across the network may have differing rules.

As articulated by one detained person, the greatest source of conflict stems from uncertainty and inconsistency – sometimes an item may be cleared for detained person possession (in their perception) because you got the ‘right person’ on property



at the right time, because of a specific detained person's relationship with facility staff, or simply a differing opinion between staff members on different days. In their experience, the inconsistency and the disappointment when expectations are subverted, leads to the most frustration.

Consistently and effectively managing detained person expectations – not necessarily through acquiescence – can reduce the instances of disappointment, frustration, anger, conflict and outbursts which could escalate and result in aggressive behaviour which requires the use of force or HCA to manage.



Recommendation 3

The Department, in consultation with the FDSP, should develop clearer guidance for detained persons and staff on what items and materials, including food products, people in detention are permitted to have in their possession.

Wellbeing and Social Care

Visits and meals

A common issue amongst detained persons is the inability to share meals with their visitors unless they are commercially pre-packaged. Currently, only commercially pre-packaged foods can be brought to visits and any food not consumed is to be discarded or removed by the visitor.

Feedback received from detained persons during our visit included an expressed desire for more culturally diverse foods from their countries of origin. The sharing of meals with family and friends is an important way to distinguish between the stricter environment of criminal custody and non-punitive administrative detention.

“Food has daily significance in the lives of all human beings. Though it holds nutritious and biological functions, food also has non-biological meanings in social interactions and in rituals and celebrations while reflecting social values and structures. For immigrants, food plays an empowering role in maintaining identity, reinforcing the

perception of self, community building, preserving habits, traditions, and creating and maintaining collective memory.”⁴

If the common goal is to maintain the good order and security of the facility, prevention of detained person aggression may be supported through increased ties to culture and community. Regardless of immigration status the positive benefits to a detained person’s wellbeing of sharing culturally traditional foods can outweigh the purported risks of permitting non-commercially packaged foods into family visits.

The benefits of allowing this would also assist in ameliorating or reducing complaints about the food that is provided in the IDC – lack of variety or culturally specific dishes would not need to be addressed by the Department and may also see reductions in instances of hostility towards facility catering services.

Further evidence of the benefits associated with culinary autonomy are already evident at the MIDC – the overwhelmingly positive feedback and engagement with the Cooking Class activity and the improved behaviour of detained persons seeking to participate, is documented by the facility staff.



Recommendation 4

The Department should provide people in detention the opportunity to regularly share meals other than commercially packaged foods during visits, to promote cultural and filial ties with visitors, subject to appropriate screening and other acceptable limits.

Outdoor access whilst in HCA

The Shaw HCA compound is used to separate detained persons when they pose a risk to their own or others’ safety or the good order of the facility. A detained person is placed in HCA for up to 24 hours. They may be detained for two further 24-hour blocks if approved by the ABF Superintendent.

In a 12-month period from February 2023 to February 2024, there were 65 reported incidents of detained persons remaining in HCA for longer than a 24-hour period.

⁴ [Breaking Bread: The Functions of Social Eating | Adaptive Human Behavior and Physiology \(springer.com\)](https://www.springer.com)



Image 2: Shaw HCA 'Smoking Room'

The Shaw unit has no outdoor access. The unit has a 'smoking room' which is a standard room with a glass-less window which is barred and wired over. Notably, there is a fenced outdoor area attached to the HCA, but with only a single entrance from outside of the Shaw unit. With a relatively small renovation, one room of the HCA could be removed, and turned into access to the outdoor grassed area.



Image 3: Fenced outdoor area near Shaw HCA

Whilst we acknowledge that detained persons are placed within HCA for the shortest period possible, the lack of outside access whilst in the unit could be perceived to be in breach of the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) standard 21 (1): “Every [detained person] ... shall have at least one hour of suitable exercise in the open air daily if the weather permits”⁵, particularly in instances where placements exceed a 24-hour period.

We compare the Shaw HCA with the HCA units at Villawood IDC – in which each HCA unit has an enclosed outdoor area for smoking and access to fresh air and sunlight.

Improving the experience of HCA in this way may assist in a more expeditious de-escalation of behaviour and subsequently less time spent in HCA overall.



Recommendation 5

The Shaw HCA unit should undergo renovation within six months to enable detained persons to directly access the adjacent outdoor area for smoking, sunlight, and fresh air access.

Staff and training

The Commonwealth NPM heard reports that some facilities maintenance staff (also known as services staff) – such as sanitation and catering team members – often commence working at the location without having undertaken any training specific to working in a detention centre or around the detained person cohort.

Whilst a training package does exist and is a requirement for staff to complete, a training session may not be available to a new employee for some weeks after commencing their employment.

This was highlighted to us as an issue by staff at the location because incidents of aggressive or abusive behaviour occurred which may have been avoided by services staff having been appropriately trained in how to navigate detained person interactions.

⁵ UN Standard Minimum Rules for the Treatment of Prisoners

Anecdotally, confident and well-trained staff had greater understanding of their role and responsibilities and the ability to maintain professional boundaries under pressure. A well-trained workforce fosters a working environment with improved safety and security, reducing the likelihood of degrading or ill-treatment occurring.



Recommendation 6

The Department should ensure facilities maintenance staff are provided with situational awareness training before the employee commences working within the facility

Wheelchair accessible infrastructure

The Commonwealth NPM observed that the facility had limited accessibility for people with mobility issues – both detained persons and staff – with the exception of one unit in the BRP which had ramp access.



Image 4: Example access ramp (Credit: MHA products Australia)

Portable kerb ramps like those pictured above have been affixed at some steps within the south compound, which currently houses an individual who relies on a wheelchair, but we consider this, and the overall accessibility of the site, could be brought closer in line with the Nelson Mandela Rule 5.2⁶:

“[Detention] administrations shall make all reasonable accommodation and adjustments to ensure that [detained persons] with physical, mental, or other disabilities have full and effective access to [detention] life on an equitable basis.”

⁶ UN Standard Minimum Rules for the Treatment of Prisoners

In addition to this, the Committee on the Rights of Persons with Disabilities has ‘stressed that a lack of accessibility and reasonable accommodation places persons with disabilities in sub-standard conditions of detention that are incompatible with Article 17 of the Convention and may constitute a breach of article 15(2)⁷’, and that detaining authorities “Must take all relevant measures to ensure that persons with disabilities who are detained may live independently and participate fully in all aspects of daily life in their place of detention, including ensuring their access on an equal basis with others to the various areas and services such as bathrooms, yards, libraries, study areas, workshops and medical, psychological, social and legal services”.⁸

In our [Annual Report for 2022-23](#), we recommended the Department conduct a review of detention-related infrastructure within 6 months, with a focus on the needs of detained persons including those with disabilities. The recommendation also outlined that a copy of any such review and advice should be provided to the Commonwealth NPM within 90 days of completion. The Department of Home Affairs accepted this recommendation and advised they have an ongoing program to address it.

The Shaw HCA unit has no means of access for a person with mobility issues, having only concrete steps. Should a detained person with a disability be required to be separated, there are no suitably accessible options available.



Recommendation 7

The Department should ensure the Shaw HCA unit is accessible for detained persons with mobility issues or disability.

[This recommendation reiterates a previous recommendation]

⁷ *Convention on the Rights of Persons with Disabilities (CRPD)*

⁸ [Persons with disabilities | APT](#)

The Commonwealth National Preventive Mechanism Mandate

The *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (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.

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 Subcommittee for the Prevention of Torture) and by National Preventive Mechanisms (NPMs) at a domestic level.

NPMs are independent visiting bodies, established in accordance with 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 in its preventive approach: it seeks to identify patterns and detect systemic risks of torture and ill-treatment, rather than investigating or adjudicating complaints.

In July 2018, the Australian Government announced the Commonwealth Ombudsman as the visiting body for Commonwealth places of detention (the Commonwealth NPM). At present, the Commonwealth NPM visits places of detention operated by:

- the Department of Home Affairs
- the Australian Federal Police
- the Australian Defence Force

Methodology

The Commonwealth NPM visits places of detention to:

- monitor the treatment of people in detention and the conditions of their detention
- identify any systemic issues where there is a risk of torture or ill-treatment
- make recommendations, suggestions, or comments promoting systemic improvement.

The Commonwealth NPM conducts three types of visits: announced, unannounced, and semi-announced. The type, location and timing of each visit is determined by the Commonwealth NPM alone.

Each place of detention is observed in terms of its 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 bodies.

The five indicators of a healthy centre are⁹:

Safety	people in detention are held in safety and that consideration is given to the use of force and disciplinary procedures as a last resort
Respect	people in detention are treated with respect for their human dignity and the circumstances of their detention
Purposeful activity	the detention facility encourages activities and provides facilities to preserve and promote the mental and physical well-being of people in detention
Well-being and social care	people in detention are able to maintain contact with family and friends, support groups, and legal representatives, and have a right to make a request or complaint
Physical and mental health	people in detention have access to appropriate medical care equivalent to that available within the community. Stakeholders work collaboratively to improve general and individual health conditions for people in detention

⁹ These indicators have been adapted from expectations used by international and domestic inspectorates.



OFFICIAL

Our Ref: EC24-006031

Mr Iain Anderson
Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601

Iain
Dear Mr Anderson,

Thank you for providing the National Preventative Mechanism (NPM)'s Post Visit Summary of their visit to the Melbourne Immigration Detention Centre and Broadmeadows Residential Precinct (BRP).

The Department values the NPM's oversight of immigration detention in accordance with its role under the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. The Department's response to the NPM's recommendations is attached.

For your information, on 5 November 2024, the Department entered into an interim agreement with Secure Journeys Pty Ltd (SJ) for the provision of Facilities and Detainee Services across the Immigration Detention Network (IDN). An interim agreement is a mechanism that allows the new service provider to be announced and to commence transition activities while the contract is formally signed. It is anticipated the contract will be signed in the coming weeks. The transition period is expected to continue until June 2025. This process may affect the currency of responses as existing practices are updated.

Should your staff wish to discuss any aspects of the Department's response they can contact

[Redacted] Alternatively, you are welcome to contact me directly if that is helpful.

Yours sincerely,

[Redacted Signature]

Stephanie Foster PSM

22 November 2024

OFFICIAL

OFFICIAL

Recommendation 1: Within three months, the Department implement, across the network, a process for the routine, formalised review of all unplanned use of force incidents, independent of the FDSP to identify and reduce unnecessary or inappropriate use of force.

The Department **agrees** with Recommendation 1 and is currently developing an enhanced first-line assurance framework, which will focus on key areas of risk across the Immigration Detention Network (IDN), including use of force. This will mean that all unplanned use of force incidents will be reviewed independent of the FDSP.

A three month timeframe for implementation is not achievable. Anticipated completion of this work is in Quarter 4 FY 2024-25.

Recommendation 2: The Department should work with the FDSP to improve the Programs and Activities Schedule, to ensure all people in detention at MIDC and BRP have access to stimulating and engaging activities regardless of their age, ability, or placement. [This recommendation reiterates previous recommendations made]

The Department **agrees** with Recommendation 2 and will continue to make improvements to the Programs and Activities Schedule under the new service provider contracts. The Department will continue to work closely with the Office of the Commonwealth Ombudsman on completion of contract transition to ensure this recommendation is met.

Recommendation 3: The Department, in consultation with the FDSP, should develop clearer guidance for detained persons and staff on what items and materials, including food products, people in detention are permitted to have in their possession.

The Department **agrees** with Recommendation 3.

The Department will work closely with the FDSP to develop clearer guidance for detained persons and staff on what items and materials people in detention are permitted to have in their possession.

Recommendation 4: The Department should provide people in detention the opportunity to regularly share meals other than commercially packaged foods during visits, to promote cultural and filial ties with visitors, subject to appropriate screening and other acceptable limits.

The Department does **not agree** with Recommendation 4 that people in detention should be provided the opportunity to share meals other than commercially packaged foods during visits based on security, food handling and food safety risks that are unable to be mitigated through undertaking screening. Some of the risks which may be associated with non-commercial food items being brought in with visitors include:

1. **Security risks** such as food tampering and contraband smuggling.
2. **Health and Safety risks** such as foodborne illness (food preparation standards) and allergens or unknown ingredients.
3. **Operational risks** posed due to the time and resources that would be required to adequately screen and clear homemade or unpackaged food. For example, redirecting staff positioned in other critical areas of the centre thereby decreasing our ability to adequately respond to a security incident in a timely manner.
4. **Legal and Liability risks** stemming from the issues identified above.

The Department's operational policy was developed following the outcome of a court case listed below that reinforced the appropriateness of the Department's "Outside Food Policy". In this policy, we are clear that **special purpose foods** are allowed, with prior notice and considered on a case by case basis. Special purpose food includes birthday cakes, food processed or manufactured for consumption by infants and people suffering medical conditions (e.g. diabetes) that require altered and tailored food. It also includes prescribed medicines or any other products that are regulated as therapeutic goods or food.

On 30 May 2023, the Full Federal Court handed down judgment in the appeal of Minister for Immigration, Citizenship and Multicultural Affairs & Ors v SZRWS. The Court held that the implementation of the Department's Outside Food Policy was a lawful exercise of executive power. The Court found that subsection 273(1) of the Migration Act 1958 (Cth) authorises the Department to operate detention centres and this is facilitated via regulation and maintenance. This permits the Department to take certain measures, including the continued lawful use of the Outside Food Policy, to keep a detention centre safe, ordered and secure.

On 27 June 2023, SZRWS applied for special leave to appeal the judgment of the Full Federal Court, to the High Court of Australia. The application was subsequently dismissed on 12 October 2023 with costs, in favour of the Minister.

Recommendation 5: The Shaw HCA unit should undergo renovation within six months to enable detained persons to directly access the adjacent outdoor area for smoking, sunlight, and fresh air access.

The Department **partially agrees** with Recommendation 5 and will consider it under the Administered Capital Works Program prioritisation process. The Department is unable to meet the timeframe specified in the recommendation, noting funding within this program is finite and projects are considered for prioritisation across the entire IDN. On this basis, the Department partially agrees the recommendation.

The Department will continue to ensure that detainees have access to sunlight and fresh air through day-to-day operational management thus meeting the intent of this recommendation.

Recommendation 6: The Department should ensure facilities maintenance staff are provided with situational awareness training before the employee commences working within the facility.

The Department **agrees** with Recommendation 6 and will reinforce with the FDSP that it should provide site induction and briefings for all staff that enter an immigration detention facility to ensure safety and security measures are appropriately followed.

Under the current contract, contractors external to the FDSP engaged on a short-term basis such as some catering, cleaning and maintenance staff, undertake a site induction on commencement. This site induction includes advice to avoid detainee areas without direct supervision, as well as what do to when engaging with a detainee while on shift. Where possible, these contractors will shadow an FDSP staff member and efforts are made to place them in areas where there is limited direct access to detainees.

OFFICIAL

Recommendation 7: The Department should ensure the Shaw HCA unit is accessible for detained persons with mobility issues or disability. [This recommendation reiterates a previous recommendation]

The Department **disagrees** with Recommendation 7.

Detainees with mobility issues are unable to be accommodated at Shaw compound, however detainees with other types of disability can be considered on a case-by-case basis taking careful consideration of individual's health needs, operational risks and advice from detention stakeholders, including the Detention Health Services Provider. Alternative Places of Detention can also be considered.

Disclaimer

The Commonwealth owns the copyright in all material produced by the Ombudsman. With the exception of the Commonwealth Coat of Arms, the Office of the Commonwealth Ombudsman's logo, any material protected by a trade mark, and where otherwise noted, all material presented in this publication is provided under a Creative Commons Attribution 4.0 licence.

The details of the relevant licence conditions are available on the Creative Commons website (creativecommons.org/licenses/by/4.0/deed.en) as is the full legal code for the CC BY 4.0 licence.

The Commonwealth's preference is that you attribute this report and any material sourced from it using the following wording:

Source: Licensed from the Commonwealth Ombudsman under a Creative Commons 4.0 licence. This report is available from the Commonwealth Ombudsman website at www.ombudsman.gov.au.

Use of the Coat of Arms

The terms under which the Coat of Arms can be used are set out on the It's an Honour website www.pmc.gov.au/government/its-honour

Contact us

Inquiries regarding the licence and any use of this report are welcome at:

Commonwealth Ombudsman

Level 5, 14 Childers Street

Canberra ACT 2600

Tel: 1300 362 072

Email: ombudsman@ombudsman.gov.au