



Commonwealth  
National  
Preventive  
Mechanism

# **Access All Areas: Monitoring Places of Detention 2022–23**

**6<sup>th</sup> Report of the Commonwealth  
National Preventive Mechanism**

May 2024

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# Foreword

*Access All Areas: Monitoring Places of Detention 2022-23* is the 6<sup>th</sup> Annual Report of the Commonwealth National Preventive Mechanism (NPM) since the appointment of the Commonwealth Ombudsman to this role. In the years since this appointment, the Commonwealth NPM has strengthened its internal processes and visiting methodology and broadened the scope of its visits, reflecting the change of role from Ombudsman to NPM under OPCAT.

During the 2022-23 reporting period, we visited 19 distinct places of detention, making suggestions and recommendations for systemic improvements at these facilities. Visits during this year focussed on places operated by:

- the Department of Home Affairs
- the Australian Federal Police (AFP)
- the Australian Defence Force (ADF).

We are also considering how to expand into other places of detention within the Commonwealth NPM's remit that have not yet been subject to monitoring under the OPCAT.

As required under s 8(5) of the *Ombudsman Act 1976*, I invited the three agencies we visited to review sections of the draft Report relevant to them, to notify us of any errors of fact, and provide a formal response to our findings and recommendations.

This report is based on the observations made both during our 2022-23 visits, and our ongoing, remote monitoring work. I make 12 recommendations, all of which are directed to the Department of Home Affairs, aimed at making systemic improvement in the treatment and conditions for people in places of detention.



Although the Department of Home Affairs used different terminology in its response to our recommendations, we understand they accepted most of our recommendations.

Department of Home Affairs response	Recommendation number
Accepted	Recommendations 1, 3, 6, 7, 8, 9, 10, 11, 12
Accepted in principle	Recommendation 2
Partially accepted	Recommendation 4
Not accepted (or 'noted')	Recommendation 5

Table 1: Department of Home Affairs response to recommendations 2022-23

The Department of Home Affairs informed us they consider that no further action is required beyond what is already in place (or action is near completion) to implement recommendations 1, 6 and 7. We will assess the actions taken to implement all accepted recommendations in the coming year and look forward to seeing lasting, systemic improvement in each area.

The work of the Commonwealth NPM throughout the year would not be possible without cooperation and engagement from the Department of Home Affairs, the Department of Defence, and the Australian Federal Police, and I thank them for this. I would also like to acknowledge the contribution of the operational staff at the detention facilities we visit and the people in detention who speak with us to share their personal stories and experience.

I look forward to continuing the critical work of the Commonwealth NPM during the 2023-24 period, along with our NPM counterparts across Australia.



# Executive summary

In the reporting period 1 July 2022 to 30 June 2023, the Commonwealth NPM visited to a total of 19 places of detention. In line with our jurisdiction, these included 6 sites controlled by the AFP, 4 by the ADF, and 9 sites controlled by the ABF. Three of the visits within this reporting period were unannounced.

This report details the key findings made over the course of the year, both as a result of these visits, and also from our ongoing remote monitoring work. It includes a total of 12 recommendations, all of which are directed to the Department of Home Affairs/ABF (the Department).

The immigration detention network (IDN) is made up of diverse facilities including large scale, purpose-built facilities, repurposed small-scale sites, and the ad hoc use of hotels. During 2022–23, we noted that infrastructure limitations affected the ability of sites to safely hold certain vulnerable groups, provide opioid substitution programs, offer adequate access to open air and exercise, and hold people in the same state as their families, friends, and support networks.



## Recommendation 1:

Within 6 months, the Department conduct a review of detention-related infrastructure, focusing on the needs of detainees, compliance with domestic and international standards with the aim of improving:

- the safe accommodation of vulnerable groups including, but not limited to, people with disabilities, women, and gender diverse persons
- the ability of detained persons to maintain contact with family and other community and cultural supports, and
- access to culturally safe health and specialist services commensurate with those in the community

and provide the Commonwealth NPM with a copy of the review, advice of relevant actions taken and the implementation plan for any recommendations made, no later than 90 days after completion of the review.



The population of women in immigration detention is very small compared to that of males. At the end of the 2022–23 reporting period, women accounted for 4% of the total detained population (48 out of 1,066).<sup>1</sup> Long-term detention of women can only occur in three facilities, in NSW, Victoria and WA. Any woman who comes into detention in the remaining states or territories must either be held in a hotel APOD or transferred interstate.



## Recommendation 2:

In line with Recommendation 1, within 6 months:

- the Department consider ways to best accommodate women in all state and territory immigration detention facilities, with the aim of avoiding both the long-term detention of women in hotel APODs and interstate separation from friends and family; and
- provide the Commonwealth NPM with advice of the consideration process and implementation plan as soon as completed.

Transgender, intersex, and gender diverse people have unique vulnerabilities in a detention environment which must be expressly taken into account. At present, the Department does not have a comprehensive policy or guidelines outlining how transgender, intersex, or gender diverse people should be accommodated or managed in the IDN.



## Recommendation 3:

In line with Recommendation 1, within 9 months, the Department develop procedural guidance relating to the accommodation, welfare, security, and management of transgender people in detention, noting the requirements outlined in Australian and international best practice guidance, and provide copies to the Commonwealth NPM upon completion.<sup>2</sup>

The 2022–23 reporting period saw a gradual reduction in the extent and severity of COVID-19 restrictions in both travel and community settings. However, at immigration detention facilities the staff, people in detention, and their visitors remained subject to COVID-19 restrictions, which were in stark contrast to community settings.







## Recommendation 4:

The Department end its national COVID-19 restrictions across the immigration detention network no later than 30 April 2024.

Throughout the year we maintained concerns about the prevalence of drugs across the IDN, their negative impact on those detained there, and on the good order and security of the centres themselves.

A key factor affecting the inability of authorities to prevent the influx of contraband, are the limited search and seizure powers contained in the *Migration Act 1958*. Under the Act, a person in detention cannot be searched if they are suspected of carrying drugs, and regular room searches have ceased following legal advice. Detainees, and their property and rooms may only be searched if staff have intelligence regarding a concealed weapon or escape tool. This considerably impacts the ABF's ability to detect and disrupt the drug trade in immigration detention.



## Recommendation 5:

The Australian Government should urgently consider legislative reforms to allow ABF to use its existing broader powers to detect and address criminal activity within immigration detention facilities, including but not limited to appropriate search and seize powers.

Throughout the reporting period, we heard of incoming changes to alcohol and other drug (AOD) services from the contracted health care provider. By the end of the reporting period, additional services for those affected by substance abuse were beginning to come online. This is a positive step. We welcome this shift in approach and look forward to monitoring its effects throughout the coming year.





## Recommendation 6:

The Department ensure that people in detention receive substance misuse and harm minimisation services and support commensurate with government-funded services available in the community, and report to the Commonwealth NPM within 6 months on their plan to achieve this.

During our visits throughout 2022-23, we were encouraged to see that an extended programs and activities schedule had been rolled out, which saw activities running in the evenings and on weekends. This is a positive initiative, which offers greater opportunity for engagement and purposeful activity for people held in detention. However, we maintain some concerns around the content of the schedule. A common complaint from those we spoke with was that many of the activities (arts and crafts for example) were not perceived to be age appropriate or useful. We encourage the Department and Serco to consider the expansion of age-appropriate activities where possible.



## Recommendation 7:

The Department review Programs and Activities schedules across the immigration detention network to ensure age- and culturally-appropriate and meaningful programs and activities are available to all people in detention, and report to the Commonwealth NPM within 6 months on the implementation of this recommendation.

Population management in the IDN is a challenge, with more people entering detention on the east coast than there are places to hold them. Many are therefore transferred to facilities in the west (YHIDC and NWPIDC), to keep numbers manageable.

We found that in doing so, the Department relied on a limited definition of 'family', which excludes relationships (such as parents, grandparents, cousins, and other extended family) that some cultures place great significance on. This issue was raised consistently with us by people during the year's visits. The loss of ability to connect with friends and family can be deeply upsetting to people in detention, and has the potential to cause unrest.





## Recommendation 8:

Within 6 months, the Department update relevant policy to include an expanded definition of 'critical family', beyond the minimum standard identified in the *Migration Regulations 1994*, to ensure cultural recognition of extended family and to minimise the impact of separating people in detention from their family and social supports where possible.

High-care accommodation (HCA) is used in the immigration detention setting to describe places where people in detention may be held when close monitoring and intensive management is deemed necessary. Due to the obvious risks associated with placing people in HCA we conducted a number of enquiries into their use.

Disappointingly, the response we received was limited, due to the fact that the Department does not have reliable and detailed data about the use of HCA across the IDN. The Department's limited record keeping capacity, particularly in regard to use of HCA, limits our ability to analyse the information to identify any systemic issues.



## Recommendation 9:

Within 6 months, the Department must improve its record keeping capability and incident reporting guidelines regarding the use of High Care Accommodation, to clearly record duration of stay and reasons for placement at a minimum, and provide the Commonwealth NPM with advice of relevant actions taken.

Another area of concern for us around the use of HCAs relates to the limited access to open air and exercise they may offer. The Mandela Rules offer a minimum standard for places of detention, and Rule 23.1 states that everyone held in detention should have access to at least one hour of suitable exercise in the open air daily.<sup>3</sup> However, the access to open air available to people held in certain HCA settings does not meet the expectations or intent of '*access to open air or outdoor recreation*' that is established under the Mandela Rules.





## Recommendation 10:

Within 6 months, the Department must ensure that HCA across the immigration detention network offer access to open air and exercise, in accordance with the intent of the Mandela Rules and other relevant domestic and international standards, and provide the Commonwealth NPM with advice of relevant actions taken.

During this reporting period, we learned that the Department requested a third party be engaged to conduct a systemic review of HCA across the immigration detention network. The review covered six facilities,<sup>4</sup> and sought to identify, in particular, ligature points in high-risk areas and make recommendations to mitigate potential risks. This specifically included works to minimise the risk of self-harm. The review and its findings were comprehensive and resulted in a significant number of recommendations. Due to the significance of this work, we support any endeavours to fund and implement the review's recommendations.



## Recommendation 11:

The Department implement all recommendations arising from the six *Pedavoli Architects' High Care Accommodation Reviews* (March 2023) and provide the Commonwealth NPM within 6 months with an implementation plan including time frames for completion.

In our 2021-22 report, we identified that firefighting equipment had been used to control the movement of people during two disturbances at NWPIDC in early 2022. We also found that incident reports failed to document the management of these disturbances and that, against departmental policy, the use of firefighting equipment (aside from a reference or two) had been concealed.

We raised our concerns about this apparent pre-planned and systematic use of firefighting equipment against people held in detention. In November 2022, the Department advised us that a management-initiated detention assurance review by their internal auditors was underway.



We received a copy of the finalised review report, which confirmed that the use of the firefighting equipment was unauthorised by the Department, and not in line with approved practices and procedures. Despite these serious findings, the report did not make any recommendations to address the concerns identified. We recommend that the Department take prompt action to fully investigate this matter.



## Recommendation 12:

Within 30 days, the Department should advise the Commonwealth NPM of the outcome of the investigation, provide a copy of the investigation report and advise of:

- action taken, including against facility staff, in regard to the inappropriate and unauthorised use of firefighting equipment at North West Point IDC in early 2022,
- action taken in regard to non-compliance with reporting requirements regarding the incidents, including how this was addressed and how it will be prevented in the future,
- action taken to ensure that fire-fighting equipment is never improperly used against people in detention again,
- the updated policy and procedures for facilities to deal with similar incidents, which should include 'explicit detail' on response methods, and prohibited response behaviours, and
- policy, procedures and training in place and planned on appropriate use of force against people in detention.



# List of recommendations

Recommendation	Agency	Content	Page number
<b>Recommendation 1</b>	Department of Home Affairs	<p>Within 6 months, the Department conduct a review of detention-related infrastructure, focusing on the needs of detainees, compliance with domestic and international standards, and with the aim of improving:</p> <ul style="list-style-type: none"> <li>the safe accommodation of vulnerable groups including, but not limited to, people with disabilities, women, and gender diverse persons</li> <li>the ability of detained persons to maintain contact with family and other community and cultural supports, and</li> <li>access to culturally safe health and specialist services commensurate with those in the community.</li> </ul> <p>and provide the Commonwealth NPM with a copy of the review, advice of relevant actions taken and the implementation plan for any recommendations made, no later than 90 days after completion of the review.</p>	<a href="#">26</a>
<b>Recommendation 2</b>	Department of Home Affairs	<p>In line with Recommendation 1, within 6 months:</p> <ul style="list-style-type: none"> <li>the Department consider ways to best accommodate women in all state and territory immigration detention facilities, with the aim of avoiding both the long-term</li> </ul>	<a href="#">28</a>



		<p>detention of women in hotel APODs and interstate separation from friends and family; and</p> <ul style="list-style-type: none"> <li>provide the Commonwealth NPM with advice of the consideration process and implementation plan as soon as completed.</li> </ul>	
<b>Recommendation 3</b>	Department of Home Affairs	In line with Recommendation 1, within 9 months, the Department develop procedural guidance relating to the accommodation, welfare, security, and management of transgender people in detention, noting the requirements outlined in Australian and international best practice guidance, and provide copies to the Commonwealth NPM upon completion.	<a href="#">29</a>
<b>Recommendation 4</b>	Department of Home Affairs	The Department end its national COVID-19 restrictions across the immigration detention network no later than 30 April 2024.	<a href="#">31</a>
<b>Recommendation 5</b>	Department of Home Affairs	The Australian Government should urgently consider legislative reforms to allow ABF to use its existing broader powers to detect and address criminal activity within immigration detention facilities, including but not limited to appropriate search and seize powers.	<a href="#">32</a>
<b>Recommendation 6</b>	Department of Home Affairs	The Department ensure that people in detention receive substance misuse and harm minimisation services and support commensurate with government-funded services available in the community, and report to the Commonwealth NPM within 6 months on their plan to achieve this.	<a href="#">33</a>



<b>Recommendation 7</b>	Department of Home Affairs	The Department review Programs and Activities schedules across the immigration detention network to ensure age- and culturally-appropriate and meaningful programs and activities are available to all people in detention, and report to the Commonwealth NPM within 6 months on the implementation of this recommendation.	<a href="#">34</a>
<b>Recommendation 8</b>	Department of Home Affairs	Within 6 months, the Department update relevant policy to include an expanded definition of ‘critical family’, beyond the minimum standard identified in the Migration Regulations 1994, to ensure cultural recognition of extended family and to minimise the impact of separating people in detention from their family and social supports where possible.	<a href="#">35</a>
<b>Recommendation 9</b>	Department of Home Affairs	Within 6 months, the Department must improve its record keeping capability and incident reporting guidelines regarding the use of High Care Accommodation, to clearly record duration of stay and reasons for placement at a minimum, and provide the Commonwealth NPM with advice of relevant actions taken.	<a href="#">41</a>
<b>Recommendation 10</b>	Department of Home Affairs	Within 6 months, the Department must ensure that HCA across the immigration detention network offer access to open air and exercise, in accordance with the intent of the Mandela Rules and other relevant domestic and international standards, and provide the Commonwealth NPM with advice of relevant actions taken.	<a href="#">44</a>
<b>Recommendation 11</b>	Department of Home Affairs	The Department implement all recommendations arising from the six <i>Pedavoli Architects’ High Care Accommodation Reviews</i> (March 2023) and provide the Commonwealth NPM within 6	<a href="#">45</a>





		months with an implementation plan including time frames for completion.	
<b>Recommendation 12</b>	Department of Home Affairs	<p>Within 30 days, the Department should advise the Commonwealth NPM of the outcome of the investigation, provide a copy of the investigation report and advise of:</p> <ul style="list-style-type: none"> <li>• action taken, including against facility staff, in regard to the inappropriate and unauthorised use of firefighting equipment at North West Point IDC in early 2022</li> <li>• action taken in regard to non-compliance with reporting requirements regarding the incidents, including how this was addressed and how it will be prevented in the future</li> <li>• action taken to ensure that fire-fighting equipment is never improperly used against people in detention again</li> <li>• the updated policy and procedures for facilities to deal with similar incidents, which should include 'explicit detail' on response methods, and prohibited response behaviours, and</li> <li>• policy, procedures and training in place and planned on appropriate use of force against people in detention.</li> </ul>	<a href="#">48</a>



# Visit activity in 2022–23

Agency	Facility	State / Territory	Date of visit
AFP	Norfolk Island Police Station	TNI	August 2022
	Lavarack Barracks, Townsville	Qld	
ADF	Royal Australian Air Force Base, Wagga Wagga	NSW	September 2022
	Blamey Barracks, Kapooka		
	Army Logistics Training Centre, Bandiana		
ABF	Perth Hotel APOD	WA	November 2022
	Villawood Immigration Detention Centre & Sydney Hotel APOD	NSW	
	Brisbane Immigration Transit Accommodation & Brisbane Hotel APOD	Qld	December 2022
	Melbourne Immigration Transit Accommodation & Broadmeadows Residential Precinct	Vic	February 2023
AFP	Tuggeranong Police Station	ACT	April 2023
	Woden Police Station		
ABF	Perth Immigration Detention Centre	WA	May 2023
	Yongah Hill Immigration Detention Centre		
AFP	Gungahlin Police Station	ACT	June 2023
	Belconnen Police Station		
	Canberra City Watch House		

Table 2 Places of detention visited by the Commonwealth NPM in 2022–23



# Australian Border Force

## ABF facilities in 2022–23

This section covers places of detention under control of the Department of Home Affairs (the Department) and the Australian Border Force.

ABF permanent immigration detention centres & transit accommodation <sup>5</sup>	Location
Villawood Immigration Detention Centre (VIDC)	Sydney, NSW
Melbourne Immigration Transit Accommodation (MITA)	Melbourne, VIC
Brisbane Immigration Transit Accommodation (BITA)	Brisbane, QLD
Adelaide Immigration Transit Accommodation (AITA)	Adelaide, SA
Yongah Hill Immigration Detention Centre (YHIDC)	Northam, WA
Perth Immigration Detention Centre (PIDC)	Perth, WA
North West Point Immigration Detention Centre (NWPIDC) <sup>6</sup>	Christmas Island

Table 3: Operational ABF Facilities 2022–23

## Commonwealth NPM visits in 2022–23

ABF Facility	Date of visit	Type of visit
Perth Hotel APOD, WA	29 September 2022	Unannounced
Villawood Immigration Detention Centre and Sydney Hotel APOD, NSW	9 November 2022	Unannounced
Brisbane Immigration Transit Accommodation and Brisbane Hotel APOD, Qld	28 November – 2 December 2022	Announced
Melbourne Immigration Transit Accommodation, Vic (inc Broadmeadows Precinct)	20 – 24 February 2023	Announced
Perth Immigration Detention Centre, WA	11 – 12 May 2023	Unannounced
Yongah Hill Immigration Detention Centre, WA	29 May – 2 June 2023	Announced

Table 4: ABF Facilities visited in 2022–23

# Demographics

During this reporting period, the population of the immigration detention network fell, from 1,379 (31 July 2022) to 1,070 (30 June 2023). The length of time that people spent in immigration detention also generally fell, as indicated in Figure 1.

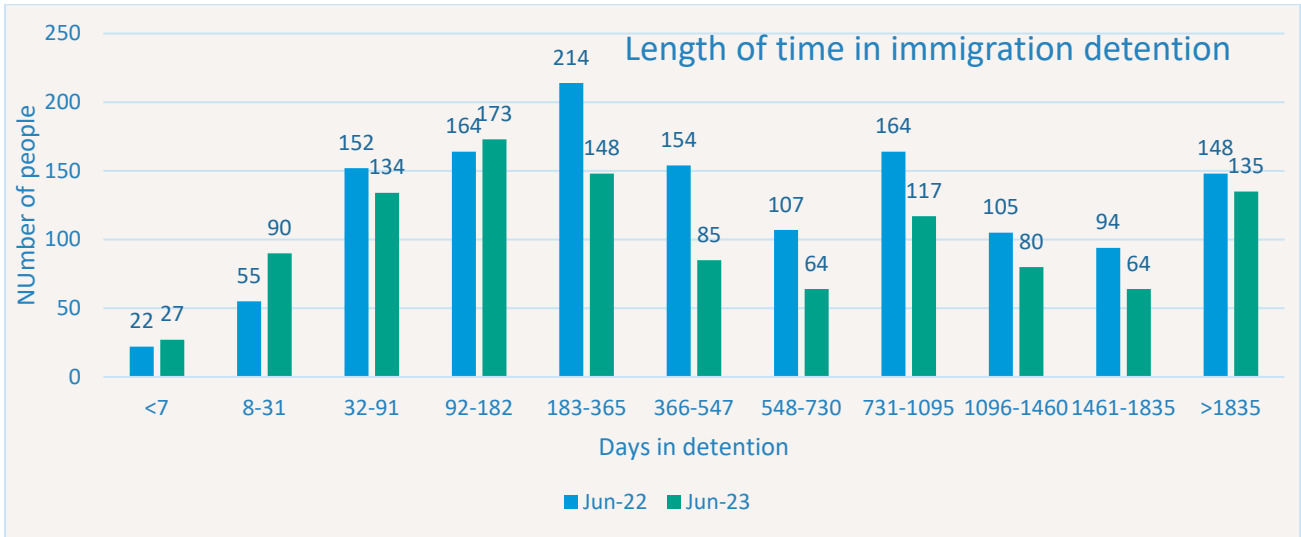


Figure 1: Length of time in immigration detention, 31 July 2022<sup>7</sup> and 30 June 2023<sup>8</sup>

At the end of the reporting period, the largest cohort in the immigration detention network was made up of people detained for being determined to have failed the character test under section 501 of the *Migration Act 1958* (64%), typically because of criminal convictions. In contrast, unauthorised maritime arrivals, who were once the vast majority of those detained, now make up only 15% of the detention population.

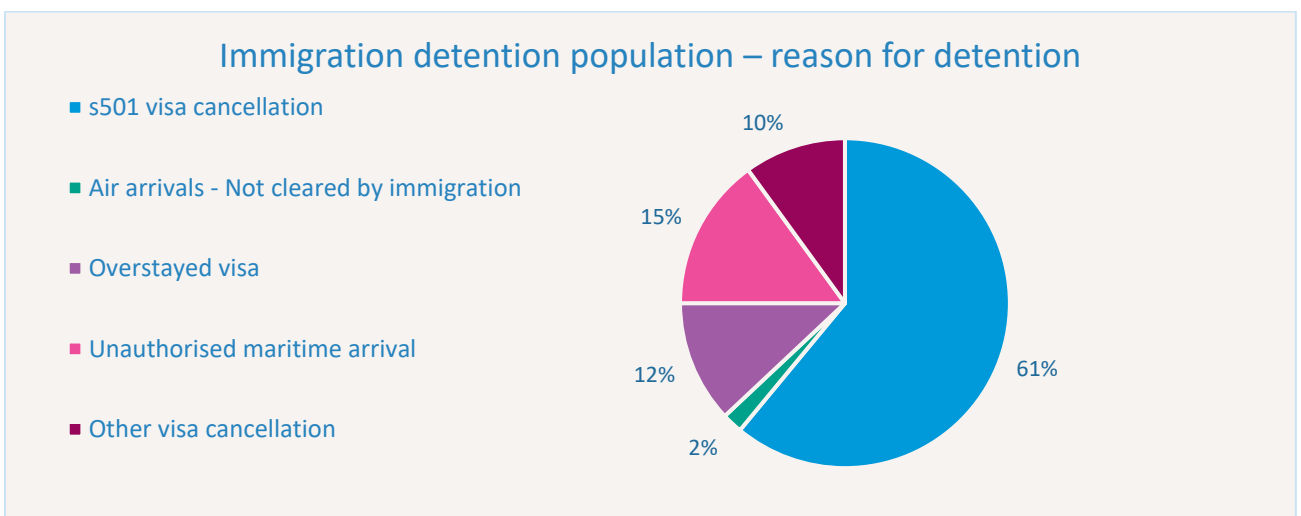


Figure 2: Immigration detention population – reason for detention, 30 June 2023<sup>9</sup>

This change in composition of the detention population is also reflected in the nationality of those detained, with New Zealanders making up the largest cohort at 17%.

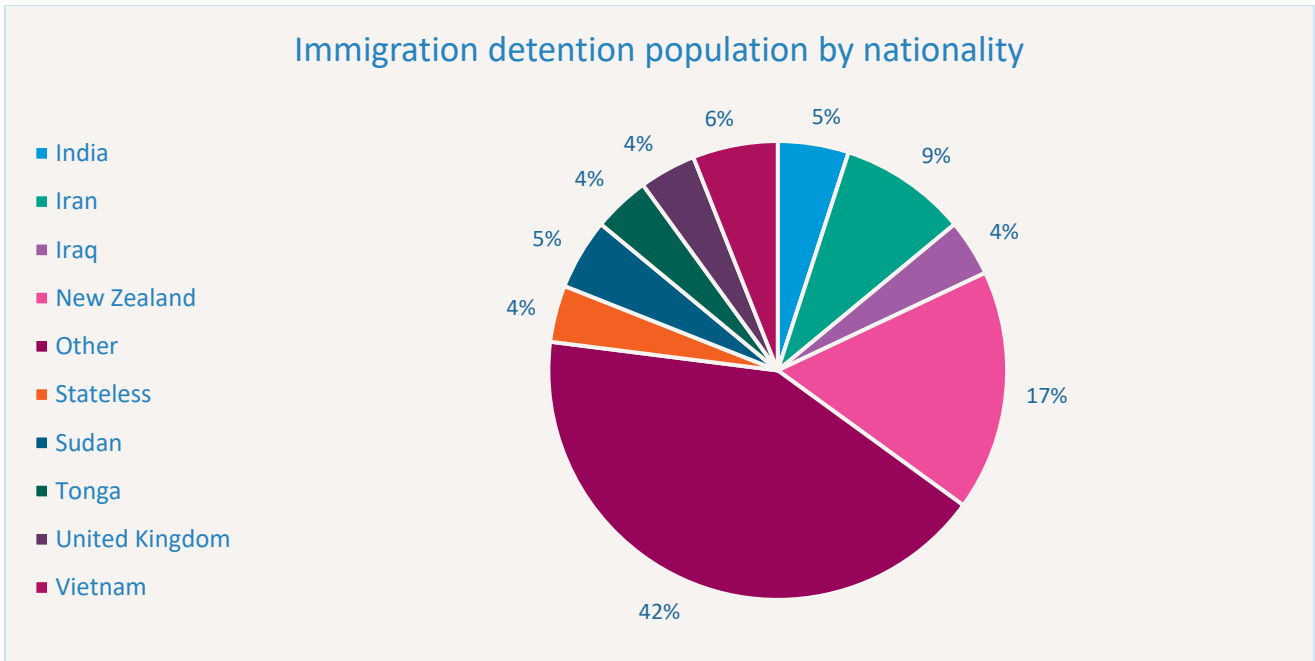


Figure 3: Immigration detention population by nationality, 30 June 2023<sup>10</sup>

VIDC held 40% of all people in immigration detention at the end of the reporting period. This was followed by YHIDC with 22%, and MITA with 18%. By the end of the financial year only 42 individuals were being held at NWPIDC on Christmas Island, and since then all staff and people in detention have been moved to the mainland. The facility has been placed into “hot contingency” meaning although currently empty, it could be made ready to accept new people into detention within 72 hours.

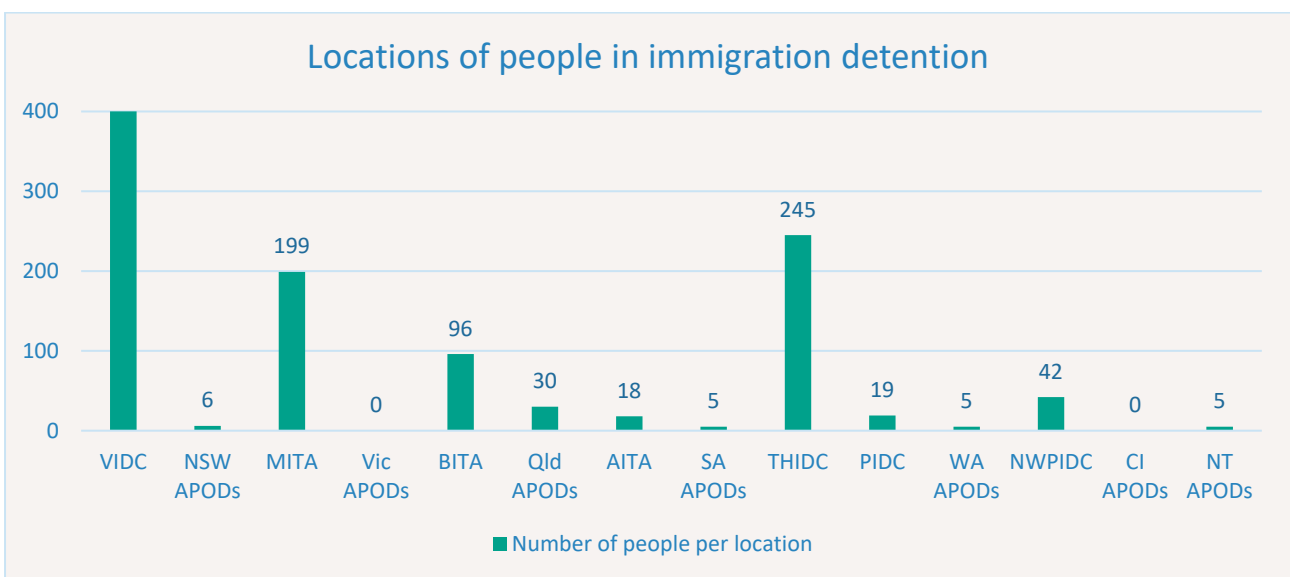


Figure 4: Locations of people in immigration detention, 30 June 2023<sup>11</sup>



# Spotlight: The Pearson decision and its impact



As noted, the population of the immigration detention network has fallen considerably. During this reporting period, the removal of people in immigration detention increased, due to changes in government policy and the reopening of international borders following reductions in COVID restrictions.

The greatest single cause of change in population numbers during the 22–23 financial year, however, was the Federal Court’s decision in *Pearson v Minister for Home Affairs* [2022] FCAFC 203<sup>12</sup>, which was handed down on 22 December 2022.

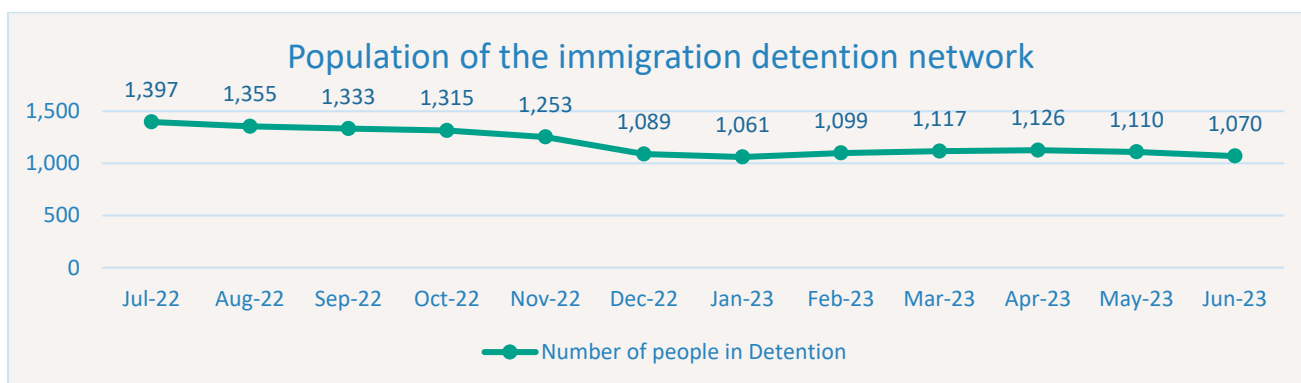


Figure 5: Population of the immigration detention network, 2022–23

This case tested whether an aggregate sentence (the sum total of a number of sentences imposed on a person for more than one offence) of more than 12 months should be considered a ‘substantial criminal record.’

Section 501 of the *Migration Act* states that:

*For the purposes of the character test, a person has a substantial criminal record if:*

*... (c) the person has been sentenced to a term of imprisonment of 12 months or more;...*<sup>13</sup>

The Federal Court found that an aggregate sentence of imprisonment of at least 12 months did not constitute a ‘term of imprisonment of 12 months or more’ and therefore would not result in a mandatory visa cancellation under s 501(3A) of the Act. This finding had considerable implications for many people in detention: within just 35 days, 165 people had been released from immigration detention.



However, on 13 February 2023 the *Migration Amendment (Aggregate Sentences) Bill 2023* passed both Houses of Federal Parliament and came into effect on 17 February 2023.<sup>14</sup> This Bill amended the *Migration Act 1958* to include the following:

*For the purposes of the character test, a person has a substantial criminal record if:*

*... (d) the person has been sentenced to 2 or more terms of imprisonment, where the total of those terms is 12 months or more<sup>15</sup>*

This legislative change reaffirmed the original decisions to refuse or cancel a visa under section 501 and required that all detainees who had been released as a result of the decision be re-detained. On 17 February 2023, the ABF commenced locating and re-detaining these people.

The Department advised us that:

*'Particular care will be paid to the mental health of any person that re-enters the immigration detention network'.*

By the end of June 2023, 132 people who had been released under the Pearson decision had been re-detained and were back in immigration detention.

Upon reviewing the regular reporting and data provided by the Department, particularly around mental health related and self-harm incidents in detention, we were concerned about the impact this release and then re-detention was having on the mental health of those affected and requested information from the Department relating to their wellbeing. We were advised that, as of 18 July 2023:

- 134 individuals released due to the Pearson decision had been re-detained
- 15 of those people were recorded as having threatened self-harm
- one was recorded as having actually self-harmed
- 12 noted suicidal ideation during medical consultation, and
- one had passed away in immigration detention on 30 June 2023.<sup>16</sup>

Although there is potential bias in this data as it relies on people in detention reporting their issues (i.e., there could be missing data if not reported), after reviewing this information, it appears that the rate of self-harm is lower in the re-detained Pearson cohort than in the general immigration detention population (0.75% of Pearson cohort compared to 4.13% of the general population) and this difference is statistically significant (99% Confidence). The rate of threatened self-harm is closer to the rest of the immigration population (11.19% Pearson cohort, 15.76% general) but is not statistically significant.

When asked, the department advised that no additional mental health supports were implemented for the Pearson-affected cohort on their return to detention, beyond the standard

of health care available to all detainees in immigration detention.<sup>17</sup> The services outlined in the *Immigration Detention Health Services Contract* between the Department and International Health & Medical Services Pty Ltd (IHMS) Statement of Work appear to have been sufficient in this case. Nonetheless, the potential negative psychological impact of being released from detention, only to be re-detained some months later, cannot be underestimated. The NPM will continue to follow up with the Pearson cohort to ensure that any emerging issues are identified and managed early.

The circumstances surrounding the death of a person who was re-detained following the Pearson decision are the subject of coronial and other investigations.<sup>18</sup> We will continue to monitor this case and await the outcome of those investigations.





# Immigration detention: Focus topics 2022–23



## Infrastructure challenges

The immigration detention network (IDN) is made up of a considerable variety of diverse facilities including large scale, purpose-built facilities such as NWPIDC, repurposed small-scale sites such as PIDC, and the ad hoc use of hotels. Other facilities such as YHIDC were purpose built to hold a particular cohort of detainees (unauthorised maritime arrivals), who were once the majority of the population but no longer are. As the profile of people in detention has changed over the past two decades, so too have the infrastructure needs of the IDN.

The immigration detention population has changed to a cohort with a criminal history and prison experience, primarily due to the requirements under section 501 of the *Migration Act 1958*. This group are typically more challenging to hold in administrative detention and pose a greater security risk.

During the 2022–23 period, we noted that infrastructure limitations affected the ability of sites to:

- safely hold certain groups (including women, and vulnerable detainees requiring protection)
- provide opioid substitution programs due to a lack of waiting or observation rooms and suitably secure storage
- provide sufficient office space or supply storage
- hold detained people in the same state as their families, friends, and support networks
- offer adequate access to open air and exercise to those in high-care accommodation.

We acknowledge that there were some positive infrastructure projects under way (for example the construction of a new kitchen at BITA) but we are concerned at an apparent lack of holistic planning based on future need.

Working towards a future-oriented network is a necessity, and a case in point is the PIDC. This centre is located in a single building, currently leased by the Australian Government from Perth Airport Pty Ltd, who have a 99-year leasehold interest over the airport and surrounding land.<sup>19</sup> The centre is now all but enclosed by public carparks, posing privacy and security risks, and PIDC is small and cramped. However, despite these shortcomings, it offers many positives that WA's other facility (YHIDC, 100 km out of Perth) cannot, including accommodation for women, metro-location with proximity to health services and ease of access for visitors, and should be kept as an IDC. Losing this site could pose significant challenges going forward.

We urge the department to commit to a review of all immigration detention infrastructure and assess its suitability for current and future need.



## Recommendation 1:

Within 6 months, the Department conduct a review of detention-related infrastructure, focusing on the needs of detainees, compliance with domestic and international standards, and with the aim of improving:

- the safe accommodation of vulnerable groups including, but not limited to, people with disabilities, women, and gender diverse persons
- the ability of detained persons to maintain contact with family and other community and cultural supports, and
- access to culturally safe health and specialist services commensurate with those in the community.

and provide the Commonwealth NPM with a copy of the review, advice of relevant actions taken and the implementation plan for any recommendations made, no later than 90 days after completion of the review.

## Women in the immigration detention network

The population of women in immigration detention is very small compared to that of males. At the end of the 2022-23 reporting period, women accounted for just 4% of the total detained population (48 out of 1,066).<sup>20</sup> Most of these women (61.7%) have been detained because they have had their visa cancelled under s501, similar to their male counterparts where 64.4% are s501 cancellations. A further 21.3% have overstayed their visa (compared to only 10.4% of males), 14.9% were not cleared by immigration after arriving by air (compared to only 2% of the male cohort), and 2.1% have had their visa cancelled for other reasons (compared to 9.3% of the male cohort).

Specific accommodation for women is not available at all facilities in the IDN. In fact, the long-term detention of women can only be facilitated in VIDC, MITA and PIDC. Any women who come into detention in the remaining states or territories must either be held in a hotel APOD or be transferred interstate.



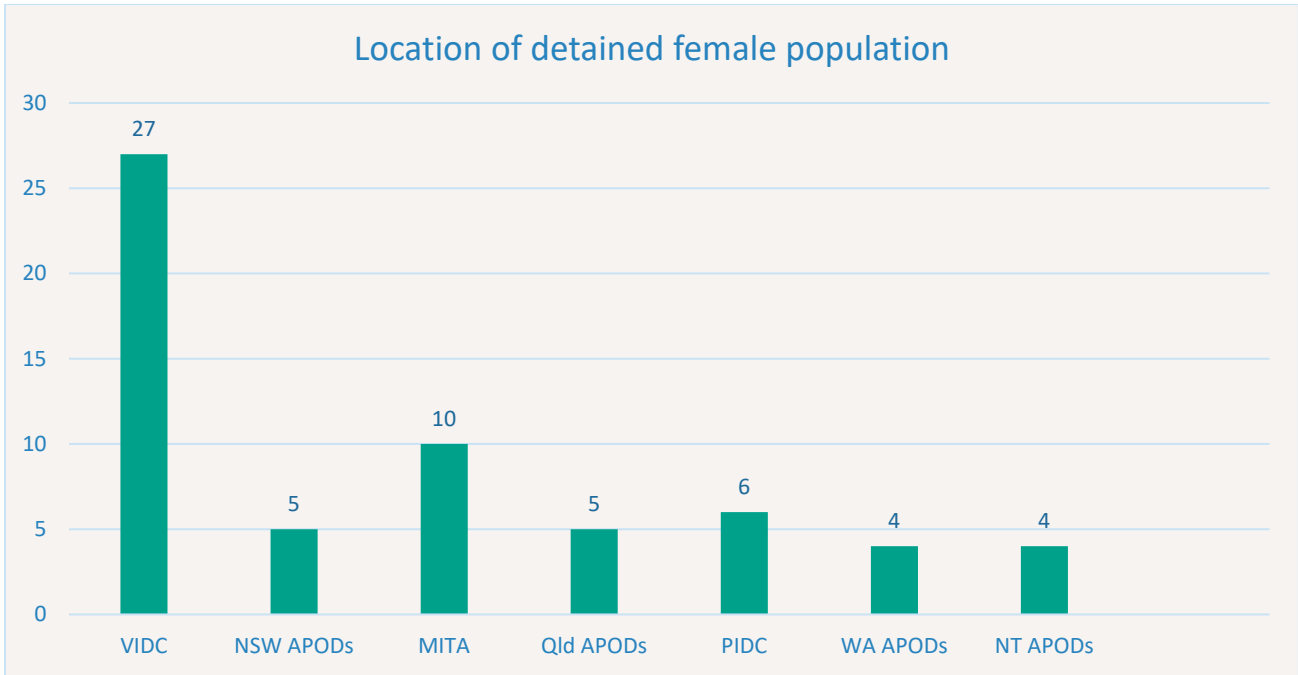


Figure 6: Location of detained female population, 30 June 2023

This is a worrying prospect. During our visit to BITA, seven women were being detained at a hotel APOD in Brisbane – one of them told us she had been there for over four months. As we have repeatedly stated, in previous annual reports, prior recommendations and in a joint statement by the Commonwealth Ombudsman and Human Rights Commissioner, such a location is not appropriate for long-term detention, as it is unable to facilitate adequate access to fresh air, exercise, and purposeful activity. However, transfer to more appropriate accommodation interstate would see the women moved away from their children and families, friends, and support networks. Neither of these options is satisfactory from a human rights perspective.<sup>21</sup>

Furthermore, in those centres that do accommodate women (VIDC, PIDC, and the MITA Broadmeadows Residential Precinct), female detainees had poorer access to the facilities and services available at each site. For example, at PIDC the women’s compound includes an outdoor undercover area and a yard. The outdoor undercover area is used as a common area, classroom, undercover gym, and programs and activities area. It is small, cramped, and semi-exposed to the elements. It is not unusual to see several activities happening concurrently in the same small space. This year we were advised that centre management arranged for the women to use the male dining room for activities on a number of occasions, but that the women declined as they did not feel comfortable.

Due to the limited infrastructure options available, it is also more challenging to separate women from one another if there are security or interpersonal concerns. This in turn increases the risk of security incidents.



## Recommendation 2:

In line with Recommendation 1, within 6 months:

- the Department consider ways to best accommodate women in all state and territory immigration detention facilities, with the aim of avoiding both the long-term detention of women in hotel APODs and interstate separation from friends and family; and
- provide the Commonwealth NPM with advice of the consideration process and implementation plan as soon as completed.

## Transgender, intersex, and gender diverse individuals

While we do not intend to detail the specifics of any individuals, we acknowledge that there are transgender, intersex, and gender diverse people in the immigration detention network. These individuals have unique vulnerabilities in a detention environment which must be expressly taken into account.

At present, there does not appear to be a comprehensive policy or guidelines outlining how transgender, intersex, or gender diverse people should be accommodated or managed in the IDN.

Following one of our visits this year, we suggested that the Department develop comprehensive procedural guidance relating to the accommodation, welfare, security, and management of transgender people in detention, noting the requirements outlined in Australian and international best practice guidance. The Department did not accept this suggestion, stating that they prefer to endorse a person-centred approach, which permits an ongoing management plan tailored to support individual needs and circumstances.

We acknowledge that there are advantages to a case-by-case, needs based approach, however, facility managers would benefit from having some guidance on how best to support transgender, intersex, or gender diverse people who may come into their care.

As such, we reiterate our previous suggestion with the following recommendation:





### Recommendation 3:

In line with Recommendation 1, within 9 months, the Department develop procedural guidance relating to the accommodation, welfare, security, and management of transgender people in detention, noting the requirements outlined in Australian and international best practice guidance, and provide copies to the Commonwealth NPM upon completion.<sup>22</sup>

## COVID-19 restrictions

In contrast to recent years, this reporting period was characterised by a gradual reduction in the extent and severity of COVID-19 restrictions in both travel and community settings. However, at immigration detention facilities the staff, people in detention, and their visitors all remain subject to ongoing COVID-19 restrictions.

During our last visit of the reporting period,<sup>23</sup> we found that the following restrictions were still in place for staff and visitors right across the detention network:

- External visitors and staff were required to wear masks in detainee areas.
- External visitors (including children) were required to be double vaccinated.
- External visitors and staff were required to answer a series of health questions before entering the facility.

Furthermore, the following restrictions remained for people in detention:

- Newly arrived individuals from prisons or the community were required to complete 5-7 days of operational quarantine.
- Limitations on the number of visits and visit attendees remained in place.

While we acknowledge the increased risk of COVID-19 in closed environments, these restrictions were in stark contrast to community settings, which had moved on from the need to isolate or maintain social distancing.

For example, pre-COVID visits at YHIDC accommodated up to 20 people in detention and their visitors, but in early June 2023, visit places were limited to just four per session. And, if a visitor was unvaccinated against COVID-19, no other visits could occur during the same session. These restrictions severely limit visit places per session, and, therefore, the number of people in detention who are able to access visits with their friends and family.



We observed that many restrictions on staff were being poorly enforced due to mask-wearing fatigue and staffing pressures. The restrictions on those in detention and their families, however, were still in place.

Those who were required to complete 5-days of Operational Quarantine did so in a designated wing of the high care accommodation (HCA) compound. The HCA is designed to hold those at risk of harming themselves or others, and so are ligature minimised, barren, and under constant CCTV observation. We acknowledge that steps were taken to make the rooms more comfortable (adding televisions and power points), but the people held there should not be under constant observation unless they have been individually assessed as being at risk of self-harm.

The COVID-19 restrictions remain in line with the Communicable Diseases Network Australia (CDNA), which offer principles-based guidelines on the management of COVID-19 in detention settings. We note that one of these key principles is that measures to control COVID-19 should not be out of step with those in community.

After our visit to YHIDC, we suggested that the Department should end its national COVID restrictions across the immigration detention network to align with current community practice. In response, the Department advised that they partially agree and are gradually moving towards a business-as-usual approach to managing COVID-19. Since the end of the 2022-23 reporting period, the following measures have been removed:

- mask requirements for staff, visitors, and people in detention
- entry screening questions
- proof of vaccination for visitors.

We note and appreciate these changes, but also note that the Department and its contracted health services provider now have thorough policies and procedures in place to manage the outbreak of other communicable diseases in the immigration detention network (IDN). We believe that these should be considered adequate for the management of COVID-19 as well, and thus we recommend removal of all COVID-based restrictions across the IDN.



## Recommendation 4:

The Department end its national COVID-19 restrictions across the immigration detention network no later than 30 April 2024.

# Drug infiltration and alcohol and other drug (AOD) services

In our 2021-22 Commonwealth NPM report, we raised concerns about the prevalence of drugs across the IDN, the negative impact on people in detention, and on the good order and security of the centres themselves.

Numerous factors contribute to this complex issue, including limited access to opiate substitution programs, and a lack of behavioural management or therapeutic treatment programs, as are typically offered in Australian prisons.

However, a key factor affecting the inability of authorities to prevent the influx of contraband, are the limited search and seizure powers contained in the *Migration Act 1958*. These define the circumstances under which a person in immigration detention, and their property, may be searched:

*(2) The purposes for which a person, and the person's clothing and any property under the immediate control of the person, may be searched [...] are as follows:*

*(a) to find out whether there is hidden on the person, in the clothing or in the property, **a weapon** or other thing capable of being used to inflict bodily injury or **to help the person to escape** from immigration detention...<sup>24</sup>*

In other words, a person cannot be searched if they are simply suspected of carrying drugs. Staff can only search someone if they have reasonable suspicion that they are carrying a weapon or tool of escape.

Furthermore, regular room searches have ceased following legal advice, and rooms may only now be searched if staff have intelligence that a weapon or escape tool is concealed there. This



change has considerably impacted the ABF's ability to detect and disrupt the drug trade in immigration detention.

In response to this issue, our 2021–22 report made the following recommendation:

*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.<sup>25</sup>*

The Department agreed with this recommendation, however, there has been no progress in amending the *Migration Act 1958* to permit broader search powers.

Drug infiltration and associated criminal activity continued to be one of our greatest concerns this reporting period. The scale of drug infiltration and use across the IDN continues to have significant, negative consequences.

Throughout our visits in 2022–23, detention centre staff members expressed frustration with their limited ability to disrupt infiltration and trafficking. This included drugs and other contraband entering centres from external throws or drops, or concealed in mail packages. The prevalence of illicitly brewed alcohol is also proving to be a considerable threat to safety and security. Staff reported that abusive and aggressive behaviours, assaults, and other challenging conduct have been linked with the consumption of home brewed alcohol. We have also received feedback from detained people who were concerned about their personal safety due to the behaviour of intoxicated people in detention.

We reiterate our previous recommendations in this regard, and again urge the Government to consider amending the *Migration Act 1958* to address this ongoing concern.



## Recommendation 5:

The Australian Government should urgently consider legislative reforms to allow ABF to use its existing broader powers to detect and address criminal activity within immigration detention facilities, including but not limited to appropriate search and seize powers.

Substance misuse is a complex issue, and while it is discouraging that efforts to address the supply of illicit substances have somewhat stalled, there was progress in reducing demand.

Throughout the reporting period, we heard of incoming changes to alcohol and other drug (AOD) services from the contracted health care provider. By the end of the reporting period, additional





services were beginning to come online. For example, in our last visit of the financial year, we learned that services at YHIDC were expanding to include a new and well-resourced drug and alcohol team. The team would include an additional General Practitioner, Clinical Nurse Supervisor, drug and alcohol counsellor, two nurses, and a team leader, all tasked with focussing on healthcare related to drug and alcohol issues alone. Smaller centres like PIDC however, which had few issues with alcohol or drug use, were due to receive one day per week services of an AOD counsellor.

We also heard that services would include delivery of a smart recovery program which will be available to groups and one-on-one. The programs were due to be offered to all people in detention.

The addition of these new services is a positive step. It will not only serve to improve health outcomes for those affected by substance abuse, but also free up the existing primary health and mental health team to refocus on their primary roles. From a safety and security perspective, it may also reduce the ongoing harm caused by substance abuse in the IDN. We welcome this shift in approach and look forward to monitoring its effects throughout the coming year.



### Recommendation 6:

The Department ensure that people in detention receive substance misuse and harm minimisation services and support commensurate with government-funded services available in the community, and report to the Commonwealth NPM within 6 months on their plan to achieve this.

## Programs and activities

Program and activity schedules run in all immigration detention facilities. If detained persons participate in at least some of the available programs they can earn additional 'points' which may then be spent at the canteen, for the purchase of items such as food, small personal items, and tobacco. Although there is a national approach to the delivery of these programs, the available activities vary from site to site due to staffing, infrastructure, and resource variables.

In our 2021-22 report we noted that YHIDC was trialling an extended programs and activities schedule, which saw activities running in the evenings and on weekends.<sup>26</sup> We saw this as positive, as it offered greater opportunity for engagement and purposeful activity for people held in detention. During our visits throughout 2022-23, we were encouraged to see that this extended



schedule was being rolled out throughout the immigration detention network. This is a positive initiative.

However, we maintain some concerns around the content of the schedule. A common complaint from the people we speak with in detention is that many of the activities (arts and crafts for example) are not perceived to be age appropriate. Some men, for example, felt demeaned, as they associated activities with those their children might take part in.

In contrast, the programs available at YHIDC offered a number of very popular classes in leather making and woodwork. Men we spoke to felt that these were not only more suitable, but also more useful, as they could make things for themselves, their friends, or families to use. We acknowledge that offering such programs requires significant resourcing, including access to appropriately skilled staff and necessary equipment, but the benefits to the wellbeing and self-esteem of those in detention are clear. We encourage the Department and Serco to consider the expansion of such programs and other age-appropriate activities where possible.



### Recommendation 7:

The Department review Programs and Activities schedules across the immigration detention network to ensure age- and culturally-appropriate and meaningful programs and activities are available to all people in detention, and report to the Commonwealth NPM within 6 months on the implementation of this recommendation.

## Population management

Population management in the IDN is a challenge, with more people entering detention on the east coast than there are places in the east coast detention facilities. Many of those from the east coast are transferred to facilities in the west (YHIDC and NWPIDC), to keep numbers manageable in east coast facilities.

This sees many people who have significant family and social networks in the community transferred, at a minimum, to the other side of the continent. In the case of those transferred to the NWPIDC on Christmas Island (which is about 1,550 kms from the Australian mainland), the chance of them receiving visits from their family or social networks became virtually impossible. We were pleased therefore to note the closure of NWPIDC on 29 September 2023.



Consideration for placement location is given to those who meet the threshold of having 'critical family' connections. We suggested that the Department should consider reviewing its definition of 'critical family' to minimise the impact of separating people in detention from their family and social supports. The Department does not support this approach. They continue to use the definition of 'immediate family' in Reg 1.12AA of the *Migration Regulations 1994*, being:

- spouse or de facto
- dependent child
- a parent of someone under the age of 18.

This limited definition of 'family' excludes relationships (such as parents, grandparents, cousins, and other extended family) that some cultures place great significance on. This issue was raised consistently with us by people detained at YHIDC and NWPIDC. The loss of ability to connect with friends and family was deeply upsetting to them, and has the potential to cause unrest.



## Recommendation 8:

Within 6 months, the Department update relevant policy to include an expanded definition of 'critical family', beyond the minimum standard identified in the *Migration Regulations 1994*, to ensure cultural recognition of extended family and to minimise the impact of separating people in detention from their family and social supports where possible.

## Use of hotels as APODs

In our 2021-22 report, we recommended that the Department cease the use of hotel APODs for long-term detention (greater than 4 weeks). We found that these facilities were unsuitable for prolonged detention, as they could not provide basic human rights standards, including access to fresh air, exercise, and adequate meaningful activity.<sup>27</sup> At that time, the Department noted this recommendation, and stated that it was actively working to reduce its reliance on hotel APODs for the placement of immigration detainees.<sup>28</sup>

We visited a number of hotel APODs during this reporting period, and despite noting reduced numbers in certain locations, the concerns we raised in last year's report remain. We are particularly concerned by the long-term detention of some people who were unable to reside in larger IDCs for either health, behavioural, or safety reasons.



On 7 October 2022, the Commonwealth Ombudsman published a joint statement with the Australian Human Rights Commissioner, on the use of hotels as APODs. The statement included the following recommendations:

- Hotel APODs should only be used for short-term detention.
- People held in hotel APODs should have access to at least one hour of open-air exercise per day.
- People held in hotel APODs should have access to meaningful programs and activities.
- People held in hotel APODs should have the same access to medical and welfare services as people held at other detention facilities.
- People’s right to privacy should be respected in hotel APODs.

At that time, the longest continuous period an individual had been detained at a hotel APOD was 634 days.

We are pleased to note that since November 2022, the Department has taken active steps to reduce its use of hotel APODs. The numbers of people being held in hotel APODs has reduced significantly, since a peak in August 2022. Furthermore, those people who had been held in APODs for excessive lengths of time (including those referred to above) have been successfully moved out, into either community detention or mainstream detention facilities.

Certain cohorts will likely continue to be held in hotel APODs in the first instance due to a lack of appropriate infrastructure in all centres (women, illegal foreign fishers, individuals who have been refused immigration clearance).

We welcome the Department’s efforts to successfully scale back the use of hotel APODs and reiterate our previous recommendations. We will continue to monitor conditions and the length of time people are detained in hotel APODs. However, our ability to conduct this monitoring is limited by the type and aggregation of data that we regularly receive from the Department. This is a matter that we will continue to pursue in the coming reporting period.

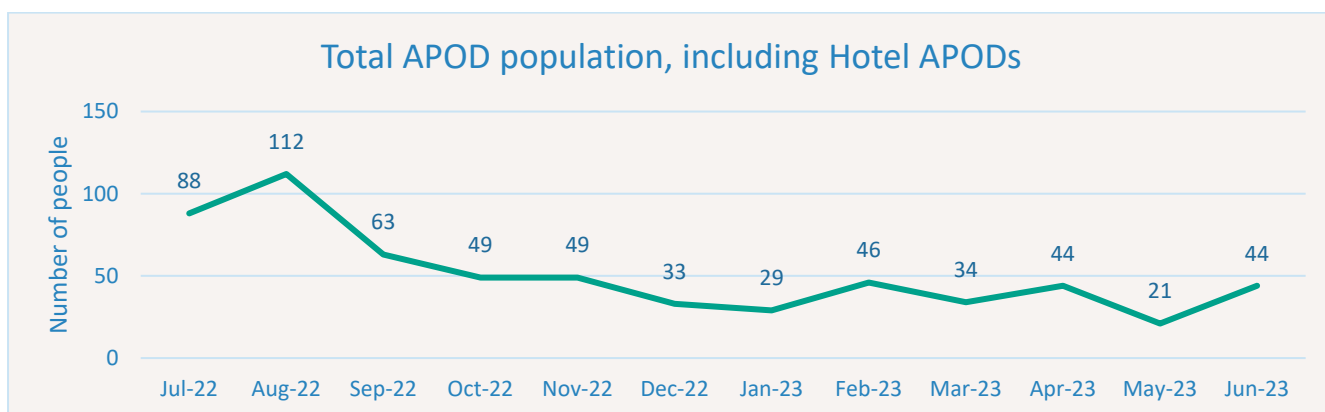


Figure 7: Total APOD population, including Hotel APODs, 2022–2023



## Spotlight: Children in detention



### An Independent Visitor function for children in detention

The *Migration Act 1958* affirms the human rights principle that children under the age of 18 years can only be detained as a measure of last resort and for the shortest practicable time. If children are to be detained, they must be held in an APOD that has been approved by the Minister in writing, rather than an immigration detention centre.

During this years' reporting period, the Commonwealth NPM accepted the role of Independent Visitor for Children in immigration detention. This arrangement is in response to a recommendation by the *Royal Commission into Institutional Responses to Child Sexual Abuse* aimed at further strengthening the protection of children held in immigration detention.

The details of the Independent Visitor arrangement were agreed by the Department and the Commonwealth Ombudsman, and seek to ensure that children and their families in immigration detention have early access to a dedicated, child-specific avenue through which they can raise concerns, and have any issues identified and resolved.

## Children in detention during the 2022–2023 reporting period

During the 2022–2023 reporting period, we were advised of the detention of 24 children. All but one arrived in family groups,<sup>29</sup> of which there were 12. There were no unaccompanied minors. The largest group of detained children (siblings) was five. The detained children ranged in age from 1 to 17 years, with the average age being 8. The longest period a child was held for was 17 days, while the shortest was less than 24 hours.

The Department informed us that the role and functions of the Commonwealth NPM as an Independent Visitor were offered to children in detention and their families. However, none contacted us during the reporting period.

Origin	Number of children detained	Age/s	Location	Number of days detained
Middle East	1	14	Sydney Hotel APOD	17
Indo-Pacific	2	17, 15	Brisbane Hotel APOD	11
Middle East	5	9, 8, 7, 4, 1	Brisbane Hotel APOD	3
Indo-Pacific	1	17	N/A	<1
Middle East	3	5, 4, 3	Brisbane Hotel APOD	3
Indo-Pacific	2	10, 5	Cairns Hotel APOD Brisbane Hotel APOD	7
Middle East	5	13, 11, 9, 3, 1	Broadmeadows Residential Precinct	3
South America	1	14	Sydney Hotel APOD	3
Indo-Pacific	1	15	Northern Hotel APOD	12
Middle East	1	1	Sydney Hotel APOD	1
South America	1	2	Sydney Hotel APOD	3
Europe	1	4, 1	Brisbane Hotel APOD	2

Table 5: Details of children detained in immigration detention during the reporting period

During one of our visits, our monitors were able to observe preparations for the arrival of a family group at a hotel APOD. The planning for the arrival of the family was well coordinated and comprehensive, with a focus on the needs of the children.

As part of these preparations, senior ABF and Serco staff reminded their team that managing a family group was different to detaining adults. The family were consulted about their accommodation requirements and their preferences were taken into account. We were also pleased to note that planning was underway for the family to access an outdoor recreation facility. Although the family did not opt to meet with us in this instance, we were broadly satisfied with the measures we observed being taken for the care of the family.

## Detained children as ‘guests’

During the reporting period, we observed that in 4 of the 12 group arrivals, the children in question were referred to as ‘guests’ rather than detainees. Upon querying this, we were advised that this term is used when parents are refused entry to Australia on certain grounds and therefore detained,<sup>30</sup> while travelling with their children. In these instances, the Department has advised that they do not consider the children to be ‘unlawful’ under the *Migration Act 1958*, but that to

remain in the care of their parents, and in their best interests, they are held in immigration detention as 'guests'.

Despite the Department's claim that the children are only detained so that they can remain with their parents, under the Migration Act an 'unlawful non-citizen' is any person who is not an Australian citizen and remains in Australia without a valid visa. Unless the children hold visas that their parents do not, they are unlawfully in Australia. Regardless, the experience of these children is unchanged. They are children who are detained, not "guests": it minimises the fact of their detention to call them "guests" and it would be misleading if they were not to be recorded as detainees in departmental records. We also note that s4AA of the Migration Act affirms the principle that a minor only be detained as a measure of last resort. While we agree that the preference of families is likely to be to stay together, possible alternative arrangements should also be considered as an option for children if this is not the case.

We do acknowledge that the Department notified us of the arrival of children at their facilities, whether they considered them detained or being held as guests, in keeping with the Independent Visitor agreement.



# Spotlight: High Care Accommodation

## HCA in the immigration detention network

High-care accommodation (HCA) is the name used in the immigration detention setting to describe the accommodation where people in detention may be held for brief periods when close monitoring and intensive management is deemed necessary. Some immigration detention facilities have areas that are routinely used as HCA, which are typically low-sensory settings, characterised by enhanced observation (in-room CCTV), movement restrictions, and a minimal environment (no TV or power outlets). Placement in HCA should only be used as a last resort, when other strategies to manage a person's vulnerabilities, behaviour, or the risk they pose have not succeeded. Due to the obvious risks associated with placing people in HCA we conducted a number of enquiries into their use.

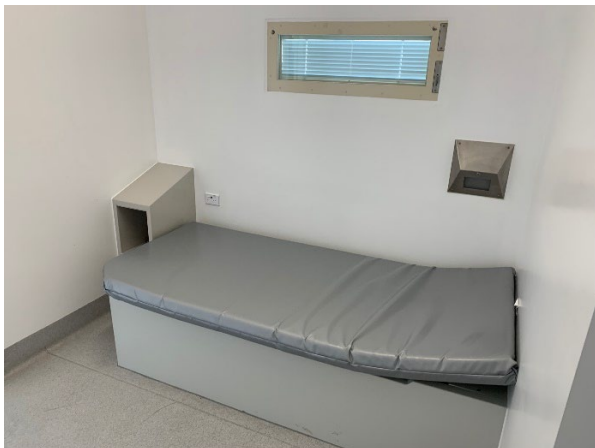


Figure 8: HCA room at BITA

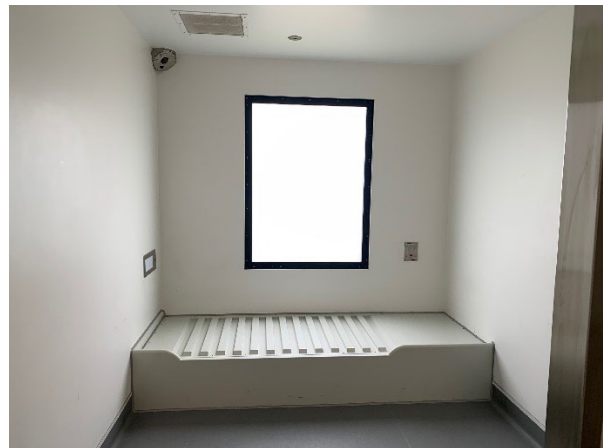


Figure 9: HCA room at MITA

As part of our enquiries, we received some, but not all, of the information we requested, which included the following:

- number of people placed in HCA rooms in the 2022-23 reporting period (by site)
- time spent in HCA in the 2022-23 reporting period (by site, and by length of time)
- reasons for placement in HCA during the 2022-23 reporting period (by category).

Disappointingly, the response we received was limited, due to the fact that the Department does not have reliable and detailed data about the use of HCA across the IDN.

The Department further noted that its current HCA incident reporting is limited to the placement of people in HCA for more than 24 hours, and that reporting on HCA use for periods under 24 hours would be a time and a labour-intensive manual process.



The Department's limited record keeping capacity, particularly in regard to use of HCA, limits our ability to analyse the information to identify any systemic issues.



## Recommendation 9:

Within 6 months, the Department must improve its record keeping capability and incident reporting guidelines regarding the use of High Care Accommodation, to clearly record duration of stay and reasons for placement at a minimum, and provide the Commonwealth NPM with advice of relevant actions taken.

In the course of 2022-23, the Department recorded 209 incidents of HCA being used for greater than 24 hours, which included people with multiple placements.

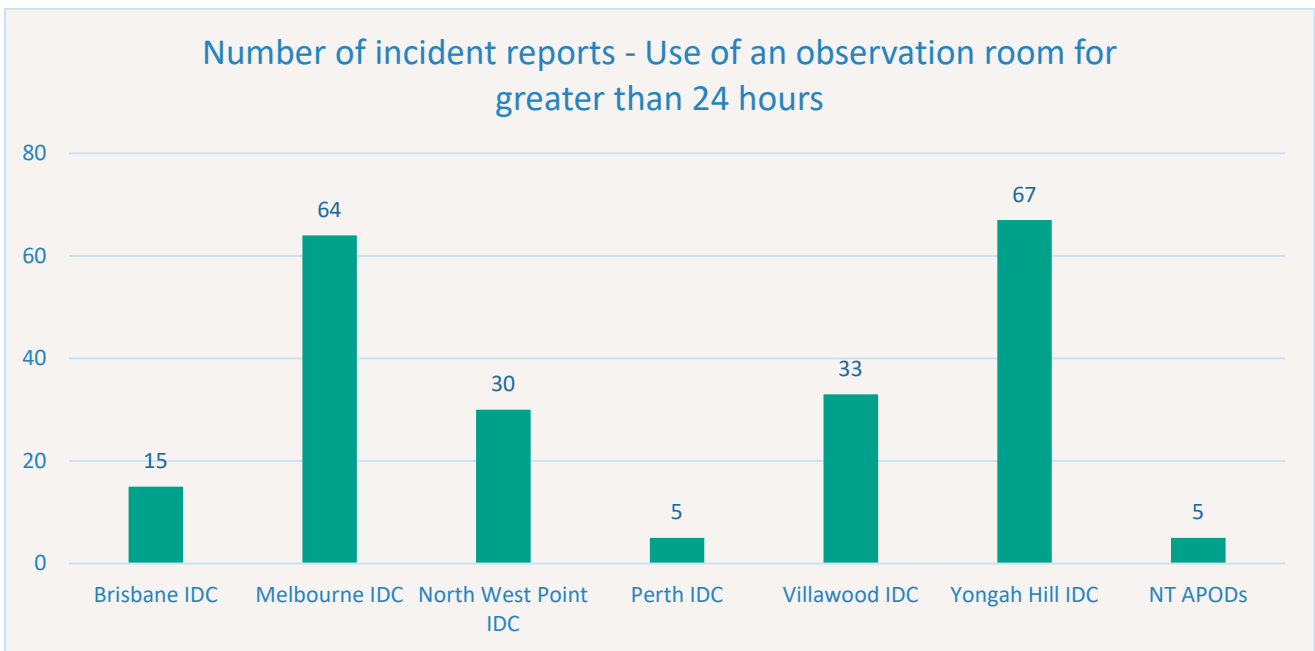


Figure 10: Number of incident reports - Use of an observation room for greater than 24 hours, 2022-23

YHIDC has only five HCA rooms, but had 67 instances of an HCA room being used for more than 24 hours over the 12-month period. Similarly, MITA, which has only eight HCA rooms, had 64 instances of the rooms being used for more than 24 hours. VIDC and NWPIDC, which have the most HCA rooms with 16 and 20 respectively, used theirs for fewer extended periods (33 and 30 occasions).

During 2022-23, 147 different people were held in a HCA room for more than 24 hours. Of these, 33 people were placed in an HCA for a period of 24 hours or more on more than one occasion. Two detainees were placed in HCA rooms seven times during the reporting period, one individual at



MITA and one at NWPIDC. A single detainee was placed in an HCA room at VIDC 16 times during the reporting period.

The fact that we have been unable to cross reference this information with the reasons for these individuals' placement in HCA is troubling, and part of the reason we are concerned by the Department's inability to track this correlation also. There are numerous reasons why this placement may be occurring, from ongoing security concerns to a person being vulnerable if placed with others. But this highlights the need for a better recordkeeping capacity.

## Access to open air

An additional area of concern for us around the use of HCAs, and particularly when used for extended periods of time, relates to the limited access to open air and exercise they may offer.

The Mandela Rules offer a minimum standard for places of detention, and Rule 23.1 states that everyone held in detention should have access to at least one hour of suitable exercise in the open air daily.<sup>31</sup> This minimum standard is accepted internationally, and is reflected in the legislation that governs the custody of prisoners in the majority of Australian states.<sup>32</sup>

However, we are of the view the access to open air available to people held in certain HCA does not meet the expectations or intent of '*access to open air or outdoor recreation*' established in these rules, particularly for example, at YHIDC and MITA.

At YHIDC, the HCA compound is made up of pre-fabricated, raised, transportable buildings. The exercise area is an unfurnished room, with windowpanes removed and replaced with wire mesh. In practice, it is used more for people to smoke in than exercise, and does not provide a truly open-air environment.

At MITA, the HCA exercise area (or smoke room) is also an empty room with windowpanes removed, but here the panes have been replaced with three layers of mesh and louvres. This is clearly not access to open air within the true intent of the Mandela Rules.

Following our visit to YHIDC this year, we recommended that the Department consider ways to improve access to fresh air and exercise for those held in the HCA.



Figure 11: YHIDC HCA, access to fresh air



Figure 12: MITA HCA access to fresh air



Figure 13: Close up of MITA HCA, grille covering the windows.

The Department partially agreed with a recommendation we made specific to the YHIDC HCA and improving access to fresh air and exercise for those held in the HCA. The Department advised that people held in the YHIDC HCA did, in fact, have access to an outdoor area of the HCA compound, and that they were also provided with supervised access to the Greenheart (grassed area at the centre of the facility) twice daily when not otherwise in use.

However, neither the Superintendent nor other staff at YHIDC mentioned this during our visit or in response to our questions relating to access to fresh air. This may indicate a change in policy since our visit, or that centre staff are unaware of this policy.



## Recommendation 10:

Within 6 months, the Department must ensure that HCA across the immigration detention network offer access to open air and exercise, in accordance with the intent of the Mandela Rules and other relevant domestic and international standards, and provide the Commonwealth NPM with advice of relevant actions taken.

## Ligature minimisation review

During this reporting period, we learned that the Department requested a third party be engaged to conduct a systemic review of HCA across the immigration detention network. The review covered six facilities,<sup>33</sup> and sought to identify, in particular, ligature points (anything which could be used to attach a cord, rope or other material for the purpose of hanging or strangulation) in high-risk areas (predominantly HCA) and make recommendations to mitigate potential risks. This specifically included works to minimise the risk of self-harm. The review and its findings were comprehensive and resulted in a significant number of recommendations.

Facility	Number of HCA rooms	Number of recommendations
Adelaide IDC	0	N/A
Brisbane IDC	3	27
Melbourne IDC	8	75
North West Point IDC	20	25
Perth IDC	1	15*
Villawood IDC	16	39
Yongah Hill IDC	5	31
<b>TOTAL</b>	<b>53</b>	<b>212</b>

\* All recommendations related to a full upgrade of the PIDC HCA room to bring it into alignment with guiding principles.

Table 6: Ligature minimisation review scope and recommendations made



The ABF and the Department advised us they are currently considering the recommendations proposed by the review and noted that:

*The ABF will continue to prioritise infrastructure works across the IDN through the Departmental Administered Capital Works process and through other agreed funding mechanisms.*

We acknowledge the scale of these proposed works, the potential costs involved, and the disruption and risks that such works could introduce to the running of secure facilities. But noting the significance of this work – to substantially reduce the risk of self-harm in high-risk locations – we support any endeavours to fund and implement the review’s recommendations.



## Recommendation II:

The Department implement all recommendations arising from the six *Pedavoli Architects’ High Care Accommodation Reviews* (March 2023) and provide the Commonwealth NPM within 6 months with an implementation plan including time frames for completion.

# Update: Inappropriate crowd control at NWPIDC



In our 2021-22 report on Commonwealth NPM activity, we raised our concerns about apparent pre-planned and systematic use of firefighting equipment against people held in detention.

Through monitoring CCTV footage, we identified that firefighting equipment had been used to control the movement of detained people during two disturbances at the NWPIDC in early 2022. We also found that incident reporting relating to these disturbances failed to document the management of these disturbances and, although mention was made to firefighting equipment in some reporting, it appeared that the fact it had been used for crowd control, against departmental policy, had been concealed.



Figure 14: CCTV still – firefighting equipment being used against detainees, NWPIDC White Compound, 24 March 2022



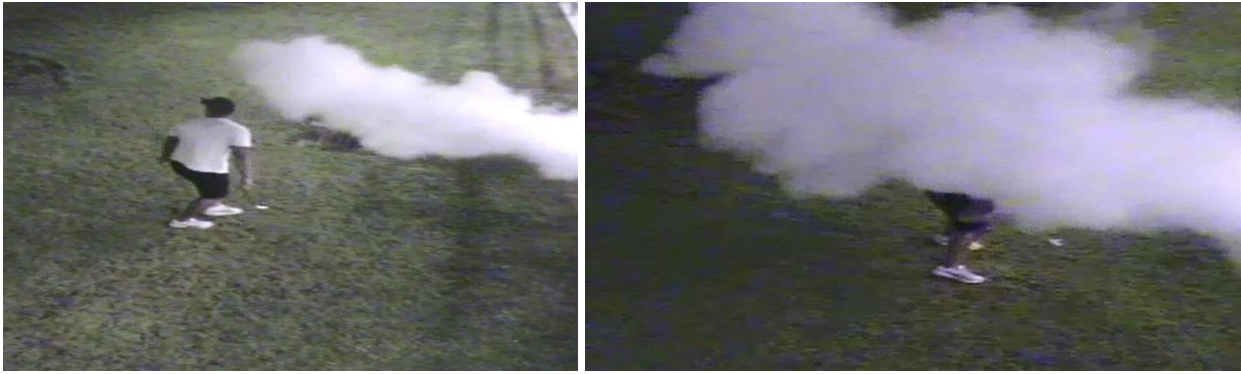


Figure 15-16: CCTV stills - firefighting equipment being used against a detainee, NWPIDC White Compound, 24 March 2022



Figure 17: Firefighting equipment being used against detainees in a semi-enclosed area, NWPIDC White Compound, 24 March 2022

Our enquiries into these incidents continued into this reporting period, and in September 2022 the Ombudsman wrote to the Secretary of Home Affairs encouraging an independent investigation into these incidents. In November 2022, we received confirmation from the Department that the use of the firefighting equipment against people in detention was unauthorised, and that a management-initiated detention assurance review by their internal auditors was underway. We were also advised that actions had been taken to prevent a recurrence of these acts, pending the outcome of the review.

We received a copy of the finalised review report on 25 July 2023. It confirmed that the use of the firefighting equipment was unauthorised by the Department, and not in line with approved practices and procedures. However, the report also identified that the Department's policy and procedures do not 'explicitly detail' how to respond to incidents such as these.

Despite these serious findings, the report did not make any recommendations to address the concerns identified. Instead, it stated that:

*'the two incidents reviewed would be referred for further investigation by the Department [...]*

And that:

*'As such, recommendations to address the root causes would not be included in this draft report.'*

We also note that although the review intended to interview stakeholders involved in these incidents, interviews did not go ahead due to 'sensitivities' involved.

We understand that there is no legal impediment to the department investigating the matter, and we recommend the department take prompt action to fully investigate this matter.

We will continue to monitor and report on the response to these incidents.



## Recommendation 12:

Within 30 days, the Department should advise the Commonwealth NPM of the outcome of the investigation, provide a copy of the investigation report and advise of:

- action taken, including against facility staff, in regard to the inappropriate and unauthorised use of firefighting equipment at North West Point IDC in early 2022
- action taken in regard to non-compliance with reporting requirements regarding the incidents, including how this was addressed and how it will be prevented in the future
- action taken to ensure that fire-fighting equipment is never improperly used against people in detention again
- the updated policy and procedures for facilities to deal with similar incidents, which should include 'explicit detail' on response methods, and prohibited response behaviours, and
- policy, procedures and training in place and planned on appropriate use of force against people in detention.



# Update: Use of spit hoods



In December 2022, the United Nations' Committee Against Torture released its Concluding Observations, following its consideration of Australia's 6<sup>th</sup> Periodic Report under the Convention against Torture.

In relation to fundamental legal safeguards, it noted that Australia should:

*'[...T]ake 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.'*<sup>34</sup>

South Australia and Queensland had already prohibited the use of spit hoods or ceased using them. There were also partial bans in the Northern Territory and Western Australia. There has also been considerable progress at the Commonwealth level.

In April 2023, the AFP released a media statement advising they had completed an internal review on the use of spit hoods and that as a consequence they had ceased using spit hoods.<sup>35</sup>

The ABF ceased authorisation for spit hoods to be used against juveniles in immigration detention in November 2022 and from 1 July 2023 spit hoods were no longer available as an item of restraint for anyone in immigration detention, minors or adults. There are now no circumstances in which a spit hood may be used on immigration detainees by ABF or contractors.

We welcome the ABF and the AFP eliminating their use of spit hoods against people in detention. We note with caution however, that certain alternate approaches to controlling individuals who may spit such as physical or chemical (OC spray etc) restraint or ground stabilisation, can also pose risks to the person they are applied to. We will continue to monitor this as part of our regular assessment of use of force and use of restraints in places of detention going forward.

# Australian Federal Police

## AFP facilities in 2022–23

The Commonwealth NPM visits and monitors places of detention controlled by the Australian Federal Police (AFP). These include AFP controlled:

- Holding cells: cells used to detain and safekeep persons in custody pending further legal proceedings.
- Watch houses: facilities used to charge and hold persons in the custody of the AFP.<sup>36</sup>

AFP Facility	State/Territory	Type
Canberra City Watch House	ACT	Watch House
Gungahlin Police Station	ACT	Holding cells
Belconnen Police Station	ACT	Holding cells
Woden Police Station	ACT	Holding cells
Tuggeranong Police Station	ACT	Holding cells / Emergency Watch House <sup>37</sup>
Jervis Bay Police Station	Jervis Bay Territory	Holding cells
Norfolk Island Police Station	Norfolk Island	Holding cells
Christmas Island Police Station	Christmas Island	Holding cells
Cocos (Keeling) Islands Police Station	Cocos (Keeling) Islands	Holding cells

Table 7: Operational AFP facilities 2022–23

## Commonwealth NPM visits in 2022–23

During the reporting period, we visited six of the nine AFP facilities – five in the ACT and one on Norfolk Island. Several of these were first visits aimed at increasing our understanding of the AFP environment.

Due to the arrangements within the ACT in regard to policing, the Commonwealth and ACT NPMs share jurisdiction over certain aspects of detention monitoring. The delivery of policing services by the AFP falls under the jurisdiction of the Commonwealth, whereas issues such as infrastructure and facilities come under the remit of the ACT Government, and therefore, the ACT NPM.

To ensure that all aspects subject to OPCAT were covered during our visits to AFP facilities in the ACT, staff from the ACT Ombudsman (which is part of the ACT NPM) participated in the visit. Staff

from the other elements of the ACT NPM (the ACT Human Rights Commission and the ACT Inspector of Custodial Services) attended the visits as observers.

AFP Facility	Date of visit
Norfolk Island Police Station	3 August 2022
Tuggeranong Police Station, ACT	20 April 2023
Woden Police Station, ACT	21 April 2023
Gungahlin Police Station, ACT	2 May 2023
Belconnen Police Station, ACT	3 May 2023
Canberra City Watch House, ACT	15-16 June 2023

Table 8: AFP facilities visited in 2022-23

Data received from the AFP on the use of their holding facilities indicates that most are rarely used to detain people. Of the nine facilities in operation, only two held people in custody during the financial year 2022-23.

One of those facilities, the police station on Christmas Island, held only four people. The Canberra City Watch House, on the other hand, was the busiest by far, holding over 4,000 people.

AFP detention facility	# detainees	# First Nations detainees	# Female detainees	# Juvenile detainees
Canberra City Watch House, ACT	4,088	877	852	377
Gungahlin Police Station, ACT	0	0	0	0
Belconnen Police Station, ACT	0	0	0	0
Woden Police Station, ACT	0	0	0	0
Tuggeranong Police Station, ACT	0	0	0	0
Jervis Bay Police Station, NSW	0	0	0	0
Norfolk Island Police Station	0	0	0	0
Christmas Island Police Station	4	0	0	0
Cocos (Keeling) Islands Police Station	0	0	0	0

Table 9: Number of people detained in AFP facilities in 2022-23

The Canberra City Watch House provides a charging and custodial facility that operates 24 hours a day, 365 days per year. Its cells are used to hold people who have been:

- placed under arrest and are awaiting charge
- refused police bail and remanded into custody, or
- placed into protective custody (for example people who are intoxicated).

During the 2022-23 financial year, the Canberra City Watch House held 4,088 people in custody. Of those individuals, 887 (18%) identified as First Nations people, 852 (21%) were female, and 377 (9%) were juveniles.

# AFP custody centres: Selected topics from 2022–23

The key systemic issues that we observed during the year’s visits included:



## 1 Infrastructure Issues

Many sites face significant maintenance issues (las of or poorly functioning CCTV and in-cell intercoms, lack of adequate storage) which could pose risks to the safe custody of detained people.



## 2 Lack of use and limited functionality with process

Because many of the sites are so infrequently used, there is a risk that processes are not well known or understood by local staff.



## 3 Lack of female officers

Some locations, including in Canberra, were unable to have a female officer on each shift, while some remote (offshore) locations had no female staff at all. This could cause issues if a female identifying, or gender diverse individual come into custody.



## 4 Lack of onsite psychological assessment

Whis may cause people to stay in custody for extended periods while waiting for an assessment to be arranged elsewhere.

Figure 18: Key systemic issues found at AFP custody centres, 2022–23

# Part 3: Australian Defence Force

## ADF facilities in 2022–23

According to information received from the ADF, the operational status of their detention facilities during the 2022–23 reporting period was as follows:

ADF Facility	Operational status	State
Defence Force Correctional Establishment (DFCE), Holsworthy Barracks	Open	NSW
Blamey Barracks, Kapooka	Open	NSW
Army Logistics Training Centre, Bandiana	Open	VIC
Gallipoli Barracks, Brisbane	Open	QLD
Lavarack Barracks (1 <sup>st</sup> Battalion Royal Australian Regiment), Townsville	Open	QLD
RAAF Base Williamstown	Suspended	NSW
Simpson Barracks	Suspended	VIC
RAAF Base Amberley	Suspended	QLD
HMAS Stirling	Suspended	WA
RAAF Base Edinburgh	Suspended	SA
Robertson Barracks	Suspended	NT
Royal Australian Air Force Base, Wagga Wagga	Closed	NSW
RAAF Base Richmond	Closed	NSW
Lavarack Barracks (2 <sup>nd</sup> Battalion, Royal Australian Regiment), Townsville	Closed	QLD

Table 10: Operational ADF detention facilities, 2022–23

Data received from the ADF indicates that the majority of their detention facilities are rarely used. Of the five facilities in operation, only the Defence Force Correctional Establishment (DFCE) held people in custody during the financial year 2022–23. The DFCE is the only ADF detention facility authorised to hold members of all three branches of the Defence Force<sup>38</sup> who have been sentenced to more than 14 days of detention.

In 2022–23, the DFCE held 18 individuals. All were male, they ranged in age from 18 to 37, and were held for periods of between 6 and 30 days. The average length of stay was just under 19 days and the average age of those detained was 25.6 years of age.

The main role of the DFCE is to rehabilitate members of the ADF who have been sentenced to detention for breaching military regulations or laws, though it also seeks to deter such behaviour,

with an emphasis on rehabilitation over punishment. The goal of this rehabilitation is to prepare them to return to active service by building respect for military authority and improving the individual's self-respect and discipline.

## Commonwealth NPM visits in 2022–23

During the reporting period, we conducted a number of familiarisation visits to ADF facilities. During these visits, we accompanied ADF staff members on their routine technical inspections, in order to increase our understanding of the ADF environment.

ADF Facility	Date of visit
Lavarack Barracks, Townsville, Qld	24 August 2022
Royal Australian Air Force Base, Wagga Wagga NSW	20 September 2022
Blamey Barracks, Kapooka, NSW	20 September 2022
Army Logistics Training Centre, Bandiana, Vic	21 September 2022

Table 11: ADF Facilities visited in 2022–23

The ADF have a pre-existing inspection process in place, which focuses on:

- the material conditions of cells and related infrastructure
- the welfare of detainees
- access to exercise
- staff training, and
- record keeping.

The ADF's internal technical inspections provide a degree of monitoring and oversight to these places of detention, but in order to confirm this, we will commence our own OPCAT-focused visits to these facilities in the coming reporting period. The frequency of those visits will depend upon resourcing and our assessment of risk.

# Education, advisory and cooperation functions

## Education function

The Commonwealth NPM has a role in providing education and training to raise awareness of the prevention of torture and ill-treatment. When conducting our visits, we share information about OPCAT, the concept of preventing torture and ill-treatment, and our mandate with the staff and people that we engage with in detention environments.

Throughout the 2022–23 reporting period, the Commonwealth NPM also took part in education and awareness raising activities, including:

- September 2022: The Ombudsman presented at the National OPCAT Symposium in Melbourne, hosted by the Australian Human Rights Commission and RMIT University.
- December 2022: The Ombudsman presented at the Queensland OPCAT Forum to discuss perspectives on Australia’s readiness to meet its OPCAT obligations.
- March 2023: The Office presented at the Future Justice and Corrections Summit outlining progress on implementation of OPCAT, which provided an update from the Office’s presentation at the Summit in March 2022.

Furthermore, our observations and recommendations are made available to the public. Since appointment in 2018, the Commonwealth NPM has produced publicly available reports, of which this report is the sixth:

- 1 January – 30 June 2019
- 1 July – 30 December 2019
- 1 January – 30 June 2020
- 1 July 2020 – 30 June 2021
- 1 July 2021 – 30 June 2022
- 1 July 2022 – 30 June 2023

In order to increase the transparency and accessibility of our work, in the 2023–2024 financial year we will also be moving to publish an individual report following each of our visits to a place of detention. These Post Visit Summaries will be published on our website, and will include the key observations, recommendations, suggestions, and comments, arising from each visit.



# Advisory function

The Commonwealth NPM has a general advisory function relating to legislative and other proposals, opinions, recommendations, and reports on any issues within the mandate of the NPM, including those concerning the treatment of persons deprived of their liberty.

We were co-signatories to five joint statements made by Australian NPM members in 2022–23. These joint statements were also educative in nature and related to:

- the role and functions of the NPM – [26 October 2022](#)
- the treatment of children and young people in detention – [21 November 2022](#)
- the commencement of Australia’s NPM obligations under OPCAT – [20 January 2023](#)
- the termination of the Subcommittee on Prevention of Torture’s visit to Australia – [20 February 2023](#)
- the absence of additional funding for OPCAT implementation in the 2023–24 federal budget – [10 May 2023](#).

We also contributed to three joint submissions made by Australian NPM members to domestic and international bodies in 2022–23. These related to:

- the Monitoring Places of Detention (Optional Protocol to the Convention against Torture) Bill 2022 (Qld) (available [here](#)) (submission to the Queensland Legal Affairs and Safety Committee).
- the UN Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions’ call for input on practices for the investigation, documentation, and prevention of deaths in custody in the criminal justice context (available [here](#)) (submission to the Special Rapporteur).
- the UN SPT’s draft General Comment on Article 4 of OPCAT relating to the definition of ‘places of detention’ (available [here](#)) (Submission to the SPT).

The Commonwealth NPM engages regularly with the Attorney General’s Department, and other agencies, and when required, the Commonwealth Ombudsman will engage directly with the Attorney General on OPCAT related matters.

The Commonwealth NPM also provided input to the first Annual Report of the Australian NPM, which will cover the activities of the bodies that comprise the Australian NPM during the 2022–23 financial year. That report is anticipated to be published in early 2024.





# Cooperation function

The Commonwealth NPM works with other NPMs both within Australia and internationally, to share experience and best practice. We also engage with a range of other stakeholders.

On 7 October 2022, the Commonwealth Ombudsman and the Australian Human Rights Commissioner released a [joint public statement](#) highlighting concerns regarding the use of hotel APODs.

We regularly engage with the Australian Human Rights Commission, the Australian Red Cross, the United Nations High Commissioner for Refugees, the Association for the Prevention of Torture (APT), other domestic and international NPMs, and civil society organisations to leverage their knowledge and expertise to support the Commonwealth NPM's work, particularly regarding immigration detention.

As an active member of the Australian NPM, we participated in three meetings of the Australian NPM in 2022–23 (in August, December, and March). The Australian NPM forum offered considerable opportunity for NPMs to disseminate information, and take part in group education and training opportunities. For example, as part of the March 2023 meeting, training was provided to participants by the APT and the Norwegian NPM.

Communiqués from each of these meetings are published on [the Office's website](#), where the Australian NPM [Terms of Reference](#) are also available.

On 30 September 2022 the Ombudsman, as both Commonwealth NPM and NPM Coordinator, made a [submission](#) to the Committee against Torture as part of the Committee's consideration of Australia's sixth periodic report under the Convention against Torture.

On 14 November 2022, the Ombudsman attended a private hearing with the Committee in Geneva, alongside the Australian Human Rights Commission. The hearing presented an opportunity to discuss the Office's submission to the Committee and respond to Committee questions.

The Commonwealth Ombudsman also attended, as an Observer, the Australian Government's appearance before the Committee on 15 and 16 November 2022.

During the SPT's visit to Australia in October 2022, the Commonwealth NPM participated in two Australian NPM meetings with the SPT. Separately, they also participated in an SPT training session on the obligations of NPMs under OPCAT.



In early 2020, the Commonwealth Ombudsman established a civil society advisory group to provide expert advice and guidance to the Office about its functions and responsibilities as both Commonwealth NPM and as the NPM Coordinator.

- Since establishment there have been nine OAG meetings (including two in 2022–23), most recently in May 2023.
- Since the fourth OAG meeting in April 2021, the Office has published communiqués from each meeting on [our website](#).
- Current members of the OAG can be found [here](#).



# Appendix A: OPCAT and the Commonwealth NPM



## The Optional Protocol to the Convention Against Torture

The *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) creates a practical framework for protecting the rights of those who have been deprived of their liberty. It does this by regularly visiting places of detention, at both an international and national level, to prevent the occurrence of torture and ill-treatment.<sup>39</sup> OPCAT also establishes the Subcommittee on the Prevention of Torture (SPT), who are tasked with overseeing the enactment of OPCAT at an international level.

OPCAT was adopted by the UN General Assembly in 2002, and ratified by Australia in 2017. In doing so, Australia committed to establishing and maintaining a network of visiting bodies known as National Preventive Mechanisms (NPMs), as well as allowing the SPT to have unfettered access to places of detention in Australia.

Australia is a Commonwealth, made up of the national government, six federated states, and 2 self-governing territories.<sup>40</sup> Power and responsibility for different areas of government are divided amongst the Commonwealth, states and territories, including responsibility for various places of detention. As a result, federal, state and territory governments each have jurisdiction and control over distinct places of detention.

Detention oversight is also divided between these levels of government. The Australian NPM Network is a cooperative association of federal, state and territory bodies responsible for inspecting places of detention.

## Establishing the Commonwealth NPM

In July 2018, the Commonwealth Ombudsman was appointed as the NPM for places of detention under Commonwealth control. The Commonwealth NPM was established as an independent function within the Ombudsman's Office to perform this role.

The places of Commonwealth detention that we currently visit are:



- Immigration detention facilities: managed by the Department of Home Affairs (Department) and, in particular, the Australian Border Force (ABF).
- Custodial detention facilities: managed by the Australian Federal Police (AFP).
- Military detention facilities: controlled by the Australian Defence Force (ADF).

Oversight of adult prisons, youth detention, police cells, closed mental health and forensic disability facilities generally fall within scope of state and territory NPMs. At present, these detention facilities are considered 'primary' places of detention by the Australian Government, with other 'secondary' places of detention (for example certain aged care facilities or disability care settings) falling outside of the scope of OPCAT.

However, OPCAT does not distinguish between 'primary' and 'secondary' places of detention, and the *Ombudsman Regulations 2017* do not limit the Commonwealth NPM's remit to only 'primary' Commonwealth detention facilities. Subject to resourcing, the Commonwealth NPM will consider visiting other places of detention in the future.

## A Preventive Mechanism

NPMs perform the four following key functions:

- to visit
- to advise
- to educate
- to cooperate.

In practice, the visiting function is the foremost of our functions, due to the impact that visits to places of detention can have in the prevention of torture and ill-treatment. Much of this report will be taken up with descriptions, analysis, and recommendations based on our visits to places of detention in the 2022–2023 financial year.

Details of our activities in the other areas of our work (education, advisory, and cooperative functions) are discussed in Part 5 of this report.

These four functions are intended to help build a system which reduces the likelihood or opportunity for torture or ill-treatment to take place. In this way, the work of the NPM is preventive, rather than reactive.

## VISIT

Our primary function is undertaking preventive monitoring of places of detention. We regularly examine the treatment of persons deprived of their liberty. During these visits:

- We check compliance with international human rights obligations, other UN norms, domestic laws, and relevant practice.
- Speak with staff and people held there.
- Report on findings.
- Make recommendations for change.

## EDUCATE

We make our mandates and work known. This may include:

- Developing educational programs to raise awareness of OPCAT and prevention of torture & ill-treatment for staff working in places of detention, or at schools and universities.
- Reviewing training materials for staff in places of detention.
- Presenting information on OPCAT & our work at conferences, symposiums & other educational opportunities.

## ADVISE

We have a general advisory function relating to legislative and other proposals, options, recommendations, and reports on any issues within the mandate of the NPM. We may:

- Make recommendations to the government including directly to detention authorities.
- Submit and/or comment on legislative and reform proposals by governments.
- Review policies of governments and detention authorities.
- Contribute to Australian government reports or present the NPM's own reports to human rights mechanisms.

## COOPERATE

We are committed to having meaningful engagement with a range of stakeholders and who may include:

- The SPT, the CAT, other international NPMs, & other international torture prevention organisations.
- Other Australian NPM bodies.
- Other relevant domestic bodies such as the Australian Human Rights Commission, UNHCR, Red Cross.
- The Commonwealth Ombudsman's OPCAT Advisory Group.

Figure 19: The four functions of an NPM

# Powers of the Commonwealth NPM under OPCAT

OPCAT includes provisions that define the powers of an NPM. This includes the responsibilities of State Parties, one of which is that the NPM be afforded functional independence and the resources necessary to perform its functions.<sup>41</sup>

For NPMs to fulfil their mandates effectively, OPCAT requires the following powers:

## Access to information concerning:

- the number of people detained
- the number of places of detention

the location of places of detention

## Access to information concerning:

- the treatment of those people
- the conditions of their detention

## Access to all places of detention:

- including all related facilities and installations

## The opportunity to have private interviews:

- with anyone who wishes to speak with us, without witnesses and with an interpreter if necessary
- with any person who may supply relevant information

## The liberty to choose:

- where and when we conduct our visits
- who to speak with

## The right to maintain contact with the SPT:

- to meet with them, and
- to share information



Figure 20: Article 20 OPCAT, the powers of an NPM

Article 21 of OPCAT further includes the protections against repercussions. Firstly, by prohibiting any sanctions against those who engage with an NPM, and secondly by stipulating that any private information an NPM collects as privileged.<sup>42</sup>

# Methodology of the Commonwealth NPM

The foundation of our work is to monitor, make recommendations, and promote systemic improvement. In order to achieve this, we regularly undertake the following activities:

- Remote monitoring: examination of reporting on incidents and population data.
- Regular visits: we maintain a schedule of visits to places of detention, which may be announced, semi-announced or unannounced.
- Regular engagement: regular contact is kept with facility management in order to build a more proactive and responsive relationship between our organisations.
- Post-visit feedback and recommendations: we identify areas that we perceive as posing a risk to potential ill-treatment, and make recommendations with the aim of influencing systemic improvement.

Subject to available resourcing, we determine which places of detention to prioritise, and the frequency and length of each visit. We take an evidence-based approach to the scheduling of our visits and have the flexibility to adjust our visiting schedule based on our assessment of risk.

When planning for our announced and semi-announced visits, we gather information about each site through a comprehensive request for information from the relevant detaining agency, to assist the team in its preparation. This does not occur in the case of unannounced visits as it would alert the site to our intention to visit. Information received during this process is used along with that from our monitoring and engagement activities to build a picture of each site visited. We conduct a series of planning meetings, to ensure that all team members are fully informed about the site and are familiar with their roles and responsibilities.

When conducting on-site visits to places of detention, we speak with staff and those who have been detained, and observe the conditions of the places they are held in. We consider the appropriateness of the following:

- accommodation facilities and their condition
- medical, health and wellbeing services
- the availability of purposeful activities (for example educational, recreational and cultural activities) and whether they meet the needs of those in detention
- opportunities to remain in contact with family, friends, and other supports, and
- use of force against people in detention.

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



# Information gathering

1. Interviewing people in detention



2. Meeting with staff who operate facilities



3. Reviewing records and other information



4. Analysing intelligence and statistics



5. Reviewing footage and records of incidents



6. Observing the condition of facilities



Figure 21: Information gathering activities used by the Commonwealth NPM



We benchmark our observations against Australia’s obligations under OPCAT, associated international treaties, and other relevant human rights standards. In addition, we consider whether the government agencies who administer these places of detention, as well as any contracted service providers, adhere to applicable legislation, policies, and procedural instructions.

We pay particular attention to problems and risks that we have 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 bodies.<sup>43</sup>

The 5 indicators of a healthy detention facility are:

<b>SAFETY</b>	People in detention are held in safety, and consideration is given to the use of force and disciplinary procedures as a last resort.
<b>RESPECT</b>	People in detention are treated with respect for their human dignity and the circumstances of their detention.
<b>PURPOSEFUL ACTIVITY</b>	Detention authorities encourage activities and provides facilities to preserve and promote the mental and physical well-being of people in detention.
<b>WELLBEING &amp; SOCIAL CARE</b>	People in detention can maintain contact with family and friends, support groups, and legal representatives, and have a right to make a request or complaint.
<b>PHISICAL &amp; MENTAL HEALTH</b>	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.

Figure 22: The 5 indicators of a healthy facility

The role of the Commonwealth NPM is preventive, not reactive. Our work involves monitoring in order to identify any patterns or systemic issues where torture and other inhuman or degrading treatment or punishment may occur. It is not the role of the Commonwealth NPM to collect, investigate or advocate on behalf of individual complainants. However, when encountering such complaints, we ensure that the individual is either advised of the appropriate mechanisms to contact within the Commonwealth Ombudsman or pass on the information ourselves.

During the 2022–23 reporting period, additional work has been done to further develop our methodology, including progressing two key documents:

- *Disability Engagement Strategy*
- *Engaging External Experts Framework*

Our forthcoming *Disability Engagement Strategy* will support our mandate by identifying when and how we engage on matters relating to people with disability. It will guide us to become more disability-aware in our OPCAT work, by developing ongoing relationships with people with lived experience of disability, their families, friends, and carers, and with organisations that represent and advocate for people with disability. We intend that this will support better outcomes for people with disability in the places of detention we oversee.

The *Engaging External Experts Framework* provides guidance on:

- why external experts may be required
- the types of expertise that may be useful
- how experts can be identified
- the ways in which experts can assist us, and
- how experts can be engaged.

Having access to diverse professional expertise, for example, specialist medical expertise, can significantly assist an NPM. International guidance emphasises the importance of ensuring that NPMs are comprised of, or have access to, a diverse range of skills so they can holistically assess the treatment and conditions of people deprived of their liberty. Although we do not currently engage external experts to assist in our work, it is our intention to do so going forward, should our funding permit it.

We expect that these documents will be finalised and begin to inform our methodology and practice during the 2023–24 financial year.



# Appendix B: Agency responses



## Home Affairs response



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EC24-000971

Mr Iain Anderson  
Commonwealth Ombudsman  
Office of the Commonwealth Ombudsman  
GPO Box 442  
CANBERRA ACT 2601

Iain  
Dear Mr Anderson

Thank you for providing the Department of Home Affairs (the Department) with a copy of your draft report *Commonwealth National Preventative Mechanism Report – Access All Areas: Monitoring Places of Detention 2022-23* (the NPM Annual Report).

Given the passage of time since the NPM visits to immigration detention facilities between November 2022 and May 2023, there are a number of matters applicable to the recommendations made in the NPM Annual Report that the Department is already progressing. The Department accepts and either has an ongoing program to address or has already addressed eight recommendations made in this report. The Department agrees with recommendations three and nine and partially agrees with recommendation four. As recommendation five deals with legislative reform, it is a matter for the Australian Government.

The Department's full response to the NPM Annual Report is at **Attachment A**.

I note the caveats related to the non-disclosure of operationally sensitive information contained within the responses to recommendations one, two and 11 and request this information is not published. I note that several of the recommendations include timeframes for implementation. The Department will endeavour to meet these targets, noting that activities will be prioritised in accordance with the Department's broader operational priorities.

Should you wish to discuss any aspects of the Department's response, please contact Assistant Secretary Audit and Assurance, [REDACTED]

Yours sincerely

Stephanie Foster

**Stephanie Foster PSM**

Secretary

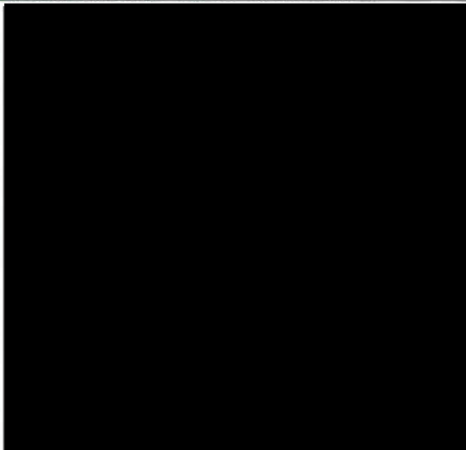
3 April 2024



The Department welcomes the opportunity to respond to the *Commonwealth National Preventative Mechanism Report – Access All Areas: Monitoring Places of Detention 2022-23* (the NPM Annual Report).

The Department accepts and is already addressing the majority of the recommendations made in this report. Responses to individual recommendations are outlined below.

**General comments and errors of fact:**

Page	Commonwealth Ombudsman statement	Home Affairs comment
30 to 32	<p><i>The Migration Act 1958 requires that children under the age of 18 years can only be detained as a measure of last resort and for the shortest practicable time.</i></p> <p><i>We also note that s4AA of the Migration Act requires that a minor only be detained as a measure of last resort.</i></p> <p><i>During the reporting period, we observed that in 4 of the 12 group arrivals, the children in question were referred to as 'guests' rather than detainees. Upon querying this, we were advised that this term is used when parents are refused entry to Australia on certain grounds and therefore detained, 29 while travelling with their children. In these instances, the Department has advised that they do not consider the children to be 'unlawful' under the Migration Act 1958, but that to remain in the care of their parents, and in their best interests, they are held in immigration detention as 'guests'.</i></p>	<p>Section 4AA(1) of the <i>Migration Act</i> states that 'The Parliament affirms as a principle that a minor shall only be detained as a measure of last resort'. It is important to note that s 4AA expressly refers to a 'principle', not a legal requirement.</p> <p>If a minor is to be detained as a measure of last resort, an officer must, for the purposes of determining where the minor is to be detained, regard the best interests of the minor as a primary consideration.</p> <p>In addition the Department wishes to advise that there are instances where children who are lawful non-citizens or potentially Australian citizens are accommodated for the shortest practicable time in alternative places of detention as 'guests'. These children may reside at a detention facility with their parent/guardian, and this will occur with the agreement of the parent/guardian. In these circumstances, the Department or service provider may refer to these children as 'guests' rather than 'detainees' because they are free to leave at any time if the parent/guardian makes other arrangements for their care.</p>
39	<p><i>We received a copy of the finalised review report on 30 June 2023.</i></p>	<p>This is incorrect. A draft review report was provided to the Ombudsman's Office on 25 July 2023.</p>
40		<p>The Department requests redaction of this paragraph as it is inappropriate to refer to matters as having been referred to, or being under consideration by the NACC in a public document.</p>



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### Recommendation 1

*Infrastructure challenges - Within 6 months, the Department conduct a review of detention-related infrastructure, focusing on the needs of detainees, compliance with domestic and international standards, and with the aim of improving:*

- *The safe accommodation of vulnerable groups including, but not limited to, people with disabilities, women, and gender diverse persons*
- *The ability of detained persons to maintain contact with family and other community and cultural supports, and*
- *Access to culturally safe health and specialist services commensurate with those in the community.*

*And provide the Commonwealth NPM with a copy of the review, advice of relevant actions taken and the implementation plan for any recommendations made, no later than 90 days after completion of the review.*

The Department **accepts and has an ongoing program to address** this recommendation.

The Department considers onshore detention infrastructure needs on a continuous basis (with formal mechanisms in place to discuss emerging risks at the site and national level) and as part of the annual departmentally managed Administered Capital Works (ACW) Program.

In addition to formal complaints mechanisms (for detainees and visitors), emerging infrastructure risks can be raised for consideration at any time by stakeholders at the site level (within the Weekly Review Meeting (WRM)), and at the national level (within the Detention Service Provider Committee (DSPC) or the Detention Estate Governance Forum (DEGF)).

As part of the ACW program, a range of infrastructure needs are considered on a six-monthly basis including, but not limited to: operational capacity (including the ability to safely accommodate detainees, where possible, close to family and community supports); the requirement for operational flexibility (enabling ABF to segregate detainees as required to ensure safety and security); the requirement for infrastructure resistant to contraband infiltration, health care facilities which support the delivery of health services commensurate with those available within the community; educational and recreational facilities; and facilities which enable detainees to maintain contact with family and community supports (e.g. telephones, computers, and visit facilities).

At the site level, the review process for the ACW program involves continual informal and, if required, formal discussion culminating in the annual submission of formal Capital Expenditure Proposals (CEPs). At the national level, CEPs are received annually at which time they are formally reviewed, prioritised, and submitted to the Department (via the DEGF). These involve discretionary and non-discretionary submissions (those relating to assets which pose an immediate risk to health and safety; seriously compromise operational capability; are at or beyond end-of-life; no longer fits their intended purpose; or are negatively impacting detainees and other stakeholders). Discretionary CEPs are considered by the Department once all non-discretionary bids have been identified and funding allocated. The approved ACW Program is formally reviewed (by the Department and the DEGF) after six months or on an ad-hoc basis in response to emerging risks and/or changes in the operational environment.

As part of the ACW Program, the Department receives and records various documents and certificates confirming any work undertaken conforms to relevant Australian codes, legislation and requirements.

Examples of these include:

- Certificate of Practical Completion;
- Documents confirming compliance with Disability Access/Development Approval;
- Certificate of structural compliance and design compliance;
- Acoustic certification;

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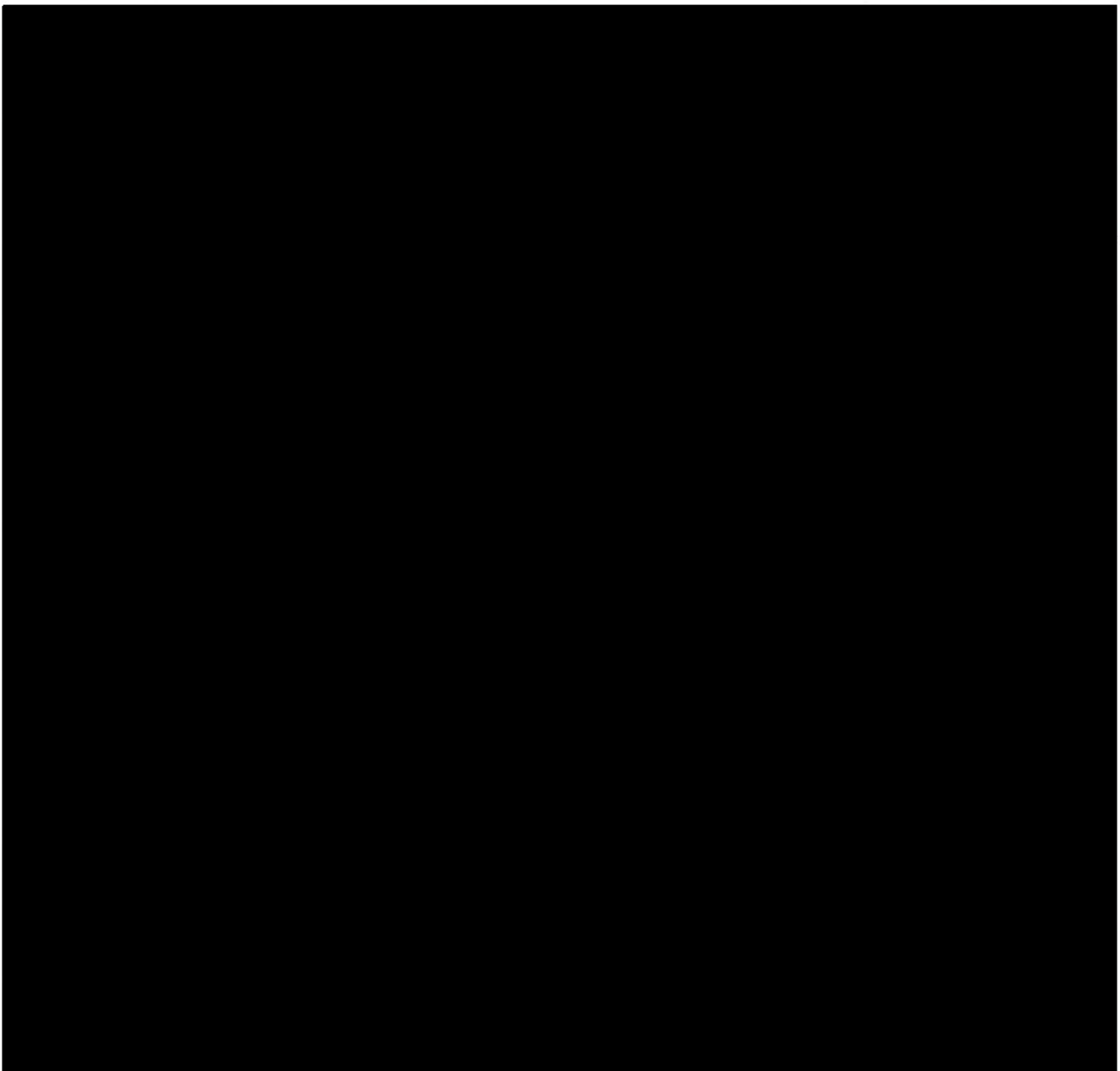
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- Security system commissioning and witness testing;
- Electrical and communications data testing; and
- Installation certificates for electrical/ fire/ hydraulics, evacuation and other related fire alarm plans.

As with any infrastructure measures, any agreed works are subject to funding availability and a range of risks commonly associated with infrastructure projects, particularly inclement weather, contractual issues or supply chain challenges (i.e. labour or materials shortages which are often associated with delays and/or inflated prices).

Projects currently underway which demonstrate the Department's commitment to ensuring a safe and secure Immigration Detention Network (IDN) which supports diverse detainee health and welfare needs include the following.





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### Recommendation 2

*Women in the immigration detention network - In line with Recommendation 1, within 6 months:*

- *The Department consider ways to best accommodate women in all state and territory immigration detention facilities, with the aim of avoiding both the long-term detention of women in hotel APODs and interstate separation from friends and family, and*
- *Provide the Commonwealth NPM with advice of the consideration process and implementation plan as soon as completed.*

The Department **accepts in-principle** this recommendation.

As per our response to recommendation one, the Department already considers infrastructure needs across the IDN on a continual and bi-annual basis. This includes the ability to safely accommodate detainees, where possible, close to family and community supports; and to reduce reliance on alternative places of detention (APOD) accommodation. While options to expand and significantly enhance the detention estate are regularly considered, substantial infrastructure projects exceed the scope of the ACW program and are subject to resource restraints and funding approvals.

The Department notes that as for all detainees, the placement of a female in an immigration detention facility is determined on a case-by-case basis and decisions are reviewed monthly (at a minimum). On occasion, accommodation in a (hotel) APOD may be the most appropriate placement option for a female detainee's circumstances. In all cases, 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 impacted the IDN capacity.

### Recommendation 3

*Transgender, intersex, and gender diverse individuals - In line with Recommendation 1, within 9 months, the Department develop procedural guidance relating to the accommodation, welfare, security, and management of transgender people in detention, noting the requirements outlined in Australian and international best practice guidance, and provide copies to the Commonwealth NPM upon completion.*

The Department **agrees** with recommendation three.

As part of its ongoing review of operational policy instructions contained within the DSM (and in line with the Department's Policy and Procedure Control Framework (PPCF)), the Department will consider this recommendation, particularly in relation to the current review of the *DSM – Procedural Instruction – Detainee placement – Assessment and placement of detainees in Immigration Detention Facilities* (DM-5126).

The Department takes a person-centric approach to the management of all detainees and incorporates this within all detention operational policies and procedures, including the aforementioned *Detention Services Manual (DSM) – Procedural Instruction – Detainee placement – Assessment and placement of detainees in Immigration Detention Facilities* (DM-5126). This approach ensures an ongoing and appropriate management approach tailored to support individual needs and circumstances, including for detainees who



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identify as transgender, intersex and gender diverse individuals in immigration detention. Where known to the ABF, a detainee's LGBTI+ status is considered across all detention practices affecting the detainee.

The Department welcomes any specific advice from the Ombudsman's Office to further discuss details of best practice guidance that the Office deems relevant.

### Recommendation 4

*COVID-19 restrictions - The Department end its national COVID-19 restrictions across the immigration detention network no later than 30 April 2024.*

The Department **partially agrees** with recommendation four.

The Department's response to COVID-19 has progressed towards a 'business-as-usual' approach, with the virus being treated like other transmissible respiratory illnesses. While COVID-19 controls in community settings have relaxed, and COVID-19 controls within the IDN have been stepped down, at this time the Communicable Diseases Network Australia (CDNA) Guidelines still considers the detention environment a 'high risk' COVID-19 setting. We note also the IDN continues to experience COVID-19 outbreaks. COVID-19 controls within the IDN are guided by regular risk assessments which incorporate clinical advice and, where possible, the Department has, stepped down COVID-19 measures within the IDN.

Robust governance arrangements remain critical to ensure the safety of detainees, staff and visitors within the IDN. When an outbreak does occur, COVID-19 mitigation strategies are reintroduced flexibly, effectively and in a timely manner.

### Recommendation 5

*Drug infiltration and alcohol and other drug (AOD) services - The Australian Government should urgently consider legislative reforms to allow ABF to use its existing broader powers to detect and address criminal activity within immigration detention facilities, including but not limited to, appropriate search and seize powers.*

This recommendation **requires Government consideration**.

The Department takes seriously the safety and security of staff and detainees at immigration detention centres and continually assesses program and policy settings and adjusts processes and risk management measures as required in order to enhance the safety and security of detention centres. The consideration of legislative reforms however is a matter for the Australian Government.

### Recommendation 6

*Drug infiltration and alcohol and other drug (AOD) services - The Department ensure that people in detention receive substance misuse and harm minimisation services and support commensurate with government-funded services available in the community, and report to the Commonwealth NPM within 6 months on their plan to achieve this.*

The Department **accepts and has an ongoing program to address** this recommendation.

The Department notes that the Detention Health Service Provider (DHSP) provides comprehensive drug and alcohol services to detainees in the IDN and similar to specialist drug and alcohol services accessible to people in the Australian community through the public health system. Since March 2022, drug and alcohol services across the IDN have been expanded and are available to all detainees Monday to Friday during business hours and include, but may not be limited to:

- Induction drug and alcohol screening;
- Scheduled Comprehensive Drug and Alcohol Assessment;
- Self-Management and Recovery Training;
- Case management; and
- Opioid Substitution Program Therapy.



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### Recommendation 7

*Programs and activities - The Department reviews Programs and Activities schedules across the immigration detention network to ensure age and culturally appropriate and meaningful programs and activities are available to all people in detention, and report to the Commonwealth NPM within 6 months on the implementation of this recommendation.*

The Department **accepts and has an ongoing program to address** recommendation seven.

The Department reviews programs and activities on a regular basis to ensure that age and culturally appropriate and meaningful programs and activities are available to all people in detention. This includes seeking regular feedback from detainees on current activities and the types of activities that they would like to be available. ABF regularly reviews the Facilities and Detainee Service Provider (FDSP) Programs and Activities (P&A) schedule at each immigration detention facility to ensure it meets the requirements of the specific facility cohort and is fit for purpose. The Department also ensures detainees are provided with equitable access to educational and recreational opportunities and meaningful activities that will enhance their mental health and welfare.

The Department reviews any substantiated instances of the FDSP unreasonably or unlawfully restricting an individual detainee from participating in any programs in the schedule, any facility amenity, communication services or any religious activities. If the FDSP does not meet these requirements, this will be considered a performance failure under contractual mechanisms.

While the Department's position remains that detainees, as unlawful non-citizens without study rights, cannot receive formal qualifications, the Department seeks to ensure that detainees are provided with learning opportunities to develop their skills and enhance their prospects at successfully gaining certified qualifications in their future endeavours. For example, at the Yongah Hill IDC, this includes, but is not limited to, the delivery of programs and activities seven days a week, including by teachers and trade specialists such as a chef and a woodworking practitioner.

The Department further notes that the future state of P&A across the IDN is subject to the current procurement of future immigration detention services.

### Recommendation 8

*Population management - Within 6 months, the Department update relevant policy to include an expanded definition of 'critical family', beyond the minimum standard identified in the Migration Regulations 1994, to ensure cultural recognition of extended family and to minimise the impact of separating people in detention from their family and social supports where possible.*

The Department **accepts and is addressing** this recommendation.

The Department currently does not employ the use of the term 'critical family', but instead uses the definition of 'member of the immediate family' consistent with regulation 1.12AA of the *Migration Regulations 1994* in operational policies related to detainee placement decisions in the IDN. Relying on this definition ensures consistency across immigration functions, including visa processing. However, the Department is currently undertaking a review of its *Detention Services Manual – Procedural Instruction – Detainee placement – Assessment and placement of detainees in Immigration Detention Facilities (DM-5126)*, where it is considering existing operational policy and practice in ensuring cultural recognition of the extended family, and to minimise separation of detainees from their family and social support where possible along with balancing possible security and safety risks and threats to the operations of a facility and/or the broader IDN.

### Recommendation 9

*High Care Accommodation: HCA in the immigration detention network - Within 6 months, the Department must improve its record keeping capability and incident reporting guidelines regarding the use of High Care Accommodation, to clearly record duration of stay and reasons for placement at a minimum, and provide the Commonwealth NPM with advice of relevant actions taken.*



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The Department **agrees** with this recommendation.

Home Affairs acknowledges that the record keeping associated with the use of high care accommodation for closer supervision and engagement of detainees is an area of continuous improvement. All detention service provider staff and departmental staff working in immigration detention (facility based and national) undertake record-keeping training consistent with departmental policy to ensure the capability of record keeping is continually improved.

The ABF is currently conducting a review of its Incident Reporting Guidelines. As part of this review, a range of identified issues will be considered including the quality of record-keeping in relation to the use of high care accommodation for the purposes of closer supervision and engagement.

The Onshore Detention Division also continue to progress options within the Department to improve reporting mechanisms within the Compliance Case Management & Detention Portal enhancements (the key business system utilised by detention officers and service providers).

### **Recommendation 10**

*Access to open air - Within 6 months, the Department must ensure that HCA across the immigration detention network offer access to open air and exercise, in accordance with the intent of the Mandela Rules and other relevant domestic and international standards, and provide the Commonwealth NPM with advice of relevant actions taken.*

The Department **accepts and has already addressed** this recommendation.

Under current detention operational policy (*DSM – Procedural Instruction – Detainee Placement – Closer supervision and engagement of high-risk detainees (High Care Accommodation)* (DM-626), and based on an assessment of risk, detainees placed under constant supervision and engagement (including high care accommodation) should be as free from restriction as is safe and practicable. The policy also states they are to have access 'activities targeted to their needs, unless access to these services interferes with the nature of the closer supervision and engagement or poses a risk to the safety and security of the IDF'. In the event these services 'interfere with the nature of the closer supervision and engagement or pose a risk to the safety and security of the IDF, all reasonable steps should nevertheless be taken to provide these services to detainees while under closer supervision and engagement' At all times, the implementation of closer supervision and engagement arrangements (including high care accommodation placement) is expected to be consistent with the operational, legal and administrative requirements of the Department and its contracted service providers, ensuring the safety and security of the detainee as well as other persons within the immigration detention facility. While the Department assesses that DM-626 currently addresses the requirement for detainees to access open air and exercise, it is scheduled for review in late 2024 at which time this recommendation will be reconsidered.

Access to open air and exercise within HCA placements is also considered within the context of the ACW program referenced in our response to recommendation one. The Department notes that the use of high care accommodation for closer supervision and engagement of detainees is an area of continuous improvement and remains open to ideas for improvement.

### **Recommendation 11**

*Ligature minimisation review - The Department implement all recommendations arising from the six Pedavoli Architects' High Care Accommodation Reviews (March 2023) and provide the Commonwealth NPM within 6 months with an implementation plan including time frames for completion.*

The Department **accepts and is addressing** this recommendation.

The Department notes that recommendations arising from the six Pedavoli Architects' High Care Accommodation Reviews (March 2023) are progressing at all onshore detention centres, with the exception



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of North West Point which entered into hot-contingency status on 1 October 2023. As this centre is not currently operational, recommendations relating to this facility are not being progressed at this time.

### Recommendation 12

*Inappropriate crowd control at NWPIDC - The Department advise the Commonwealth NPM within 30 days of:*

- *Action taken, including against facility staff, in regard to the inappropriate and unauthorised use of firefighting equipment at North West Point IDC in early 2022,*
- *Action taken in regard to non-compliance with reporting requirements regarding the incidents, including how this was addressed and how it will be prevented in the future,*
- *Action taken to ensure that fire-fighting equipment is never improperly used against people in detention again,*
- *The updated policy and procedures for facilities to deal with similar incidents, which should include 'explicit detail' on response methods, and prohibited response behaviours, and*
- *Policy, procedures and training in place and planned on appropriate use of force against people in detention.*

The Department **accepts and has already addressed** this recommendation.

On 21 October 2022, the Department wrote to the FDSP and instructed all FDSP staff to discontinue the use of firefighting equipment against detainees.

The Department requested the FDSP undertake a review of incidents and issues identified, and articulate to the Department what action will be taken to prevent the use of unauthorised equipment against detainees in the IDN in the future.

On 28 October 2022, the FDSP responded to the Department with the outcome of its review, outlining the following:

- A review of other critical incidents has been conducted and no other incidents have been identified where fire extinguishers have been used against detainees.
- The FDSP undertook a review of the current documentation, including Policy & Procedure Manuals (PPM) and update where necessary, to ensure they are sufficiently clear about accurate reporting and the correct use of firefighting equipment.
- Formal notification was provided to facilities related specifically to these two issues and reminding them to follow policies and procedures in relation to accurate reporting.
- The FDSP National Emergency Response Team Training Team is reinforcing with all trainees that firefighting equipment are not approved use of force tools.

The FDSP completed a review of their PPMs and concluded that the PPMs were fit for purpose with no proposed amendments. The FDSP highlighted that there is no material within the PPMs which alludes to the use of fire extinguishers for any purpose other than to extinguish fires and noted that the purpose of a PPM is to describe the appropriate response rather than the inappropriate response. The FDSP issued a formal notification to staff reminding them of their obligation to follow policies and procedures.

The Department confirms that the FDSP was financially abated under the *Performance Management Framework* for the March 2023 Reporting Period, for non-compliance with reporting requirements.

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# Implementation of recommendations to the Department of Home Affairs, 2021–22

2021–22 recommendation	Departmental Response	Update from the Department, June 2023
<p>Recommendation 1</p> <p>We reiterate our previous recommendation that Home Affairs work with the Minister to reduce the number of people in detention.</p>	<p>Noted</p>	<p>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 either through grant of a visa or departure from Australia.</p> <p>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 bridging visa to enable the person to reside in the community while their status is resolved. Grant of a bridging visa may be undertaken either by a Departmental delegate subject to the applicant satisfying eligibility requirements or through Ministerial Intervention (where statutory bars prevent a valid application and/or delegate decision).</p> <p>The <i>Migration Act 1958</i> (the Act) provides the Home Affairs' portfolio Ministers with personal intervention powers, allowing them to either grant a visa under section 195A of the Act, or make a residence determination under section 197AB of the Act, 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</p>

		<p>should or should not be referred for ministerial consideration.</p> <p>In November 2022, the Minister for Immigration, Citizenship and Multicultural Affairs agreed for the Department to refer persons in immigration detention in identified cohorts, including long-term detainees (detained for five years or more), for Ministerial Intervention consideration under sections 195A and/or section 197AB of the Act. The Department continues to refer persons in immigration detention for Ministerial intervention consideration.</p> <p>It remains open to individuals who have exhausted all avenues to remain in Australia to end their detention by departing Australia voluntarily.</p>
<p>Recommendation 2</p> <p>Home Affairs should work with the relevant Minister to consider alternative arrangements for individuals facing prolonged or indefinite detention.</p>	<p>Agreed</p>	<p>The Department is progressing the Alternatives to Held Detention (ATHD) program to better support alternative placements for individuals at risk of facing prolonged detention. In the short to medium term, consideration is being given to establishing an independent assessment capability to advise on risk mitigation for individuals being considered for a community placement. Development of longer-term options for an ATHD model would be subject to policy authority from Government.</p>
<p>Recommendation 3</p> <p>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).</p>	<p>Not Agreed</p>	<p>The Department has no further update regarding this recommendation. Please refer to the initial response.</p>
<p>Recommendation 4</p> <p>Home Affairs/ABF should ensure adequate support</p>	<p>Agreed</p>	<p>The Professional Support Framework (PSF) provides support for staff deploying to our Immigration Detention Facilities (IDFs) and Regional Processing Centres</p>

for staff across the Immigration Detention Network with ongoing access to Employee Assistance Programs including being responsive to spikes in absenteeism and/or attrition.

(RPCs). The PSF includes the following elements:

- Enhanced assessment and support mechanisms for staff.
- A stand-alone Professional Support Training Program for staff prior to deployment.
- Facilitated group discussions.
- An IDF and RPC Manager Support Program.
- A more robust performance management process for staff on deployment.

The PSF also provides ongoing support and ensures staff working in IDFs and RPCs have the necessary mental fitness. This includes the Onsite Support Program, post-deployment debriefs and the provision of Resilience Assessments.

#### *Onsite Support Program*

Deployment environments can be challenging for staff. To address these challenges, there is also a contracted EAP onsite presence at IDFs and RPCs. Support services include:

- Individual counselling.
- Worklife Assist seminars.

The level of onsite presence is adjusted to meet identified requirements and will increase temporarily after a critical incident. Post-deployment debriefs with a Benestar counsellor are mandatory to help staff adjust to their environment on return.

To help reduce barriers to staff seeking support, the services recommended to deployed staff have a focus on coaching and wellbeing.

#### *Resilience assessments*

All staff who deploy to an IDF or RPC must first undergo psychometric assessment. This will determine their capacity to work in certain detention locations. Staff may be suitable for deployment to one location, but not to another.

A resilience assessment is valid for 18 months. Assessment is mandatory for staff undertaking deployments or short-term missions to the below locations, irrespective of the length of deployment:

- Yongah Hill.
- Christmas Island.
- Nauru.

The outcomes of assessments have three possible ratings:

- Suitable – for the operational environment at this time. This rating recognises that the person is suitable for deployment or posting to certain locations, as clinically recommended.
- Suitable with support – for the operational environment at this time. This rating recognises that the person is suitable for deployment or posting to certain locations, as clinically recommended. However, they may benefit from accessing support options available. For example, EAP onsite services.
- Requires development – for the operational environment at this time. This rating recognises that there may be risks to the person’s wellbeing if they are deployed or posted to certain locations at this time. As a result of this assessed risk, it is not recommended that they be deployed or posted to this location.

*Post-deployment debriefs – Manager debrief*

The Department acknowledges the critical role managers play in the successful reintegration of staff into their substantive position. A manager debrief must be completed within two weeks of a staff member returning to work in their home location. Managers will receive a debrief template to guide and help with this discussion.

These debriefs apply to:

- All staff deployments (irrespective of length) to IDFs and RPCs.



		<ul style="list-style-type: none"> <li>All staff on secondment from other agencies.</li> </ul>
<p>Recommendation 5</p> <p>Home Affairs/ABF should implement COVID-19 safe strategies to enable family visits irrespective of vaccination status of detainee and/or family members.</p>	Not Agreed	The Department has no further update regarding this recommendation. Please refer to the initial response.
<p>Recommendation 6</p> <p>Unvaccinated detainees should receive equivalent health care and the same level and timeliness of access to health professionals as vaccinated detainees.</p>	Agreed	The Department has no further update regarding this recommendation. Please refer to the initial response.
<p>Recommendation 7</p> <p>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.</p>	Agreed	The Department has no further update regarding this recommendation. Please refer to the initial response.
<p>Recommendation 8</p> <p>Alternatives should be considered for detainees who refuse to attend a medical appointment due to being mechanically restrained. Alternatives</p>	Agreed	The Department has no further update regarding this recommendation. Please refer to the initial response.



may include additional escort personnel, onsite appointments, or telehealth consultations.		
<p>Recommendation 9</p> <p>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).</p>	Noted	<p>Since November 2022, the ABF has been actively working to reduce its reliance on hotel APODs for the placement of detainees in the immigration detention network. The use of hotel APODs for detainee placements is always premised on the shortest possible time; however, there remains an ongoing need to retain existing hotel APODs, to support the short stay placement of Illegal Foreign Fishers, those requiring rapid removal after being Refused Immigration Clearance, and those detainees considered too vulnerable to place within immigration detention centres.</p>
<p>Recommendation 10</p> <p>Contingency plans should be in place and alternative meals should be available if any food served is unfit for consumption.</p>	Agreed	<p>The Department has no further update regarding this recommendation. Please refer to the initial response.</p>
<p>Recommendation 11</p> <p>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.</p>	Agreed	<p>The Department has no further update regarding this recommendation. Please refer to the initial response.</p>
<p>Recommendation 12</p> <p>Home Affairs should ensure that all people in detention, including those in High Care Accommodation and alternative places of detention (APODs), have</p>	Agreed	<p>The Department has no further update regarding this recommendation. Please refer to the initial response.</p>

access to complaint and request forms and the ability to anonymously lodge complaints.		
<p>Recommendation 13</p> <p>Best practice examples of complaint management should be shared and implemented across the immigration detention network to improve consistency.</p>	Agreed	The Department provided a response relating to ongoing work but requested that this not be publicised as it is incomplete.
<p>Recommendation 14</p> <p>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.</p>	Agreed	The ABF continues to work with the Department's Immigration Policy, Integrity and Assurance Division to provide options for the Australian Government's consideration which will enhance ABF's ability to ensure safe, secure and sustainable detention.
<p>Recommendation 15</p> <p>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.</p>	Agreed	The Department has no further update regarding this recommendation. Please refer to the initial response.
<p>Recommendation 16</p> <p>Drug and alcohol rehabilitation services should be available consistently across for</p>	Agreed	In February 2023, the Department approved the Detention Health Service Provider's (DHSP) revised proposal for a comprehensive drug and alcohol service across the Immigration Detention Network.

people in detention who need these services.		In March 2023, the Department received the DHSP's Drug and Alcohol Services Agreed Service Request implementation and proposed recruitment plans. The DHSP is progressing contracts for national positions, and other identified positions are being advertised.
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.	Agreed	A proof of concept activity is being piloted at the Melbourne ITA which will trial detainee vocational and short course training (nil accreditation). Once completed, the trial will form the basis to test the current policy parameters.
Recommendation 18  People should be able to receive certification for courses they complete while in immigration detention.	Noted	The Department has no further update regarding this recommendation. Please refer to the initial response.

Table 12 Follow up: 2021-22 recommendations to the Department of Home Affairs

# AFP response





# ACT Policing

1 March 2024

Mr Iain Anderson  
Ombudsman  
Commonwealth and ACT Ombudsman  
Commonwealth National Preventative Mechanism

**Via email:** [iain.anderson@ombudsman.gov.au](mailto:iain.anderson@ombudsman.gov.au)

Dear Mr Anderson

Thank you for your correspondence dated 13 February 2024.

I am writing in relation to the 2022-23 Report (the Report) of the Commonwealth National Preventive Mechanism (NPM) under the *Operational protocol to the Prevention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT).

Thank you for providing the AFP relevant pages of the Report for review. ACT Policing appreciates the opportunity to provide comment on the Report and a response to the findings and associated suggestions.

I am pleased no formal recommendations have been made by the NPM in relation to the five places of detention visited in the ACT and of Norfolk Island. I welcome the observations made in the Report and ACT Policing will focus its attentions on the four key systemic issues you have highlighted. I understand the systemic issues have been determined based on the suggestions detailed in the Post Visit Summaries you provided in November 2023. As per my response to the Summaries in December 2023, ACT Policing will continue to actively address and implement all suggestions where appropriate and is committed to achieving a high level of ongoing compliance through our facilities, noting the ACT Government investment required. ACT Policing executive will monitor progress of implementing the suggestions through the ACT Policing Business Committee and engagement with ACT Government on facilities will continue through the joint ACT Policing and Justice and Community Safety Directorate Steering Committee.

In response specifically to the four key systemic issues I provide the following:

**Infrastructure issues:** ACT Policing continues to advocate for facilities that are fit for purpose. ACT Policing is committed to meeting the suggestions made by the NPM; some maintenance issues such as CCTV, monitors and intercom can be addressed by ACT Policing internally, others require investment by the ACT Government.

**Lack of use and limited familiarity with process:** The AFP is committed to best practice in all custodial facilities to ensure the safety of detainees, officers and visitors/contractors. The AFP National Guideline on persons in custody and police custodial facilities is undergoing comprehensive review. Its finalisation will require all AFP appointees operating within the instrument directed to be familiar with the instructions and associated functional governance.

**Chief Police Officer for the ACT**

/ GPO Box 401 Canberra ACT 2601

/ Telephone: 02 5127 4015

/ Email: [CPOACT@afp.gov.au](mailto:CPOACT@afp.gov.au)

**Lack of female officers:** The AFP continue to, whenever possible, make available female officers to service detainees who identify as female.

**Lack of onsite psychological assessment:** ACT Policing continues to engage with ACT Health Directorate and the Justice and Community Safety Directorate in relation to detainee wellbeing and health requirements. With regard to External Territories, including Jervis Bay Territory, the AFP continues to engage with the Department of Infrastructure, Transport, Regional Development, Communications and the Arts and the relevant State/Territory Health Department (WA, NSW, ACT) in relation to detainee wellbeing and health requirements.


In relation to a possible omission in your report, or rather, to provide clarity, I propose you may consider stating the infrastructure and facilities controlled by the AFP in the External Territories, including Norfolk Island, are the remit of the Commonwealth Department of Infrastructure Transport, Regional Development, Communications, and the Arts, and therefore, are visited only by the Commonwealth NPM. This would appropriately distinguish the visits made to Norfolk Island with that to the ACT.

ACT Policing notes the report is to be published on your website, along with this response, and that you may decide to table the report in Parliament. I can confirm there is no information in the report pertaining to the AFP that is sensitive.

We are in the process of writing to the relevant ACT Government Directorates and Commonwealth Government Departments in relation to issues relevant to them that have been raised in the OPACT Report.

Should you require any additional information please contact Coordinator of Legislation and Governance Jodie McEwan on 02 5127 4211 or [ACTP-FOI-Governance@afp.gov.au](mailto:ACTP-FOI-Governance@afp.gov.au).

Yours sincerely



Deputy Commissioner Neil Gaughan APM  
Chief Police Officer for the ACT

**Chief Police Officer for the ACT**

/ GPO Box 401 Canberra ACT 2601

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# ADF response





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**PROVOST MARSHAL  
AUSTRALIAN DEFENCE FORCE  
JOINT MILITARY POLICE UNIT**

BP33-02, Brindabella Business Park, CANBERRA ACT 2609

BN78851219

**Mr Iain Anderson**  
**Commonwealth Ombudsman**  
**Commonwealth National Preventive Mechanism**  
GPO Box 442  
Canberra ACT 2601

*Dear Mr Anderson*

**COMMONWEALTH NATIONAL PREVENTIVE MECHANISM 2022-23**

On behalf of the Chief of the Defence Force, I wish to thank you for the opportunity to review the Defence component of the National Preventive Measures Annual Report 2022-23.

I confirm I have no concerns regarding the content but do note a potential anomaly in the list of Australian Defence Force facilities. The facility at the Royal Australian Air Force (RAAF) Base Wagga Wagga, visited by your office in September 2022 (table 10), is omitted from the facility list (table 9). This may, however, be reflective of the fact that the facility was subsequently closed during the 2022 - 23 reporting period.

Once again, I appreciate the opportunity to provide input and commend the Ombudsman's office for its dedication to fostering transparency and accountability within the Commonwealth's operations. Please do not hesitate to contact me directly should you require further information or wish to discuss this matter in more detail.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Terrence Lewis', written over a horizontal line.

**Terrence Lewis**  
Group Captain  
Provost Marshal-Australian Defence Force  
Commander Joint Military Police Unit

PO Box 7927  
Canberra ACT 2610  
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# Appendix C: List of acronyms

ABF	Australian Border Force
ACT	Australian Capital Territory
ADF	Australian Defence Force
AFP	Australian Federal Police
AITA	Adelaide Immigration Transit Accommodation
AOD	Alcohol and other drugs
APOD	Alternative place of detention
APT	Association for the Prevention of Torture
BITA	Brisbane Immigration Transit Accommodation
CDNA	Communicable Diseases Network Australia
CI	Christmas Island
HCA	High Care Accommodation
IDC	Immigration Detention Centre
IDF	Immigration Detention Facility
IDN	Immigration Detention Network
JBT	Jervis Bay Territory
MITA	Melbourne Immigration Transit Accommodation
NPM	National Preventive Mechanism
NSW	New South Wales
NT	Northern Territory
NWPIDC	North West Point Immigration Detention Centre
OPCAT	The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
PIDC	Perth Immigration Detention Centre
SA	South Australia
SPT	Subcommittee on the Prevention of Torture
VIDC	Villawood Immigration Detention Centre
WA	Western Australia
YHIDC	Yongah Hill Immigration Detention Centre



# Appendix C: References

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<sup>1</sup> [homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-30-june-2023.pdf](https://homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-30-june-2023.pdf)

<sup>2</sup> Such as [UNDP \(2020\). Mapping of Good Practices for the Management of Transgender Prisoners. Bangkok: UNDP](#)

<sup>3</sup> *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, Rule 23.1: Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

<sup>4</sup> Including BITA, NWPIDC, MITA, PIDC, VIDC, and YHIDC.

<sup>5</sup> We acknowledge that by the time of drafting, all ITAs are now designated as IDCs.

<sup>6</sup> We acknowledge that by the time of drafting, North West Point IDC has been put into 'hot contingency'.

<sup>7</sup> [Immigration Detention and Community Statistics Summary 31 July 2022 \(homeaffairs.gov.au\)](#)

<sup>8</sup> [Immigration Detention and Community Statistics Summary 30 June 2023 \(homeaffairs.gov.au\)](#)

<sup>9</sup> [Immigration Detention and Community Statistics Summary 30 June 2023 \(homeaffairs.gov.au\)](#)

<sup>10</sup> [Immigration Detention and Community Statistics Summary 30 June 2023 \(homeaffairs.gov.au\)](#)

<sup>11</sup> [Immigration Detention and Community Statistics Summary 30 June 2023 \(homeaffairs.gov.au\)](#)

<sup>12</sup> [Pearson v Minister for Home Affairs \[2022\] FCAFC 203 \(fedcourt.gov.au\)](#)

<sup>13</sup> s501(7)(c), *Migration Act 1958*

<sup>14</sup> [Aggregate Sentences Act 2023 \(homeaffairs.gov.au\)](#)

<sup>15</sup> s501(7)(c), *Migration Act 1958*

<sup>16</sup> Correspondence, 22 August 2023

<sup>17</sup> Correspondence, 22 August 2023

<sup>18</sup> [Statement on death of detainee at Villawood Immigration Detention Centre \(abf.gov.au\)](#)

<sup>19</sup> [Perth Airport - Property | About](#)

<sup>20</sup> [homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-30-june-2023.pdf](https://homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-30-june-2023.pdf)

<sup>21</sup> *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, Rule 58 – 59; *Australian Human Rights Commission: Human rights standards for immigration detention* (2013) 10.1.

<sup>22</sup> Such as [UNDP \(2020\). Mapping of Good Practices for the Management of Transgender Prisoners. Bangkok: UNDP](#)

<sup>23</sup> YHIDC in June 2023.

<sup>24</sup> s252(2), *Migration Act 1958* [emphasis added].

<sup>25</sup> *Monitoring Places of Detention: Annual Report of the Commonwealth National Preventive Mechanism under the Optional Protocol to the Convention Against Torture (OPCAT)*, p28.

<sup>26</sup> *Monitoring Places of Detention: Annual Report of the Commonwealth National Preventive Mechanism under the Optional Protocol to the Convention Against Torture (OPCAT)*, p31

<sup>27</sup> *Monitoring Places of Detention: Annual Report of the Commonwealth National Preventive Mechanism under the Optional Protocol to the Convention Against Torture (OPCAT)*, p23.

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<sup>28</sup> *Monitoring Places of Detention: Annual Report of the Commonwealth National Preventive Mechanism under the Optional Protocol to the Convention Against Torture (OPCAT)*, p50.

<sup>29</sup> One child was travelling in a group of adults while in the care of an extended family member.

<sup>30</sup> s189, *Migration Act 1958*

<sup>31</sup> *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, Rule 23.1: Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

<sup>32</sup> *Prisons Act 1981 (WA)*, *Corrective Services Regulation 2017 (Qld)*, *Corrections Act 1997 (Tas)*, *Corrections Act 1986 (Vic)*. NSW and NT legislation refers to 'so much exercise in the open air as is prescribed'.

<sup>33</sup> Including BITA, NWPIDC, MITA, PIDC, VIDC, and YHIDC.

<sup>34</sup> [UNCAT, Concluding observations on the sixth periodic report of Australia, para.14.](#)

<sup>35</sup> [Media Statement | Australian Federal Police \(afp.gov.au\)](#)

<sup>36</sup> [AFP National Guide on Persons in Custody and Police Custodial Facilities and People in Custody 10MAY2012.pdf](#)

<sup>37</sup> Additional capacity to support the Canberra City Watch House if required.

<sup>38</sup> The Royal Australian Navy, Australian Army, and Royal Australian Air Force.

<sup>39</sup> Article 1, OPCAT

<sup>40</sup> Three internal territories (the Australian Capital Territory, the Jervis Bay Territory, and the Northern Territory) and seven external territories (Ashmore and Cartier Islands, the Australian Antarctic Territory, Christmas Island, the Cocos (Keeling) Islands, the Coral Sea Islands, Heard Island and McDonald Islands, and Norfolk Island).

<sup>41</sup> Article 18, OPCAT

<sup>42</sup> Article 21, OPCAT

<sup>43</sup> Healthy indicators adapted from: International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention Against Torture (CAT), Convention on the Rights of Persons with Disabilities (CRPD), Convention on the Rights of the Child (CRC), United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Basic Principles on the Use of Force and Firearms by Law Enforcement Officials – BPUFF, 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 Drinking Water Guidelines (2011).